



## ASX Announcement

Tuesday, 13 July 2021

# YOUFOODZ ENTERS SCHEME IMPLEMENTATION DEED WITH HELLOFRESH IN RECOMMENDED TRANSACTION

## Summary

- Youfoodz Holdings Limited (ASX: YFZ) has entered into a Scheme Implementation Deed with HelloFresh SE (**HelloFresh**), under which it is proposed HelloFresh will acquire 100% of the share capital in Youfoodz for A\$0.93 per share in cash by way of a scheme of arrangement
- Cash consideration of A\$0.93 per share represents a significant premium of 82% to the last closing price of A\$0.51 per share and a 109% premium to the one-month volume weighted average price (**VWAP**) of \$0.44
- The Youfoodz Board unanimously recommends that Youfoodz shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Youfoodz shareholders. Subject to those same qualifications, each Director of Youfoodz who owns or controls any Youfoodz shares intend to vote those shares in favour of the Scheme
- RGT Capital, a holder of 57.4% of Youfoodz shares, intends to vote in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Youfoodz shareholders
- The Scheme is subject to certain customary conditions which must be satisfied before it can be implemented
- Youfoodz shareholders do not need to take any action at the current time

## Overview of Scheme

**BRISBANE, Australia, 13 July 2021** – Youfoodz Holdings Limited (**Youfoodz** or the **Company**) (ASX: YFZ) today announced that it has entered into a binding Scheme Implementation Deed (**SID**) with HelloFresh, under which it is proposed HelloFresh will acquire 100% of the share capital in Youfoodz for A\$0.93 per share in cash, by way of a scheme of arrangement (the **Scheme**).

The price of A\$0.93 per share values the fully diluted equity of Youfoodz at approximately A\$125.3 million<sup>1</sup>.

A copy of the Scheme Implementation Deed is attached.

### Board support

The Youfoodz Board has carefully considered the Scheme and concluded that it represents an opportunity for Youfoodz shareholders to realise certain value with respect to their investment at a material premium to its trading as a public company.

The Youfoodz Board believes the Scheme provides:

- **Significant premium:** The Scheme consideration of A\$0.93 per share represents a premium of:
  - 82% to the Youfoodz closing share price of A\$0.51 on Monday, 12 July 2021;
  - 109% to the one-month VWAP<sup>2</sup> of Youfoodz shares of A\$0.44;
  - 82% to the three-month VWAP<sup>2</sup> of the Youfoodz shares of A\$0.51; and
  - 38% to the six-month VWAP<sup>2</sup> of the Youfoodz shares of A\$0.67.
- **Certainty of value:** The 100% cash consideration provides Youfoodz shareholders with certainty of value that they might not otherwise achieve by retaining their Youfoodz shares.
- **Limited conditionality:** The Scheme is subject to limited customary conditions including Court approval, Youfoodz shareholder approval and no material adverse change.

As a world-leading direct-to-consumer food solutions group, HelloFresh represents a strong strategic partner for Youfoodz. The transaction combines Youfoodz strength in developing and manufacturing delicious ready-made meals with HelloFresh's expertise in supply chain management, technology and direct-to-consumer marketing. Both companies are unified in their purpose to provide Australians with delicious, high quality and affordable fresh meals.

The Youfoodz Board **unanimously recommends that Youfoodz shareholders vote in favour of the Scheme** at the Scheme meeting in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Youfoodz shareholders.

Subject to those same qualifications, each Director of Youfoodz who owns or controls any Youfoodz shares intends to vote those shares in favour of the Scheme at the Scheme meeting.

### Major shareholder support

RGT Capital Fund No. 6 (YF) Pty Ltd (ACN 625 431 307) as trustee for the RGT Capital Fund No. 6 (YF) Trust (**RGT Capital**), a holder of 77,307,508 Youfoodz shares (57.4%), has confirmed it intends to vote in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Youfoodz shareholders.

<sup>1</sup> Implied equity value based on 134,761,519 fully diluted shares outstanding multiplied by the offer price of A\$0.93 per share. Fully diluted shares outstanding comprises 134,547,468 shares on issue and 214,051 shares expected to be issued under Youfoodz deferred shares awards. Excludes unlisted options on issue that are out of the money.

<sup>2</sup> VWAP based on cumulative trading volume and value up to and including 12 July 2021 (being the last trading day prior to this announcement).

## **Scheme Implementation Deed**

The Scheme is subject to customary conditions including Youfoodz shareholder approval, Federal Court of Australia approval and no material adverse change or prescribed occurrences.

The Scheme Implementation Deed also contains customary exclusivity provisions together with an obligation on Youfoodz to pay a break fee in certain circumstances.

Full details of the conditions to the Scheme and other agreed terms are set out in the Scheme Implementation Deed.

## **Indicative Timetable and Next Steps**

Shareholders do not need to take any action at the present time.

An Independent Expert will be appointed to prepare a report on whether, in the Independent Expert's opinion, the Scheme is in the best interests of Youfoodz shareholders. The Independent Expert's report will be included in the Scheme Booklet, along with information relating to the Scheme, the reasons for the Youfoodz Board's recommendation and details of the Scheme meeting. The Scheme Booklet is expected to be sent to Youfoodz shareholders in September 2021.

Youfoodz shareholders will then have the opportunity to vote on the Scheme at a Court convened shareholder meeting, anticipated to be held in October 2021.

Subject to conditions of the Scheme being satisfied, the Scheme is expected to be implemented in October or November 2021.

## **Advisors**

Youfoodz is being advised by Greenhill & Co. as financial adviser and Baker McKenzie as legal adviser.

This announcement has been authorised by the Youfoodz Board.

## **Further information**

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## About Youfoodz

Youfoodz specialises in the production and distribution of high quality and affordable fresh, ready-made meals and other convenience food products for residential (home delivery), retail and corporate customers. Since inception in 2012, Youfoodz has delivered over 60 million ready-made meals to its home delivery, retail and corporate customers.

Products are marketed and distributed through an omni-channel sales model to a database of more than 850,000 home delivery customers via a direct-to-consumer offering (B2C) and via a business-to-business offering to supermarkets, independent grocers, petrol and convenience stores, corporate and government customers (B2B).

Youfoodz operates three production facilities in Brisbane, Australia and has developed a scalable, proprietary manufacturing technology to optimise production and supply-chain management. The Company's three facilities produce more than 400,000 ready-made meals, 80,000 snacks and 25,000 drinks per week on average.

Additional information is available at: <https://www.investors.youfoodz.com>

## About HelloFresh

HelloFresh SE is the world's leading meal-kit company and operates in the U.S., the United Kingdom, Germany, the Netherlands, Belgium, Luxembourg, Australia, Austria, Switzerland, Canada, New Zealand, Sweden, France, Denmark and Norway. In Q1 2021, HelloFresh delivered 239 million meals and reached close to 7.3 million active customers. HelloFresh was founded in Berlin in November 2011 and went public on the Frankfurt Stock Exchange in November 2017. HelloFresh has offices in New York, Berlin, London, Amsterdam, Sydney, Toronto, Auckland, Paris and Copenhagen.

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## **Scheme Implementation Deed**

**Youfoodz Holdings Limited**

**HelloFresh SE**

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**Title**                      **Scheme Implementation Deed**

**Date**                      13 July 2021

**Parties**                      **Youfoodz Holdings Limited** (ABN 38 635 434 801) of 4, 52 Pritchard Road,  
Virginia QLD 4014 (**Youfoodz**)

**HelloFresh SE** of Saarbrücker Straße 37a, 10405 Berlin (**HelloFresh**)

## **Recitals**

- A        Youfoodz and HelloFresh have agreed that HelloFresh will acquire Youfoodz by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Youfoodz and the Scheme Shareholders.
- B        Youfoodz and HelloFresh have agreed to implement the Scheme on and subject to the terms and conditions of this deed.

## **Operative provisions**

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### **1. Definitions and interpretation**

#### **Definitions**

- 1.1        In this deed, unless the context otherwise requires:

**ASIC** means Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.

**Associate** has the meaning in section 12 of the Corporations Act.

**Break Fee** means an amount in cash of \$1,250,000.

**Business** means the business carried on by the Youfoodz Group.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Brisbane, Queensland, Sydney, New South Wales and Berlin, Germany.

**Competing Proposal** means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party either alone or together with any one or more of its Associates:

- (a)        directly or indirectly acquiring a relevant interest in, or acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of Youfoodz Shares;
- (b)        acquiring control (for the purposes of section 50AA of the Corporations Act) of Youfoodz;

- For personal use only
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the Business; or
  - (d) otherwise directly or indirectly acquiring, merging or amalgamating with Youfoodz, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.

**Confidentiality Deed** means the confidentiality deed dated 21 May 2021 between Youfoodz and HelloFresh.

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

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

**Court** means the Federal Court of Australia (Victorian Registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Youfoodz and HelloFresh.

**Deed Poll** means the deed poll to be entered into by HelloFresh in favour of the Scheme Shareholders in the form set out in Schedule 3 or such other form as agreed in writing between the parties.

**Deferred Share Awards** means any deferred share or similar awards or securities issued pursuant to an offer, grant or invitation to eligible participants under:

- (a) the Employee Gift Offer; or
- (b) the Youfoodz Equity Incentive Plan prior to the date of this deed.

**D&O run off policy** has the meaning in clause 5.17.

**Due Diligence Materials** means the written information, documents and responses disclosed or made available to HelloFresh or its Representatives by Youfoodz or its Representatives before 5.00 pm on the Business Day before the date of this deed in the Virtual Data Room.

**Employee Gift Offer** means the employee gift offer described in section 7.9 of the Youfoodz IPO prospectus dated 30 October 2020.

**Exclusivity Period** means the period from the date of this deed to the earlier of:

- (a) the termination of this deed;
- (b) the End Date; and
- (c) the Effective Date.

**Effective** means when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.



**End Date** means 31 December 2021 or such other date as agreed in writing by the parties.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Government Agency** means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

**HelloFresh AusCo** means Grocery Delivery E-Services Australia Pty Limited ACN 155 437 620.

**HelloFresh Group** means HelloFresh and each of its Related Bodies Corporate.

**HelloFresh Indemnified Parties** means HelloFresh and its Related Bodies Corporate and their respective directors, officers and employees.

**HelloFresh Information** means information regarding the HelloFresh Group provided by HelloFresh or its Representatives to Youfoodz for inclusion in the Scheme Booklet, being:

- (a) information about HelloFresh, its Related Bodies Corporate, businesses and interests and dealings in Youfoodz Shares, its intentions with respect to the assets, business and employees of Youfoodz and its funding arrangements relating to the Scheme Consideration; and
- (b) any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is "HelloFresh Information" and that is identified in the Scheme Booklet as such.

For the avoidance of doubt, the HelloFresh Information excludes the Youfoodz Information, the Independent Expert's Report and any other report or letter issued to Youfoodz by a third party.

**HelloFresh Representations and Warranties** means the representations and warranties of HelloFresh set out in clause 8.3.

**Implementation Date** means the fifth Business Day after the Scheme Record Date.

**Independent Expert** means the independent expert appointed by Youfoodz in respect of the Scheme.

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating an opinion whether or not the Transaction is in the best interests of Youfoodz Shareholders and setting out its reasons for that opinion.

**Insolvency Event** means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) the entity entering into an arrangement, compromise or composition with, or assignment for the benefit of, its creditors or a class of them;

- (c) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (d) the entity executing a deed of company arrangement;
- (e) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (f) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (g) the entity being deregistered as a company or otherwise dissolved; or
- (h) an Encumbrance becoming enforceable or being enforced over a substantial part of the property of the entity; or
- (i) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurring with respect to the entity.

**Listing Rules** means the official listing rules of the ASX.

**Material Adverse Change** means any event, occurrence, circumstance, change, matter, condition or thing (each a **Specified Event**) which, individually or when aggregated with other such events, occurrences, circumstances, changes, matters, conditions or things of a like kind or category, has had or would be reasonably likely to have the effect of reducing:

- (a) the consolidated earnings before interest, tax, depreciation and amortisation of the Youfoodz Group (**EBITDA**) of the Youfoodz Group's financial year ending 30 June 2022 by \$10 million or more (and for this purpose, the full financial year effect of any resulting EBITDA reduction must be applied in the relevant period with the calculation done in a manner consistent with the current accounting policies and principles for the Youfoodz Group's annual accounts disclosed in the Due Diligence Materials) compared to what the EBITDA of the Youfoodz Group for the financial year ending 30 June 2022 could reasonably be expected to have been but for the Specified Event; or
- (b) the consolidated annual net revenues of the Youfoodz Group (**Net Revenue**) by 20% or more in the Youfoodz Group's financial year ending 30 June 2022 relative to the Net Revenue for the financial year ending 30 June 2021 (and for this purpose, the full financial year effect of any resulting Net Revenue reduction must be applied in the relevant period with the calculation done in a manner consistent with the current accounting policies and principles for the Youfoodz Group's annual accounts disclosed in the Due Diligence Materials),

in each case provided that the impact of the Specified Event on the value of the applicable EBITDA or Net Revenue of the Youfoodz Group must be determined after taking into account any matters that are of a like or similar kind or like or similar category which offset, or will likely offset, the impact of the Specified Event on the value of the applicable EBITDA or Net Revenue of the Youfoodz Group; and

further in each case other than an event, occurrence, circumstance, change, matter, condition or thing:

- (c) to the extent that it was fairly disclosed to HelloFresh in the Due Diligence Materials or fairly disclosed in the public filings of Youfoodz to ASX prior to the date of this deed;

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- (d) expressly required or permitted to be undertaken under or in accordance with this deed or the Scheme;
  - (e) arising from any actual or proposed change in any law, rule or regulation, generally accepted accounting standards or principles or the interpretation of any such standards or principles or other change in accounting standards, after the date of this deed;
  - (f) arising from general economic, business or financial market conditions or changes in those conditions that impact Australian businesses generally;
  - (g) arising from an act of terrorism, war (whether or not declared), natural disaster, epidemic, pandemic (other than in relation to the Coronavirus or COVID-19 pandemic or any mutation, variation or derivative) or adverse weather conditions or cyber security incident after the date of this deed;
  - (h) arising from any one or more temporary closures of up to 14 days (in aggregate) of:
    - (i) any or more of Youfoodz' production facilities; or (ii) any Australian State or Territory borders which has the effect of restricting the Youfoodz Group's product or supply delivery from one or more material suppliers for which no substitution is possible (in respect of the supplier or the supply), in each case, due to the Coronavirus or the COVID-19 pandemic (or any mutation, variation or derivative);
  - (i) that is the effect of any applicable laws, orders, directions, rules or regulations of any Governmental Agency, excluding any applicable laws, orders, directions, rules or regulations in respect of the Coronavirus or COVID-19 pandemic (or any mutation, variation or derivative);
  - (j) relating to third party costs and expenses incurred by the Youfoodz Group in connection with the Transaction to the extent such amounts or estimates of such amounts are fairly disclosed in the Due Diligence Materials or in writing to HelloFresh prior to the date of this deed; or
  - (k) which HelloFresh has previously approved or requested in writing, including any consequences reasonably foreseeable as a result of such matters.

None of the references in paragraphs (e), (f), (g) and (i) will include any event, occurrence, circumstance, change, matter, condition or thing that have or could reasonably have a disproportionate effect on the Youfoodz Group, taken as a whole, as compared to other participants in the industries in which the Youfoodz Group operates.

**New Lease** has the meaning given in clause 6.3.

**Nominee** has the meaning given in clause 4.2.

**Option** means an unquoted option to subscribe for a Youfoodz Share.

**Prescribed Occurrence** means the occurrence of any of the following between the date of this deed and 8.00 am on the Second Court Date:

- (a) a member of the Youfoodz Group converting all or any of its shares into a larger or smaller number of shares;
- (b) a member of the Youfoodz Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;

- (c) a member of the Youfoodz Group:
- (i) entering into a buy back agreement; or
  - (ii) resolving to approve the terms of a buy back agreement under the Corporations Act;
- (d) a member of the Youfoodz Group issuing shares, or granting an option or a performance right over an unissued share, or agreeing to make such an issue or grant such a right or an option other than:
- (i) on the exercise of an Option existing as at the date of this Deed; or
  - (ii) an issue of Youfoodz Shares in connection with a Deferred Share Award.
- (e) a member of the Youfoodz Group issuing, or agreeing to issue, securities convertible into shares or debt securities;
- (f) Youfoodz ceases to be listed on the ASX;
- (g) Youfoodz declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its member, or announcing an intention to do any of the above;
- (h) a member of the Youfoodz Group disposing, or agreeing to dispose, of the whole or a substantial part, of the Business or its property;
- (i) a member of the Youfoodz Group granting an Encumbrance, or agreeing to grant an Encumbrance, over the whole or a substantial part, of the Business or its property;
- (j) a member of the Youfoodz Group adopting a new constitution or making any change to its constitution;
- (k) an Insolvency Event occurs in relation to a member of the Youfoodz Group;
- (l) any member of the Youfoodz Group entering into, or resolving to enter into, a transaction with any related party of Youfoodz (other than a related party that is a member of the Youfoodz Group), as defined in section 228 of the Corporations Act;
- (m) any member of the Youfoodz Group authorises, commits, resolves, undertakes or agrees to do, or makes any representation or warranty regarding doing, any of the matters set out above,

other than:

- (o) as required or permitted by this deed or the Scheme;
- (p) as fairly disclosed to ASX prior to the date of this deed;
- (q) as fairly disclosed to HelloFresh in the Due Diligence Materials; or
- (r) with the prior written consent of HelloFresh.

**Related Bodies Corporate** has the meaning set out in the Corporations Act.

**Representative** means in respect of a party, its Related Bodies Corporate and each director, officer, employee, advisor, agent or representative of that party and its Related Bodies Corporate.

**RG 60** means Regulatory Guide 60 issued by ASIC in September 2020.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Youfoodz and the Scheme Shareholders, the form of which is attached as Schedule 2 or such other form as agreed in writing between the parties.

**Scheme Booklet** means the information described in clause 5.5(c) to be approved by the Court and despatched to the Youfoodz Shareholders and which must include the Scheme, an explanatory statement, an independent expert's report, a summary of this deed, a copy of the executed Deed Poll, notice of meeting and proxy form.

**Scheme Consideration** has the meaning given in clause 4.4.

**Scheme Meeting** means the meeting of Youfoodz Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Record Date** means 5.00 pm (Sydney time) on the fifth Business Day after the Effective Date.

**Scheme Share** means a Youfoodz Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Youfoodz Shareholder recorded in the Youfoodz Register as at the Scheme Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard, or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned application or appeal is heard.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Share Registry** means Boardroom Pty Ltd of Level 12, 255 George Street, The Rocks NSW 2000.

**Subsidiary** has the meaning set out in the Corporations Act.

**Superior Proposal** means a bona fide written Competing Proposal which the Youfoodz Board, acting in good faith, after having received and taken into account written advice from Youfoodz' financial and legal advisers, determines:

- (a) is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal including any timing considerations, conditions precedent and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Youfoodz Shareholders (as a whole) than the Transaction taking into account all terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing).

**Third Party** means any person other than HelloFresh or any of its Related Bodies Corporate.

**Timetable** means the indicative timetable for the implementation of the Transaction as set out in Schedule 1.

**Transaction** means the acquisition of Youfoodz by HelloFresh through implementation of the Scheme.

**Youfoodz Board** means the board of directors of Youfoodz and a **Youfoodz Board Member** means any director of Youfoodz comprising part of the Youfoodz Board.

**Youfoodz Equity Incentive Plan** means Youfoodz equity incentive plan as approved by the Youfoodz Board, the terms of which were disclosed to ASX on 7 December 2020.

**Youfoodz Group** means Youfoodz and each of its Related Bodies Corporate and a reference to a "Youfoodz Group Member" or a "member of the Youfoodz Group" is to Youfoodz or any of its Related Bodies Corporate.

**Youfoodz Indemnified Parties** means Youfoodz and its Related Bodies Corporate and their respective directors, officers and employees.

**Youfoodz Information** means all information in the Scheme Booklet other than:

- (a) the HelloFresh Information;
- (b) the Independent Expert's Report; and
- (c) any other report or letter issued to Youfoodz by a third party.

**Youfoodz New Facility** means the new purpose-built manufacturing facility described in section 5.2.3 of the Youfoodz IPO prospectus dated 30 October 2020.

**Youfoodz Register** means the register of members of Youfoodz maintained in accordance with the Corporations Act.

**Youfoodz Representations and Warranties** means the representations and warranties of Youfoodz set out in clause 8.1.

**Youfoodz Share** means a fully paid ordinary share of Youfoodz.

**Youfoodz Shareholder** means each person who is registered as the holder of a Youfoodz Share from time to time.

**Virtual Data Room** means the virtual data room (hosted by Ansarada) established by Youfoodz for the purposes of providing information to HelloFresh for the purposes of this Transaction (an index of which has been initialled by the parties prior to the date of this deed for the purposes of identification).

## Interpretation

### 1.2 In this deed:

- (a) unless the context requires another meaning, a reference:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to a gender includes all genders;
  - (iii) to a document (including this deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
  - (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (v) to a party means a party to this deed;

- For personal use only
- (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this deed;
  - (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this deed;
  - (viii) to a person (including a party) includes:
    - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
    - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
  - (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
  - (x) to proceedings includes litigation, arbitration and investigation;
  - (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
  - (xii) to time is to prevailing Sydney time; and
  - (xiii) to \$ means the lawful currency of Australia;
  - (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
  - (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (d) headings are for convenience only and do not affect interpretation of this deed;
  - (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day;
  - (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day; and
  - (g) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed.

### **Construction**

- 1.3 This deed may not be construed adversely to a party only because that party or its legal advisers were responsible for preparing it.

### **Awareness**

- 1.4 Where a representation or warranty is given 'so far as Youfoodz is aware' or with a similar qualification as to Youfoodz' awareness or knowledge, Youfoodz' awareness or knowledge is limited to the actual awareness, knowledge or belief of Lance Giles, John O'Connor, Jonathan Salt, Peter Hardy, Christina King, Aaron Collins, Daniel Alexander and Simon Jarvis as at the date of this deed.

## **Fairly disclosed**

- 1.5 A reference to 'fairly disclosed' in this deed means disclosed to HelloFresh or any of its Representatives to the extent that, and in sufficient detail, so as to enable a reasonable bidder experienced in transaction processes similar to that applicable to the Transaction, and experienced in a business similar to the Business, to identify the nature, scope and financial impact of the relevant matter, event or circumstance on the Youfoodz Group.

## **Best and reasonable endeavours**

- 1.6 Any provision of this deed which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:
- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:
    - (i) any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
    - (ii) immaterial expenses or costs, including costs of advisers,to procure the relevant thing (except, in each case, in circumstances that are commercially onerous or unreasonable in the context of this deed); or
  - (b) commence or defend any legal action or proceeding against any person,
- except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

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## **2. Agreement to proceed with Transaction**

### **Youfoodz to propose Scheme**

- 2.1 Youfoodz agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- 2.2 HelloFresh agrees to:
- (a) comply with its obligations under this deed and the Deed Poll; and
  - (b) assist Youfoodz to propose the Scheme on and subject to the terms and conditions of this deed.

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## **3. Conditions**

### **Conditions precedent**

- 3.1 Subject to this clause 3.1, the Scheme will not become Effective, and the obligations of HelloFresh under clause 4.6 are not binding, until each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in clauses 3.2 to 3.9.



- (a) **(Restraints):** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction on the application of any Government Agency or no preliminary or final decision, determination, notice of objection, or order issued by any Government Agency that would prevent the Scheme from becoming Effective is in effect at 8.00 am on the Second Court Date.
- (b) **(Court Approval):** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (c) **(Shareholder Approval):** Youfoodz Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (d) **(No Prescribed Occurrence):** no Prescribed Occurrence occurs between (and including) the date of this deed and 8.00 am on the Second Court Date.
- (e) **(No Material Adverse Change):** no Material Adverse Change occurs, or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to Youfoodz or HelloFresh between (and including) the date of this deed and 8.00 am on the Second Court Date.
- (f) **(Options):** Youfoodz takes all necessary steps on terms acceptable to HelloFresh (acting reasonably) to ensure no Options are in existence on the Scheme Record Date.
- (g) **(Deferred Share Awards):** Youfoodz takes all necessary steps on terms acceptable to HelloFresh (acting reasonably) to ensure that no Deferred Share Awards are in existence on the Scheme Record Date.

### Best endeavours

- 3.2 Youfoodz undertakes to HelloFresh to use its best endeavours to procure that the conditions precedent in clauses 3.1(b) (Court Approval), 3.1(c) (Shareholder Approval), 3.3(d) (No Prescribed Occurrence), 3.1(e) (No Material Adverse Change), 3.1(f) (Options) and 3.1(g) (Deferred Share Awards) are satisfied as soon as possible after the date of this deed and continue to be satisfied until the last time that the relevant clause requires it to be satisfied.
- 3.3 Youfoodz will not be in breach of its obligations in clause 3.2 to the extent that it takes an action or omits to take an action:
- (a) as is expressly required, permitted or permitted not to be done under or in accordance with this deed;
  - (b) which has been fairly disclosed to HelloFresh in the Due Diligence Materials or to ASX prior to the date of this deed; or
  - (c) which has been consented to in writing by HelloFresh (such consent not to be unreasonably withheld or delayed).
- 3.4 Each party undertakes to use its best endeavours to procure that there is no occurrence within the control of Youfoodz or HelloFresh (as the context requires) that would prevent a condition precedent in clause 3.1, which such party must use best endeavours to satisfy, being satisfied in accordance with its terms.
- 3.5 Each party, in respect of matters within its knowledge, must keep the other reasonably informed of the progress towards satisfying the conditions precedent.

### **Waiver of conditions precedent**

- 3.6 The conditions precedent in clauses 3.1(a) (Restraints), 3.1(b) (Court Approval) and 3.1(c) (Shareholder Approval) cannot be waived.
- 3.7 The conditions precedent in clauses 3.1(d) (No Prescribed Occurrence), 3.1(e) (No Material Adverse Change), 3.1(f) (Options) and 3.1(g) (Deferred Share Awards) are for the sole benefit of HelloFresh and may only be waived by HelloFresh (in its absolute discretion) in writing.
- 3.8 If a party waives the breach or non-fulfilment of any of the conditions precedent in clause 3.1, that waiver does not prevent that party from taking action against the other party for any breach of this deed that resulted in the breach or non-fulfilment of the relevant condition precedent.
- 3.9 Waiver of a breach or non-fulfilment in respect of one condition precedent does not constitute:
- (a) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event; or
  - (b) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.

### **Termination on failure of condition precedent**

- 3.10 If any event occurs which would, or in fact does, prevent a condition precedent in clause 3.1 from being satisfied and that condition precedent is not waived by Youfoodz or HelloFresh or both (as applicable) in accordance with clauses 3.6 to 3.9 the parties must consult in good faith to:
- (a) determine whether the Transaction may proceed by way of alternative means or methods;
  - (b) change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by Youfoodz and HelloFresh (being a date no later than five Business Days before the End Date); or
  - (c) extend the relevant date or End Date.
- 3.11 If the parties are unable to reach agreement under clause 3.10 within five Business Days of becoming aware of the relevant occurrence, then unless that condition precedent is waived by Youfoodz or HelloFresh or both as provided in clauses 3.6 to 3.9, either party may terminate this deed without any liability to the other party because of that termination, unless the relevant occurrence or the failure of the condition precedent to be satisfied, or of the Scheme to become Effective, arises out of a breach by the terminating party.
- 3.12 Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination, on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.
- 3.13 If the condition in clause 3.1(c) (Shareholder Approval) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is

given, the condition in clause 3.1(c) (Shareholder Approval) is deemed to be satisfied for all purposes.

#### **Certain notices**

- 3.14 If Youfoodz or HelloFresh becomes aware that any condition precedent has been satisfied, it must promptly notify the other in writing of this fact.
- 3.15 If, before the time specified for satisfaction of a condition precedent, an event or occurrence that will prevent, or is likely to prevent, that condition precedent being satisfied occurs, the party with knowledge of that event must promptly give the other party written notice of that event or occurrence.
- 3.16 If a condition precedent is not satisfied or waived by the time and date specified for satisfaction of that condition precedent, then, unless there is no reasonable prospect that the condition precedent will be satisfied before the End Date, Youfoodz must, after consultation with HelloFresh, make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant condition precedent to be satisfied.
- 3.17 Youfoodz and HelloFresh (as the case may be) must promptly notify each other in writing of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:
- (a) a representation or warranty provided in this deed by a relevant party to be false or misleading in any material respect;
  - (b) a breach or non-satisfaction of any of the conditions precedent; or
  - (c) a material breach of this deed by a relevant party.

#### **Certificate**

- 3.18 At the hearing on the Second Court Date, Youfoodz and HelloFresh must provide to the Court a certificate confirming whether or not the conditions precedent in clause 3.1 (other than the condition in clause 3.1(b) (Court Approval)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by each party to the other party by 12.00 pm on the Business Day prior to the Second Court Date.

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## **4. Transaction steps**

### **Scheme**

- 4.1 Youfoodz agrees to propose the Scheme on and subject to the terms and conditions of this deed. Youfoodz and HelloFresh agree to implement the Scheme on and subject to the terms and conditions of this deed.

### **HelloFresh may elect a Nominee**

- 4.2 HelloFresh may nominate, under this clause 4.2, a directly or indirectly wholly-owned Subsidiary of HelloFresh (**Nominee**) to perform its obligations under clause 4.1 by giving written notice to Youfoodz of the Nominee at least five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review.

- 4.3 HelloFresh undertakes and warrants to Youfoodz that, if it elects a Nominee to acquire all of the Scheme Shares pursuant to clause 4.2:
- (a) HelloFresh and the Nominee will both enter into the Deed Poll;
  - (b) HelloFresh will continue to be bound by this deed as if it was still the acquiring entity;
  - (c) HelloFresh will ensure that the Nominee completes the acquisition in accordance with the terms of this deed and the Deed Poll; and
  - (d) HelloFresh guarantees the performance of the obligations of the Nominee under this deed and the Deed Poll.

### **Scheme Consideration**

- 4.4 The consideration to be provided by HelloFresh or the Nominee (as applicable) in respect of each Scheme Share is \$0.93 (**Scheme Consideration**).
- 4.5 Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this deed and the Scheme.

### **Payment of Scheme Consideration**

- 4.6 Subject to the terms and conditions of this deed and the Scheme, HelloFresh undertakes and warrants to Youfoodz (in its own right and separately as trustee or nominee for each of the Scheme Shareholders) that, in consideration of the transfer to HelloFresh (or its Nominee) of each Youfoodz Share held by a Scheme Shareholder at the Scheme Record Date under the terms of the Scheme, HelloFresh will on the Implementation Date:
- (a) accept or procure that the Nominee (as applicable) accept that transfer; and
  - (b) pay or procure the payment of the Scheme Consideration in accordance with the Scheme.

### **No amendment to Scheme without consent**

- 4.7 Youfoodz must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of HelloFresh (such consent not to be unreasonably withheld or delayed).
- 4.8 HelloFresh covenants in favour of Youfoodz (in its own right and separately as trustee for each of the Youfoodz Shareholders) to execute and deliver the Deed Poll prior to the First Court Date and (subject to its terms) to comply with its obligations under the Deed Poll.

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## **5. Implementation**

### **Timetable**

- 5.1 Subject to clause 5.2, the parties must use their best endeavours to:
- (a) comply with their respective obligations under this clause 5; and
  - (b) take all necessary steps and exercise all rights necessary to implement the Transaction,
- in accordance with the Timetable or otherwise as soon as reasonably practicable.

- 5.2 Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1 to the extent that such failure is due to circumstances and matters outside the party's control.
- 5.3 Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- 5.4 To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

### **Youfoodz obligations**

- 5.5 Youfoodz must take all reasonably necessary steps within its power to propose and implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and in particular Youfoodz must:
- (a) **(Promote merits of Transaction):**
    - (i) subject to the terms of this deed including clause 7, participate in efforts reasonably requested by HelloFresh to promote the merits of the Transaction and solicit proxy votes in favour of the Scheme, including meeting with key Youfoodz Shareholders at the reasonable request of HelloFresh;
    - (ii) provide all necessary information, and procure that the Share Registry provides all necessary information, in each case in a form reasonably requested by HelloFresh, for the purpose of understanding legal and beneficial ownership of Scheme Shares and proxy appointments and directions received by Youfoodz prior to the Scheme Meeting;
  - (b) **(Independent Expert):** promptly appoint the Independent Expert and provide assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet as soon as practicable;
  - (c) **(Scheme Booklet):** subject to clause 5.5(d), as soon as practicable after the date of this deed, prepare and despatch the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules provided that, before dispatch, Youfoodz must obtain the written consent of HelloFresh to the inclusion of HelloFresh Information in the Scheme Booklet, in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);
  - (d) **(Consultation with HelloFresh):** consult with HelloFresh as to the content and presentation of the Scheme Booklet including providing to HelloFresh drafts of the Scheme Booklet for the purpose of enabling HelloFresh and its Representatives to review and comment on those draft documents and take into account any reasonable comments from HelloFresh and its Representatives on those draft documents (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to HelloFresh);
  - (e) **(Approval of draft for ASIC):** as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, if required, procure that a meeting of the Youfoodz Board is convened to approve that draft as being in a form appropriate for provision to ASIC for review;

- (f) **(ASIC review):** provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 5.5(e), to ASIC for review and approval for the purposes of section 411(2) of the Corporations Act and:
- (i) liaise with ASIC during the period of ASIC's consideration of that draft of the Scheme Booklet; and
  - (ii) keep HelloFresh informed of any matters raised by ASIC in relation to the Scheme Booklet, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by HelloFresh and not resolve any such matters without the prior written approval of HelloFresh where such matters relate to HelloFresh Information (such approval not to be unreasonably withheld or delayed);
- (g) **(Approval of Scheme Booklet):** as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, if required, procure that a meeting of the Youfoodz Board is convened to approve the Scheme Booklet for despatch to Youfoodz Shareholders, subject to the approval of the Court;
- (h) **(No objection statement):** apply to ASIC for the production of a letter stating that ASIC does not intend to appear before the Court on the First Court Date and a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) **(Court documents):** consult with HelloFresh in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any reasonable comments on or suggested amendments to those documents from HelloFresh or its Representatives prior to filing those documents with the Court;
- (j) **(Court direction):** promptly apply to the Court for orders directing Youfoodz to convene the Scheme Meeting;
- (k) **(Court representation):** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which through its counsel, Youfoodz will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **(Scheme Meeting):** convene the Scheme Meeting to agree to the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (m) **(Court approval):** (subject to all conditions precedent in clause 3.1, other than the condition in clause 3.1(b) (Court Approval), being satisfied or waived in accordance with this deed) promptly apply to the Court for orders approving the Scheme as agreed to by the Youfoodz Shareholders at the Scheme Meeting;
- (n) **(Lodge copy of Court order):** lodge with ASIC an office copy of the Court order approving the Scheme as agreed to by the Youfoodz Shareholders at the Scheme Meeting on the day such office copy is received (or such later date as agreed in writing by HelloFresh);

- (o) **(Scheme Consideration):** if the Scheme becomes Effective:
- (i) close the Youfoodz Register as at the Scheme Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and the Deed Poll;
  - (ii) provide to HelloFresh, or procure that the Share Registry provides to HelloFresh, all necessary information about the Scheme and the Scheme Shareholders that HelloFresh reasonably requires in order for HelloFresh to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme;
- (p) **(Transfer and registration):** subject to the Scheme Consideration having been paid to Youfoodz:
- (i) execute, on behalf of Scheme Shareholders, instruments of transfer of Youfoodz Shares held by Scheme Shareholders to HelloFresh or the Nominee (as applicable); and
  - (ii) register all transfers of Youfoodz Shares held by Scheme Shareholders to HelloFresh on, or as soon as practicable after, the Implementation Date;
- (q) **(New information):** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or if the parties agree, otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Youfoodz must:
- (i) consult with HelloFresh as to the content and presentation of any updated or supplementary Scheme Booklet;
  - (ii) act reasonably and in good faith, take into account any reasonable comments from HelloFresh and its Representatives on such updates (to the extent reasonably practicable in the circumstances); and
  - (iii) obtain prior written approval from HelloFresh for any updates to HelloFresh Information (such approval not to be unreasonably withheld or delayed);
- (r) **(ASX listing):** not do anything to cause Youfoodz Shares to cease being quoted on the ASX or to become permanently suspended from quotation prior to completion of the Transaction unless HelloFresh has agreed in writing;
- (s) **(Suspension of trading):** apply to ASX to suspend trading in Youfoodz Shares with effect from the close of trading on the Effective Date;
- (t) **(Delisting):** if directed by HelloFresh in writing at any time after the Implementation Date, Youfoodz must take all steps necessary for Youfoodz to be removed from the official list of ASX;
- (u) **(Compliance with laws):** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations; and
- (v) **(All things necessary):** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

## HelloFresh obligations

- 5.6 HelloFresh must take all reasonably necessary steps within its power to propose and implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and in particular HelloFresh must:
- (a) **(HelloFresh Information):** prepare and as soon as reasonably practicable provide to Youfoodz the HelloFresh Information for inclusion in the Scheme Booklet and consent to the inclusion of that information in the Scheme Booklet;
  - (b) **(Update HelloFresh Information):** promptly provide to Youfoodz any information that arises after the Scheme Booklet has been despatched and until the date of the Scheme Meeting that may be necessary to ensure that the Scheme Booklet, in relation to the HelloFresh Information in it, does not contain any material statement that is false or misleading in a material respect including because of any material omission;
  - (c) **(Review of Scheme Booklet):** review the drafts of the Scheme Booklet prepared by Youfoodz and provide reasonable comments as soon as reasonably practicable on those drafts in good faith;
  - (d) **(Independent Expert's Report):** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
  - (e) **(ASIC review):** provide reasonable assistance to Youfoodz to assist Youfoodz to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme;
  - (f) **(Court representation):** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which through its counsel, HelloFresh will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
  - (g) **(Deed Poll):** no later than the Business Day prior to the First Court Date, enter into the Deed Poll;
  - (h) **(Accuracy of HelloFresh Information):** before a draft of the Scheme Booklet is lodged with ASIC, and again before the Scheme Booklet is despatched to Youfoodz Shareholders, confirm to Youfoodz the accuracy and completeness of the HelloFresh Information in the Scheme Booklet, including that, as far as HelloFresh is aware (having made all reasonable enquiries), the HelloFresh Information does not contain any material statement that is false or misleading in a material respect including because of any material omission;
  - (i) **(Share transfer):** if the Scheme becomes Effective, accept or procure acceptance of a transfer of the Youfoodz Shares as contemplated by clause 4.6(a);
  - (j) **(Scheme Consideration):** if the Scheme becomes Effective, procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme;
  - (k) **(Compliance with laws):** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations; and
  - (l) **(All things necessary):** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.



## Verification

- 5.7 Youfoodz must undertake appropriate verification processes in relation to the Youfoodz Information included in the Scheme Booklet and HelloFresh must undertake appropriate verification processes in relation to the HelloFresh Information included in the Scheme Booklet.

## Content of Scheme Booklet

- 5.8 The parties agree that the Scheme Booklet will contain statements to the effect that:
- (a) Youfoodz is responsible for the Youfoodz Information and will not be liable for any HelloFresh Information contained in the Scheme Booklet;
  - (b) HelloFresh is responsible for the HelloFresh Information (and no other part of the Scheme Booklet) and will not be liable for any information contained in the Scheme Booklet that is not HelloFresh Information; and
  - (c) the Independent Expert is responsible for the Independent Expert's Report.
- 5.9 Youfoodz must, unless there has been a change of recommendation in compliance with this deed, include in the Scheme Booklet a statement that each Youfoodz Board Member:
- (a) recommends that Youfoodz Shareholders vote in favour of the Scheme; and
  - (b) intends to vote, or procure the voting of, all of the Youfoodz Shares held or controlled by him or her in favour of the Scheme,
- subject to:
- (c) the Independent Expert's Report concluding and continuing to conclude that the Scheme is in the best interests of Youfoodz Shareholders; and
  - (d) there being no Superior Proposal.
- 5.10 If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form and content of the Scheme Booklet.
- 5.11 If within five Business Days of the consultation referred to in clause 5.10 above having commenced there is still no agreement between the parties, the final form and content of the Scheme Booklet shall be determined by Youfoodz, acting reasonably, provided that if HelloFresh disagrees with such final form and content:
- (a) Youfoodz must include a statement to that effect in the Scheme Booklet; and
  - (b) if Youfoodz' concerns relate to HelloFresh Information, Youfoodz must not include that HelloFresh Information to the extent that HelloFresh disagrees with the final form and content.

## Access and Integration planning

- 5.12 Youfoodz must, and must cause each of the Youfoodz Group Members to, provide HelloFresh and its Representatives with reasonable and timely access to information (subject to any existing confidentiality obligations owed to third parties or any other applicable legal restrictions) and members of senior management of Youfoodz as reasonably requested by HelloFresh at mutually convenient times for the sole purpose of:

- (a) understanding Youfoodz' financial position (including its cash flow and working capital position), trading performance and management control systems (including information technology and data);
- (b) facilitating HelloFresh to develop plans for Youfoodz' operations following implementation of the Scheme;
- (c) implementation of the Transaction (including seeking and obtaining any necessary approvals, consents or waivers); or
- (d) any other purpose agreed between the parties in writing (each acting reasonably), provided that:
  - (e) to the extent practicable, information will be made available via the Virtual Data Room;
  - (f) nothing in this clause will require Youfoodz to provide information concerning Youfoodz' directors and management's consideration of the Transaction or any Competing Proposal; and
  - (g) it does not, in the reasonable opinion of Youfoodz, result in unreasonable disruptions to the Business or require Youfoodz to make further disclosure to any other entity or Government Agency.

5.13 The obligations pursuant to clause 5.12 commence from the date of this deed and cease on the earlier of:

- (a) Implementation Date; and
- (b) a majority of the Youfoodz Board changing, withdrawing or adversely modifying or revising their recommendation that Youfoodz Shareholders vote in favour of the Scheme as permitted by this deed.

### **Transaction implementation committee**

5.14 The parties must establish a Transaction implementation committee as soon as reasonably practicable after the date of this deed and work together in good faith to consult with each other and plan to:

- (a) implement the Transaction in accordance with this deed; and
- (b) ensure the smooth transition of the management of the business and the affairs of the Youfoodz Group to HelloFresh (or its Nominee) following the implementation of the Scheme.

### **Third party consents**

5.15 As soon as practicable after the date of this deed, Youfoodz and HelloFresh must use best endeavours to identify any change of control, unilateral termination rights or notification rights in material contracts to which Youfoodz or a Youfoodz Group Member is party which may be required by, triggered by or exercised in response to the implementation of the Transaction. In respect of those contracts:

- (a) Youfoodz and HelloFresh will agree a proposed course of action and then Youfoodz will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or

appropriate. HelloFresh must not contact any counterparties without Youfoodz' prior written consent.

- (b) Without limiting clause 5.15(a), Youfoodz must:
- (i) give HelloFresh as much prior notice as reasonably practicable of any material discussions with any Third Party in connection with this clause 5.15 and give HelloFresh a reasonable opportunity to participate in such discussions;
  - (ii) give HelloFresh a reasonable opportunity to review drafts of any material communications to Third Parties in connection with this clause 5.15 and, acting reasonably and in good faith, take into account any reasonable comments provided by HelloFresh or its Representatives on such drafts; and
  - (iii) promptly provide HelloFresh with copies of all material communications received from Third Parties in connection with this clause 5.15.
- (c) HelloFresh must cooperate with, and provide reasonable assistance to, Youfoodz to obtain such consents or confirmations as expeditiously as possible, including by as soon as reasonable practicable providing any information reasonably required by counterparties.
- (d) Any notice, approval, consent or confirmation required or appropriate to obtain any third party consent or confirmation may only be given or sought by Youfoodz in a form and on terms approved by HelloFresh.
- (e) A failure by a Youfoodz Group Member to obtain any third party consent or confirmation, or the exercise of a termination right, will not constitute a breach of this deed by Youfoodz and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

### Changes to Youfoodz Board

- 5.16 On the Implementation Date, but subject to implementation of the Scheme occurring and receipt by Youfoodz of signed consents to act, Youfoodz must:
- (a) take all actions necessary to appoint the persons nominated by HelloFresh as new directors and secretaries of Youfoodz and new directors and secretaries of each member of the Youfoodz Group; and
  - (b) procure that all Youfoodz Board Members and secretaries of Youfoodz (other than the managing director and new directors appointed pursuant to clause 5.16(a)) and the directors and secretaries of each member of the Youfoodz Group resign,

in each case in accordance with Youfoodz' constitution (or constitution of the relevant Youfoodz Group Member, as the case may be), the Corporations Act and the Listing Rules.

### Deeds of indemnity and insurance

- 5.17 Youfoodz must obtain a proposal for a directors' and officers' run-off insurance policy in respect of any directors and officers and former directors and officers of any member of the Youfoodz Group that applies for no less than a 7 year period from the retirement date of each director and officer on terms which provide at least the same level of cover currently provided under the directors' and officers' insurance policy for the Youfoodz Group (**D&O run off policy**). Youfoodz agrees to keep HelloFresh informed of progress in relation to the D&O run off policy.

- 5.18 Youfoodz must use all reasonable endeavours to ensure that the costs associated with the D&O run off policy are reasonable having regard to current market conditions. Without limiting the foregoing, before entering into the D&O run off policy, Youfoodz must use all reasonable endeavours to first present to HelloFresh at least three quotations for the D&O run off policy from reputable insurers (such policies being on the same, or substantially the same, terms than the terms currently provided under the current directors' and officers' insurance policy for the Youfoodz Group), and take into account any reasonable comments received from HelloFresh on the quotations within eight Business Days of being provided the quotations. Youfoodz acknowledges and agrees to enter into the D&O run off policy with the insurer offering the lowest cost quotation of all quotations obtained by Youfoodz.
- 5.19 Before 8.00 am on the Second Court Date, Youfoodz must enter into the D&O run off policy.
- 5.20 HelloFresh acknowledges that, notwithstanding any other provision of this deed, any reasonable actions to facilitate the D&O run off policy or directly in connection therewith will not be Prescribed Occurrences or breach any provision of this deed.
- 5.21 Subject to the Scheme becoming Effective and the Transaction completing, HelloFresh undertakes in favour of Youfoodz and each other person who is a Youfoodz Indemnified Party that it will:
- (a) subject to clause 5.24, for a period of seven years from the Implementation Date, ensure that the constitutions of Youfoodz and each other Youfoodz Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Youfoodz Group Member; and
  - (b) procure that Youfoodz and each other Youfoodz Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' insurance cover for such directors and officers is maintained, subject to clause 5.24, for a period of seven years from the retirement date of each director and officer (and Youfoodz may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Scheme).
- 5.22 The undertakings contained in clause 5.17 are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- 5.23 Youfoodz receives and holds the benefit of clause 5.21, to the extent it relates to the other Youfoodz Indemnified Parties, as trustee for them.
- 5.24 The undertakings contained in clause 5.21 are given until the earlier of the end of the relevant period specified in clause 5.21 or the relevant Youfoodz Group Member ceasing to be part of the HelloFresh Group.

### **Options**

- 5.25 Youfoodz must ensure that, before the Scheme Record Date, all Options are exercised, lapse or are cancelled in the manner fairly disclosed to HelloFresh prior to the date of this deed.

### **Deferred Share Awards**

- 5.26 Youfoodz must give effect to the treatment of the Deferred Share Awards in the manner fairly disclosed to HelloFresh prior to the date of this deed.

## Conduct of Court proceedings

- 5.27 Youfoodz and HelloFresh are entitled to separate representation at all Court proceedings affecting the Transaction.
- 5.28 This deed does not give Youfoodz or HelloFresh any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- 5.29 Youfoodz and HelloFresh must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

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## 6. Conduct of business

### Conduct of business

- 6.1 From the date of this deed up to and including the Implementation Date, for so long as the majority of the Youfoodz Board continues to recommend Youfoodz Shareholders to vote in favour of the Scheme, Youfoodz must conduct, and must ensure that its Related Bodies Corporate conduct, the Business as a going concern in the ordinary course of business and consistent with past practice and, where appropriate for that purpose, use reasonable efforts to:
- (a) maintain and preserve its relationships with customers, suppliers, licensors, licensees and others having business dealings with it;
  - (b) keep available the services of its current officers and employees;
  - (c) maintain and preserve its relationships with Government Agencies; and
  - (d) maintain the Business and its assets, including maintaining at least its current level of insurance;
- except to the extent that:
- (e) it is required to do, permitted to do or is permitted not to do, that thing under or in accordance with this deed;
  - (f) it is undertaken in response to a Competing Proposal as permitted by clause 12;
  - (g) it has been fairly disclosed to HelloFresh in the Due Diligence Materials;
  - (h) it has been fairly disclosed to ASX prior to the date of this deed; or
  - (i) it has been consented to in writing by HelloFresh (such consent not to be unreasonably withheld or delayed).
- 6.2 Without limiting clause 6.1, but for the avoidance of doubt subject to clauses 6.1(e) to 6.1(i), Youfoodz must not, and must ensure that its Related Bodies Corporate do not, other than with the prior written consent of HelloFresh (such consent not to be unreasonably withheld or delayed):
- (a) dispose, agree to dispose, offer to dispose or announce a bid for the disposal of any securities, business, asset, interest in a joint venture, entity or undertaking, the price or value of which exceeds \$1.25 million (individually or in aggregate), to any person other than another entity within the Youfoodz Group;

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- (b) acquire, agree to acquire, offer to acquire or announce a bid for the acquisition of any securities, business, asset, interest in a joint venture, entity or undertaking, the price or value which exceeds \$1.25 million (individually or in aggregate), from another person other than another entity within the Youfoodz Group;
  - (c) enter into a line of business which is materially different to the Business as at the date of this deed, whether by way of acquisition or otherwise;
  - (d) sell or grant any interest in any brand of the Youfoodz Group to a third party;
  - (e) license any brand of the Youfoodz Group to a third party other than in the ordinary course of business where the licence is for a term of less than two years;
  - (f) terminate, enter into, renew, extend or materially alter or amend any contract requiring payments by the Youfoodz Group of more than \$2.5 million under the contract (other than in respect of the New Lease);
  - (g) enter into a joint venture or strategic partnership with any person where the contractually committed investment by the Youfoodz Group exceeds \$1.25 million (individually or in aggregate);
  - (h) undertake any capital expenditure which would result in aggregate capital expenditure for the Youfoodz Group in the relevant financial year exceeding \$5 million;
  - (i) either:
    - (i) enter into a new contract with a potential director, officer, executive or employee of the Youfoodz Group (other than to replace a production supervisor or similar role and/or roles otherwise disclosed to HelloFresh prior to the date of this deed where the offer is made on substantially the same terms and conditions, or not more favourable than, as for the production supervisor (or similar) being replaced) in respect of which the fixed annual remuneration (being the total of base remuneration, car allowance and superannuation) payable to that potential director, officer, executive or employee is in excess of \$100,000 per annum; or
    - (ii) alter, vary or amend a contract with an existing director, officer, executive or employee of the Youfoodz Group to increase any compensation or benefits payable (other than in the ordinary course of business, pursuant to contractual arrangements in effect as at the date of this deed or otherwise pursuant to any statutory requirements);
  - (j) enter into, renew, alter, vary or amend any enterprise bargaining agreement other than pursuant to contractual arrangements in effect on the date of this deed;
  - (k) make, commence, settle or offer to settle or admit liability in relation to any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount, the amount of the claim or the exposure of the Youfoodz Group (as applicable) exceeds \$500,000;
  - (l) waive any material third party default where the financial impact on the Youfoodz Group will be in excess of \$500,000 (individually or in aggregate), other than in relation to customer trading in accordance with the ordinary course of business;
  - (m) accept as a compromise of a matter less than the full compensation due to a member of the Youfoodz Group where the financial impact of the compromise on the

Youfoodz Group is more than \$500,000 (individually or in aggregate), other than in relation to customer trading in accordance with the ordinary course of business;

- (n) provide financial accommodation other than to Youfoodz Group Members (irrespective of what form that financial indebtedness or financial accommodation takes) in excess of \$500,000 (individually or in aggregate), except in respect of Security Interests given in the ordinary course of business;
- (o) change its accounting policies other than change in policy required by a change in the accounting standards applicable to the Youfoodz Group as at the date of this deed;
- (p) enter into, or resolve to enter into, a transaction with any related party of Youfoodz (other than a related party which is a member of the Youfoodz Group) as defined in section 228 of the Corporations Act;
- (q) allow a Prescribed Occurrence to occur; or
- (r) authorise, or commit, resolve or agree to do, any of the matters set out above.

### **Youfoodz New Facility**

- 6.3 Youfoodz must use all reasonable endeavours, within its control and subject to HelloFresh complying with its obligations in clause 6.5, to ensure that practicable completion of the Youfoodz New Facility is implemented in accordance with the timetable disclosed to HelloFresh.
- 6.4 Youfoodz agrees that it will not alter, amend or depart from the plans associated with the delivery of practicable completion of the Youfoodz New Facility as disclosed to HelloFresh without HelloFresh's prior written consent (which must not be unreasonably withheld or delayed).
- 6.5 Prior to entering into any lease agreement in relation to the Youfoodz New Facility (**New Lease**), Youfoodz must:
  - (a) first consult with HelloFresh in good faith in relation to the terms of the New Lease;
  - (b) take into account any reasonable comments received from HelloFresh and its Representatives on the terms of the New Lease within eight Business Days of being provided with a copy of the New Lease for review; and
  - (c) obtain HelloFresh's prior written consent prior to executing the New Lease (such consent not to be unreasonably withheld or delayed).

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## **7. Board support of Transaction**

- 7.1 Following execution of this deed, Youfoodz must make a public announcement in a form agreed between Youfoodz and HelloFresh which states that each Youfoodz Board Member:
  - (a) recommends that Youfoodz Shareholders vote in favour of the Scheme; and
  - (b) intends to vote, or procure the voting of, all of the Youfoodz Shares held or controlled by him or her in favour of the Scheme,subject to:
  - (c) the Independent Expert's Report concluding and continuing to conclude that the Scheme is in the best interests of Youfoodz Shareholders; and

- (d) there being no Superior Proposal.
- 7.2 Youfoodz must ensure that no Youfoodz Board Member changes, withdraws or adversely modifies or revises his or her recommendation or voting intention referred to in clause 7.1, unless:
- (a) the Independent Expert provides a report to Youfoodz (including either the Independent Expert's Report or any update or supplement to it) that concludes that the Scheme is not in the best interest of Scheme Shareholders; or
  - (b) Youfoodz has received a Superior Proposal and Youfoodz has complied with its obligations under clause 12 in respect of such Superior Proposal.
- 7.3 Customary qualifications and explanations made in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a Superior Proposal and subject to the Independent Expert's Report concluding and continuing to conclude that the Scheme is in the best interests of Youfoodz Shareholders will not be regarded as a failure to make, or a withdrawal of, a recommendation in favour of the Scheme.
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## 8. Representations and warranties

### Youfoodz' representations and warranties

- 8.1 Youfoodz represents and warrants to HelloFresh (in its own right and separately as trustee or nominee for each of the other HelloFresh Indemnified Parties) that:
- (a) **(Validly existing)**: it is a validly existing corporation registered under the laws of its place of incorporation;
  - (b) **(Authority)**: the execution and delivery of this deed has been properly authorised by all necessary corporate action of Youfoodz;
  - (c) **(Power)**: it has full corporate power and lawful authority to execute, deliver and perform this deed without seeking the consent of any other person or persons;
  - (d) **(Deed binding)**: this deed is a valid and binding obligation of Youfoodz, enforceable in accordance with its terms;
  - (e) **(No default)**: this deed does not conflict with or result in the breach of or a default under:
    - (i) Youfoodz' constitution or other constituent documents of Youfoodz or any of its Subsidiaries; or
    - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which Youfoodz or any of its Subsidiaries is bound;
  - (f) **(Information in Scheme Booklet)**: the Youfoodz Information contained in the Scheme Booklet as at the date the Scheme Booklet is despatched to Youfoodz Shareholders:
    - (i) has been prepared and included in the Scheme Booklet in good faith;
    - (ii) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides; and



- (iii) is not misleading or deceptive in any material respect and does not contain any material omission;
- (g) **(Information provided to the Independent Expert):** all information provided by Youfoodz to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
- (h) **(Scheme Booklet):** no information (other than the HelloFresh Information, the Independent Expert's Report or any other report or letter issued to Youfoodz by a third party) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Youfoodz Shareholders, will contain any statement which is materially misleading or deceptive (including by way of omission from that statement);
- (i) **(New information):** it will, as a continuing obligation, ensure that the Scheme Booklet (but in respect of HelloFresh Information, subject to HelloFresh complying with its obligations to update HelloFresh Information) will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of any material omission);
- (j) **(Continuous disclosure):** Youfoodz is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, except as fairly disclosed in the Due Diligence Materials and as relates to HelloFresh's proposal to acquire Youfoodz, as at the date of this deed Youfoodz is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A;
- (k) **(Due Diligence Materials):** as at the date of this deed, the Due Diligence Materials were compiled and made available to HelloFresh and its Representatives in good faith, and Youfoodz is not aware of any information contained in the Virtual Data Room that is false or misleading in any material respect (including because of any material omission). For the avoidance of doubt, Youfoodz makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Due Diligence Material for the purpose of HelloFresh acquiring the Scheme Shares or for HelloFresh's funding of that acquisition (if any), which are matters of which HelloFresh has to satisfy itself;
- (l) **(Capital Structure):** as at the date of this deed, there are on issue:
  - (i) 134,547,468 Youfoodz Shares; and
  - (ii) 53,332 Options,
 and, other than in relation to the Deferred Share Awards, it has not issued or agreed to issue any other securities, options, performance rights or instruments which are still outstanding and may convert into Youfoodz Shares;
- (m) **(Diluted capital):** as at 8.00 am on the Second Court Date, there will be on issue no more than 134,814,851 Youfoodz Shares;
- (n) **(Compliance):** as at the date of this deed, so far as Youfoodz is aware, each member of the Youfoodz Group has complied in all material respects with all laws applicable to them (including the Listing Rules) and have all material licenses, authorisations and permits necessary under Australian laws for them to conduct the Business as presently being conducted;

- (o) **(Insolvency Event or regulatory action):** no Insolvency Event has occurred in relation to it or another Youfoodz Group Member nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed; and
- (p) **(Indebtedness):** except as fairly disclosed in the Due Diligence Materials:
- (i) neither Youfoodz nor any of its Related Bodies Corporate has incurred or will incur any material indebtedness under any bank facility or other arrangement providing financial accommodation of any description; and
  - (ii) no event has occurred which would entitle any person to require the repayment of any borrowings of the Youfoodz Group which are repayable on demand or require any borrowings of the Youfoodz Group to be repaid before their due date for any reason.

### **Reliance on Youfoodz Representations and Warranties**

8.2 Youfoodz acknowledges and agrees that in entering into this deed, the HelloFresh Indemnified Parties have relied on the Youfoodz Representations and Warranties.

### **HelloFresh's representations and warranties**

- 8.3 HelloFresh represents and warrants to Youfoodz (in its own right and separately as trustee or nominee for each of the other Youfoodz Indemnified Parties) that:
- (a) **(Validly existing):** it is a validly existing corporation registered under the laws of its place of incorporation;
  - (b) **(Authority):** the execution and delivery of this deed has been properly authorised by all necessary corporate action of HelloFresh;
  - (c) **(Power):** it has full corporate power and lawful authority to execute, deliver and perform this deed without seeking the consent of any other person or persons;
  - (d) **(Deed binding):** this deed is a valid and binding obligation of HelloFresh, enforceable in accordance with its terms;
  - (e) **(No default):** this deed does not conflict with or result in the breach of or a default under:
    - (i) HelloFresh's constitution or other constituent documents of HelloFresh or HelloFresh AusCo; or
    - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound;
  - (f) **(HelloFresh Information):** the HelloFresh Information contained in the Scheme Booklet as at the date of despatch to the Youfoodz Shareholders:
    - (i) has been prepared and included in the Scheme Booklet in good faith;
    - (ii) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides; and
    - (iii) is not misleading or deceptive in any material respect and does not contain any material omission;

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- (g) **(Information provided to the Independent Expert):** all information provided by HelloFresh to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
  - (h) **(Scheme Booklet):** the HelloFresh Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Youfoodz Shareholders, will not contain any statement which is materially misleading or deceptive including by way of omission from that statement;
  - (i) **(New HelloFresh Information):** it will, as a continuing obligation, provide to Youfoodz all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the HelloFresh Information is not misleading or deceptive in any material respect (including because of any material omission);
  - (j) **(Insolvency Event or regulatory action):** no Insolvency Event has occurred in relation to it or HelloFresh AusCo, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
  - (k) **(No regulatory approvals):** no approval from any Government Agency is required to be obtained by HelloFresh in order to execute and perform this deed and the transactions contemplated by this deed;
  - (l) **(No dealings with Youfoodz Shareholders):** neither it nor any of its Associates has any agreement, arrangement or understanding with any Youfoodz Shareholder under which that Youfoodz Shareholder (or an Associate of that Youfoodz Shareholder) would be entitled to receive consideration for their Youfoodz Shares different from the Scheme Consideration or under which the Youfoodz Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
  - (m) **(No dealing with Youfoodz directors or employees):** neither it nor any of its Associates has any agreement with any director or employee of Youfoodz relating in any way to the Transaction or operations of Youfoodz after the Effective Date;
  - (n) **(Reasonable basis):** HelloFresh has a reasonable basis to expect that it will have available to it sufficient cash amounts to satisfy HelloFresh's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll; and
  - (o) **(Sufficient funding):** as at 8.00 am on the Second Court Date, HelloFresh will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and related procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date) sufficient cash reserves (whether from internal cash resources or external financial commitments, or a combination of both) to satisfy HelloFresh's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

### Reliance on HelloFresh Representations and Warranties

- 8.4 HelloFresh acknowledges and agrees that in entering into this deed, the Youfoodz Indemnified Parties have relied on the HelloFresh Representations and Warranties.

## **Qualifications on Youfoodz' representations, warranties and indemnities**

- 8.5 The Youfoodz Representations and Warranties in clause 8.1 are each subject to matters:
- (a) fairly disclosed to ASX prior to the date of this deed;
  - (b) which would be disclosed in a search of ASIC records in relation to Youfoodz prior to the date of this deed; or
  - (c) fairly disclosed to HelloFresh in the Due Diligence Materials prior to the date of this deed.

## **Survival of representations**

- 8.6 Each representation and warranty referred to in clauses 8.1 and 8.3:
- (a) is severable; and
  - (b) survives the termination of this deed.

## **Timing of warranties**

- 8.7 Each representation and warranty made or given under clauses 8.1 and 8.3 is given at the date:
- (a) of this deed;
  - (b) the Scheme Booklet is despatched to Youfoodz Shareholders;
  - (c) the Scheme Meeting is held; and
  - (d) of the Second Court Date,
- unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

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## **9. Releases**

### **Youfoodz directors and officers**

- 9.1 HelloFresh releases its rights, and agrees with Youfoodz that it will not make a claim, against any Youfoodz Indemnified Party (other than Youfoodz) as at the date of this deed in connection with:
- (a) any breach of any representations, covenants and warranties of Youfoodz or any member of the Youfoodz Group in this deed; or
  - (b) any disclosures containing any statement which is false or misleading whether in content or by omission,
- except where that Youfoodz Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.
- 9.2 This clause is subject to any Corporations Act restriction and will be read down accordingly. Youfoodz receives and holds the benefit of this clause to the extent it relates to each other Youfoodz Indemnified Party as trustee for each of them.

## HelloFresh directors and officers

9.3 Youfoodz releases its rights, and agrees with HelloFresh that it will not make a claim, against any HelloFresh Indemnified Party (other than HelloFresh) as at the date of this deed in connection with:

- (a) any breach of any representations, covenants and warranties of HelloFresh or any member of the HelloFresh Group in this deed; or
- (b) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where that HelloFresh Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.

9.4 This clause is subject to any Corporations Act restriction and will be read down accordingly. HelloFresh receives and holds the benefit of this clause to the extent it relates to each other HelloFresh Indemnified Party as trustee for each of them.

## Survival of releases

9.5 Each release in this clause 9:

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the release from any other obligation of that party under this deed; and
- (d) survives termination of this deed.

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## 10. Public announcements

10.1 Immediately after the execution of this deed, Youfoodz and HelloFresh must issue public announcements in a form agreed between the parties.

10.2 Subject to clause 10.3, where a party proposes to make any further public announcement or public disclosure in relation to the Transaction or any other transaction contemplated by this deed, the Deed Poll or the Scheme it must consult with the other party prior to making the relevant disclosure and take into account any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure. Any such further public announcement or public disclosure may only be made in a form approved by Youfoodz and HelloFresh in writing (acting reasonably). Such approval must not be unreasonably withheld, conditioned or delayed.

10.3 Where Youfoodz or HelloFresh is required by applicable law, rules of a stock exchange or the requirements of any Government Agency to make any announcement or to make any disclosure in relation to the Transaction or any other transaction contemplated by this deed, the Deed Poll or the Scheme, it may do so to the extent legally required and only then after it has used all reasonable endeavours, to the extent practicable in the circumstances, to notify and consult with the other party prior to making the relevant announcement or disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.

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## **11. Confidentiality**

### **Confidentiality Deed**

- 11.1 The parties acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed.

### **Survival of obligations**

- 11.2 The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.
- 

## **12. Exclusivity**

### **No existing discussions**

- 12.1 Youfoodz represents and warrants to HelloFresh that it, and its Representatives, are not as at the date of this deed in negotiations or discussions with any Third Party (whether individually or together with one or more Associates) in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal.

### **No-talk and no due diligence**

- 12.2 Subject to clause 12.4, during the Exclusivity Period, Youfoodz must not, and must ensure that none of its Related Bodies Corporate and none of their Representatives directly or indirectly:

- (a) participate in or continue any discussions or negotiations;
  - (b) provide or make available any information (including by way of providing information and access to perform due diligence);
  - (c) enter into any agreement, arrangement or understanding; or
  - (d) communicate to any person any intention to do any of those things,
- in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal.

### **No-shop**

- 12.3 During the Exclusivity Period, Youfoodz must not, and must ensure that none of its Representatives, Related Bodies Corporate and none of their Representatives directly or indirectly:
- (a) solicit, invite or initiate enquiries, expressions of interest, discussions, negotiations, offers or proposals in relation to, or that may reasonably be expected to encourage or lead, a Competing Proposal; or
  - (b) communicate to any person an intention to do any of the things referred to in clause 12.3(a).

### **Fiduciary exception**

- 12.4 Youfoodz, its Related Bodies Corporate and their Representatives may undertake any action that would otherwise be prohibited by clause 12.2 in relation to a potential or proposed bona

vide written Competing Proposal which was not solicited by it and was not otherwise brought about as a result of any breach by it of its obligations under this clause 12, where:

- (a) such Competing Proposal is, or is reasonably likely to become, a Superior Proposal; and
- (b) the Youfoodz Board, acting in good faith and after having considered written advice from Youfoodz Board's external legal advisors, determines that not undertaking that act would be likely to constitute a breach of the fiduciary or statutory duties owed by any Youfoodz Board Member or would otherwise be unlawful.

### Notification of approaches

- 12.5 During the Exclusivity Period, Youfoodz must promptly (and, in any event, within 24 hours) notify HelloFresh in writing if it, or any of its Related Bodies Corporate or any of their Representatives becomes aware of any:
- (a) actual or potential proposal made to Youfoodz or any of its Related Bodies Corporate or their Representatives, in connection with a Competing Proposal; or
  - (b) provision by Youfoodz or any of its Related Bodies Corporate or their Representatives of any information relating to Youfoodz or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with a Competing Proposal.
- 12.6 A notification given under clause 12.5 must include reasonable details of the Competing Proposal, including the terms and conditions of, and any material updates, to the Competing Proposal and the identity of the party or parties making the Competing Proposal.

### Matching right

- 12.7 Without limiting clauses 12.2 and 12.3, during the Exclusivity Period:
- (a) Youfoodz must not enter into any legally binding agreement, arrangement or understanding to implement or give effect to a Competing Proposal; and
  - (b) Youfoodz must use its best endeavours to procure that none of its directors publicly recommend a Competing Proposal,
- unless:
- (c) the Competing Proposal is a Superior Proposal;
  - (d) Youfoodz has provided HelloFresh with written notification of the material terms and conditions of the Competing Proposal (including the identity of the party or parties making the Competing Proposal);
  - (e) Youfoodz has given HelloFresh at least five Business Days after the provision of the information referred to in clause 12.7(d) above to provide an irrevocable offer of a matching or superior proposal to the terms of the relevant Competing Proposal on terms which HelloFresh considers in good faith to be no less favourable to the relevant Competing Proposal on an overall basis (**HelloFresh Counter Proposal**); and
  - (f) HelloFresh has not announced a HelloFresh Counter Proposal by the expiry of the five Business Day period in clause 12.7(e).

- 12.8 Youfoodz must use its best endeavours to procure that its directors, within two Business Days of receiving the HelloFresh Counter Proposal, consider any HelloFresh Counter Proposal in good faith and promptly notify HelloFresh in writing of its decision. If the Youfoodz Board Members determine that the terms and conditions of the HelloFresh Counter Proposal taken as a whole are no less favourable for Youfoodz Shareholders as a whole than those of the relevant Competing Proposal, Youfoodz and HelloFresh must each use their best endeavours to agree and enter into such documentation as is reasonably necessary to give effect to and implement the HelloFresh Counter Proposal as soon as reasonably practicable.
- 12.9 Each successive amendment to any Competing Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by Youfoodz Shareholders will constitute a new Competing Proposal for the purposes of these clauses 12.7 to 12.9, except that any reference to "five Business Days" in clause 12.7(e) would in that event be taken to be a reference to "four Business Days".

### **Normal provision of information**

- 12.10 Nothing in this clause 12 prevents Youfoodz from:
- (a) continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business;
  - (b) providing information to its Representatives;
  - (c) providing information to any Government Agency;
  - (d) providing information to its auditors, customers, financiers and suppliers acting in that capacity in the ordinary course of business;
  - (e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
  - (f) engaging with its shareholders (in their capacity as a shareholder) in the ordinary course in relation to the Youfoodz Group.

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## **13. Break Fee**

### **Background**

- 13.1 Youfoodz and HelloFresh acknowledge that, having entered into this deed, if the Scheme is subsequently not implemented, HelloFresh will incur significant costs, including significant opportunity costs.
- 13.2 In the circumstances referred to in clause 13.1, HelloFresh has requested that provision be made for the payments outlined in clauses 13.5 and 13.6, without which HelloFresh would not have entered into this deed or otherwise agreed to assist in implementing the Scheme.
- 13.3 Youfoodz confirms that the Youfoodz Board has acknowledged that:
- (a) it has received advice from its external legal advisers in relation to this deed and the operation of this clause 13;
  - (b) it believes the implementation of the Scheme will provide significant benefits to Youfoodz and Youfoodz Shareholders, such that it is reasonable and appropriate for Youfoodz to agree to the Break Fee in order to secure HelloFresh's participation in the Transaction; and



- (c) the Break Fee is intended to be compensatory in nature and represents a genuine and reasonable estimate of cost and loss that would be suffered by HelloFresh if this deed was entered into and the Scheme is subsequently not implemented, including to compensate HelloFresh for the costs and expenses referred to in clause 13.7.

### **Payment by Youfoodz to HelloFresh**

13.4 If:

- (a) during the Exclusivity Period, any Youfoodz Board Member changes, withdraws or adversely modifies or revises his or her recommendation that Youfoodz Shareholders vote in favour of the Scheme, or recommends a Competing Proposal, other than:
  - (i) as a result of the Independent Expert opining that the Scheme is not in the best interests of Scheme Shareholders (other than where the reason for that opinion is a Competing Proposal);
  - (ii) as a result of any matter or thing giving Youfoodz the right to terminate under clause 14.1(a) and Youfoodz has given the appropriate termination notice to HelloFresh; or
  - (iii) as a result of a failure of the conditions precedent in clause 3.1(a) (Restraints) or 3.1(b) (Court Approval);
- (b) a Competing Proposal of any kind is announced or made during the Exclusivity Period and, within nine months of the date of such announcement, the person or persons announcing or making the Competing Proposal or an Associate of any such persons:
  - (i) completes a Competing Proposal;
  - (ii) acquires a relevant interest in, becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of Youfoodz Shares and that acquisition is unconditional and free of defeating conditions;
  - (iii) acquires or becomes the holder of, or otherwise, acquires an economic interest in all or a substantial part of the Business;
  - (iv) acquires control (as determined in accordance with section 50AA of the Corporations Act) of Youfoodz; or
  - (v) otherwise acquires or merges with Youfoodz; or
- (c) HelloFresh terminates this deed pursuant to clauses 14.2(a) or 14.2(c) and has given the appropriate termination notice to Youfoodz,

then Youfoodz must pay HelloFresh the Break Fee (without set-off or withholding) in accordance with clauses 13.5 and 13.6.

### **Satisfaction of payment obligation**

- 13.5 Youfoodz must pay HelloFresh the amount claimed under clause 13.4 within five Business Days after receipt by Youfoodz of a demand for payment in writing from HelloFresh except to the extent that a finding has been made by a court, Takeovers Panel, regulatory authority or tribunal as described in clause 13.9, or an application has been made to such a body seeking such a finding.

- 13.6 Youfoodz' obligation to make the payment referred to in clause 13.5 will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by HelloFresh for the purposes of this clause.

### **Nature of payment**

- 13.7 The amount payable by Youfoodz under clauses 13.5 and 13.6 is intended to be an amount to compensate HelloFresh for:
- (a) advisory costs (including costs of advisors other than success fees);
  - (b) costs of management and directors' time;
  - (c) out-of-pocket expenses by HelloFresh and its Representatives; and
  - (d) the opportunity costs incurred by HelloFresh in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which HelloFresh could have developed to further its business and objectives,
- and the parties agree that:
- (e) the costs actually incurred by HelloFresh will be of such a nature that they cannot all be accurately ascertained; and
  - (f) the Break Fee is a genuine and reasonable pre-estimate of those costs.

### **Qualifications**

- 13.8 No amount shall be payable by Youfoodz under this clause 13 if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 13.4. To the extent that any amounts have already been paid under this clause 13 and the Scheme becomes Effective, such amounts shall be immediately refunded to Youfoodz.
- 13.9 This clause 13 does not impose an obligation on Youfoodz to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the amount:
- (a) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
  - (b) is held to be unenforceable by one party against the other as determined by a court,
- after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted. The parties must take all reasonable steps to ensure that any such determination applies to the minimum extent possible.
- 13.10 The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination of a kind referred to in clause 13.9.

### **Other claims**

- 13.11 The maximum aggregate amount which Youfoodz is required to pay in relation to this deed (including any breach of this deed by Youfoodz), other than in the case of fraud or in the event of any wilful or intentional breach by Youfoodz of this deed, is the Break Fee and in no event will the aggregate liability of Youfoodz under or in connection with this deed exceed the Break Fee.

## Exclusive remedy

- 13.12 Notwithstanding any other provision under this deed, where the Break Fee is paid to HelloFresh under this deed, HelloFresh cannot make any claim against Youfoodz or the other Youfoodz Indemnified Parties in relation to any event or occurrence referred to in clause 13.4. Nothing in this clause limits Youfoodz' liability for fraud or in the event of any wilful or intentional breach by Youfoodz of this deed.

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## 14. Termination

### Termination

- 14.1 Without prejudice to any other rights of termination under this deed, Youfoodz may terminate this deed by written notice to HelloFresh at any time before 8.00 am on the Second Court Date if:
- (a) HelloFresh is in breach of this deed (including a breach of a HelloFresh Representation and Warranty under clause 8) and:
    - (i) that breach is material;
    - (ii) Youfoodz has given written notice to HelloFresh setting out the breach and stating an intention to terminate this deed if the breach is not remedied; and
    - (iii) the breach is not remedied by HelloFresh to Youfoodz' reasonable satisfaction within 10 Business Days (or any shorter period ending on the Second Court Date) from the time the notice is given in accordance with clause 14.1(a)(ii); or
  - (b) a majority of Youfoodz Board Member change, withdraw or adversely revise or modify their recommendation that Youfoodz Shareholders vote in favour of the Scheme, or recommends a Competing Proposal, in each case as permitted to do so under this deed.
- 14.2 Without prejudice to any other rights of termination under this deed, HelloFresh may terminate this deed by written notice to Youfoodz at any time before 8.00 am on the Second Court Date if:
- (a) Youfoodz is in breach of this deed (including a breach of a Youfoodz Representation and Warranty under clause 8 and a breach of a Prescribed Occurrence) and:
    - (i) that breach is material;
    - (ii) HelloFresh has given written notice to Youfoodz setting out the breach and stating an intention to terminate this deed if the breach is not remedied; and
    - (iii) the breach is not remedied by Youfoodz to HelloFresh's reasonable satisfaction within 10 Business Days (or any shorter period ending on the Second Court Date) from the time the notice is given in accordance with clause 14.2(a)(ii);
  - (b) any Youfoodz Board Member changes, withdraws or adversely revises or modifies his or her recommendation that Youfoodz Shareholders vote in favour of the Scheme, or recommends a Competing Proposal, whether or not permitted to do so under this deed; or

- (c) in any circumstance (including circumstances permitted by clauses 12.7 to 12.9) where Youfoodz enters into a definitive agreement to implement a Competing Proposal.

For the avoidance of doubt, a statement that shareholders should 'take no action pending further advice' (or words to that effect) is not regarded as an adverse modification of a recommendation for the purposes of clauses 14.1 and 14.2 provided that the Youfoodz Board publically re-affirms its recommendation in favour of the Transaction when making any such statement .

### **Termination by agreement**

- 14.3 This deed is terminable if agreed to in writing by Youfoodz and HelloFresh.

### **Notifications**

- 14.4 Each party will promptly advise the other in writing if it becomes aware of any fact, matter, or circumstance which constitutes or is reasonably likely to constitute a breach of this deed by it.

### **Effect of termination**

- 14.5 If this deed is terminated by either party under clauses 3.11, 14.1 or 14.2, this deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and other than in relation to the provisions of this clause 14 and of clauses 1 (Definitions and interpretation), 8 (Representations and warranties), 11 (Confidentiality), 15 (GST) and 16 (Notices), 17 (General) which will remain in force after termination.

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## **15. GST**

- 15.1 Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- 15.2 Despite the other provisions of this deed, to the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay to the Supplier, in addition to the consideration otherwise to be provided under this deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 15.3 The additional amount on account of GST payable in accordance with clause 15.2 will be paid at the same time and in the same manner as the first part of the consideration otherwise payable for the supply is provided.
- 15.4 Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

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## 16. Notices

16.1 Any notice (including any other communication) given under or in connection with this deed must be:

- (a) in writing and in English;
- (b) addressed to the recipient at the address or email address set out below or to such other address or email address as that party may notify to the other party:

to Youfoodz:

Address: 4, 52 Pritchard Road, Virginia QLD 4014

Attention: Lance Giles and Edward Loneragan

Email: lance@youfoodz.com and  
edward.loneragan@youfoodz.com

With a copy to: Baker McKenzie  
Level 19, CBW, 181 William Street, Melbourne  
Victoria 3000 Australia

Attention: Rick Troiano and Lance Sacks

Email: Riccardo.Troiano@bakermckenzie.com  
and Lance.Sacks@bakermckenzie.com

to HelloFresh:

Address: Saarbrücker Straße 37a, 10405 Berlin

Attention: Christian Gärtner and Dr. Christian  
Ries

Email: cg@hellofresh.com and  
cr@hellofresh.com

With a copy to: Clayton Utz  
Level 15, 1 Bligh Street, Sydney  
New South Wales 2000 Australia

Attention: Rory Moriarty and Kimberley  
Grellinger

Email: rmoriarty@claytonutz.com and  
kgrellinger@claytonutz.com

- (c) signed by or on behalf of the party giving the notice. If the notice is sent by email and does not contain a signature, it is deemed to be signed by the person identified as the sender of the email;
- (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or email; and
- (e) if sent by email, in a form which:
  - (i) identifies the sender; and
  - (ii) clearly indicates the subject matter of the notice in the subject heading of the email.

- 16.2 Without limiting any other means by which a party giving notice may prove that a notice has been received by the other party, a notice is deemed to be received:
- (a) if sent by hand, when left at the address of the recipient;
  - (b) if sent by prepaid post, five Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
  - (c) if sent by email:
    - (i) at the time the email was delivered to the recipient's email server or the recipient read the email, as stated in an automated message received by the sender; or
    - (ii) one hour after the email was sent (as recorded on the device from which it was sent), unless within 24 hours of sending the email the sender receives an automated message that it was not delivered,
- whichever is earlier, but any notice or other communication that, pursuant to this clause 16.2, would be considered to have been received by the recipient if a notice would otherwise be deemed to be received by the recipient on a day that is not a Business Day, or after 5.00 pm (the recipient's local time) on a Business Day, the notice is deemed to be received by the recipient at 9.00 am (the recipient's local time) on the next Business Day.

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## **17. General**

### **Remedies**

- 17.1 Each party acknowledges that any breach of this deed will cause material damage to the other party and that damages may not be a sufficient remedy for such breach. Accordingly, the other party has the right to seek injunctive relief or specific performance as a remedy for any actual or threatened breach, in addition to any other remedies available at law or in equity under or independently of this deed.

### **Costs**

- 17.2 Subject to clause 17.3, each party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this deed and the implementation or attempted implementation of the Scheme.

### **Stamp duty**

- 17.3 HelloFresh must pay all stamp duty and any related fines or penalties in respect of this deed, the Deed Poll and the acquisition of the Scheme Shares in accordance with the Scheme and indemnify Youfoodz (on Youfoodz' own behalf and separately as trustee or nominee for the other Youfoodz Indemnified Parties and Youfoodz Shareholders) against any liability arising from failure to comply with this clause 17.3.

### **Entire agreement**

- 17.4 To the extent permitted by law, in relation to the subject matter of this deed, this deed:
- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and

- (b) supersedes any prior agreement (whether or not in writing) between the parties other than the Confidentiality Deed.

### **Further assurances**

- 17.5 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this deed and the transactions contemplated by this deed.

### **No merger**

- 17.6 The rights and obligations of the parties do not merge on completion of any transaction contemplated under this deed. They survive the execution and delivery of any assignment or other document entered into to implement any transaction contemplated under this deed.

### **Assignment**

- 17.7 A party cannot assign, novate or otherwise transfer or deal in any other way with any of its rights or obligations under this deed without the other party's prior written consent.

### **Invalid or unenforceable provisions**

- 17.8 If a provision of this deed is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
  - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions of this deed.

### **Waiver and exercise of rights**

- 17.9 A waiver by a party of a provision of, or of a right under, this deed is only binding on the party granting the waiver if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 17.10 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 17.11 A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.
- 17.12 The failure to exercise, or the delay in exercising, a right does not operate as a waiver or prevent the party so failing or exercising its right from later doing so.

### **Amendment**

- 17.13 Except as expressly provided to the contrary in this deed, this deed may only be amended by a document signed by or on behalf of each party.

### **Counterparts**

- 17.14 This deed may be signed in counterparts and all counterparts taken together constitute one document.

## **Rights cumulative**

- 17.15 Except as expressly provided to the contrary in this deed or as permitted by law, the rights, powers and remedies provided in this deed are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed.

## **Consents or approvals**

- 17.16 A party may give its approval or consent conditionally or unconditionally, or withhold its approval or consent, in its absolute discretion unless this deed expressly provides otherwise.

## **Governing law and jurisdiction**

- 17.17 This deed is governed by the laws of New South Wales, Australia.

- 17.18 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## **Service of process**

- 17.19 Each party agrees that a document required to be served in proceedings about this deed may be served:
- (a) by being delivered to or left at its address for service of notices under clauses 16.1; or
  - (b) in any other way permitted by law.

## **Trust and deed poll**

- 17.20 It is acknowledged and agreed by Youfoodz that HelloFresh not only enters into this deed on its own behalf but also as trustee for the HelloFresh Indemnified Parties (other than HelloFresh) in respect of rights, benefits and remedies expressed to be in favour of, or which are for the benefit of, or which benefit, the HelloFresh Indemnified Parties (other than HelloFresh) including the release in clause 9.3.
- 17.21 It is acknowledged and agreed by HelloFresh that Youfoodz not only enters into this deed on its own behalf but also as trustee for the Youfoodz Indemnified Parties (other than Youfoodz) in respect of rights, benefits and remedies expressed to be in favour of, or which are for the benefit of, or which benefit, the Youfoodz Indemnified Parties (other than Youfoodz) including the release in clause 9.1.
- 17.22 Without limiting clauses 17.20 and 17.21 or any other terms of, or the operation and effect of, this deed, it is acknowledged and agreed by the parties that this deed will also operate as a separate deed poll by each of HelloFresh and Youfoodz in favour of, and for the benefit of, each HelloFresh Indemnified Party (other than HelloFresh) and each Youfoodz Indemnified Party (other than Youfoodz) respectively so that this deed may be directly enforced by or on behalf of any other HelloFresh Indemnified Party and any other Youfoodz Indemnified Party respectively if they choose to do so.

## **No agreement**

- 17.23 This deed does not constitute an agreement for HelloFresh to acquire the Youfoodz Shares from each of the Youfoodz Shareholders.



## Execution

**Executed** as a deed.

**Signed sealed and delivered**  
by **Youfoodz Holdings Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:



\_\_\_\_\_  
Signature of director

**Neil Kearney**

\_\_\_\_\_  
Name of director (please print)

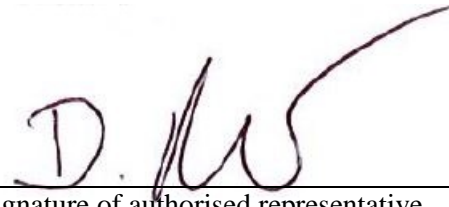


\_\_\_\_\_  
Signature of ~~secretary~~ / director

**Lance Giles**

\_\_\_\_\_  
Name of ~~secretary~~ / director (please print)

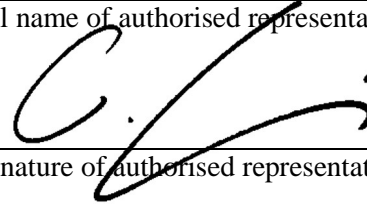
**Signed, sealed and delivered** for and on behalf of  
**HelloFresh SE** by its duly authorised  
representatives in the presence of:



Signature of authorised representative

Dominik Richter (CEO)

Full name of authorised representative



Signature of authorised representative



Signature of witness

Dr. Christian Ries (GC)

Full name of witness

Christian Gärtner (CFO)

Full name of authorised representative

For personal use only

## Schedule 1

### Timetable

Event	Indicative timing
Release of ASX announcement by Youfoodz	13 July 2021
Draft Scheme Booklet provided to ASIC	August 2021
First Court Hearing	September 2021
Dispatch of Scheme Booklet	September 2021
Scheme Meetings	October 2021
Second Court Hearing	October 2021
Effective Date	October 2021
Scheme Record Date	October 2021
Implementation Date	October 2021

## **Schedule 2**

### **Scheme**

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Refer attached.

For personal use only

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## **Scheme of Arrangement**

**Youfoodz Holdings Limited**

**The holders of fully paid ordinary shares in  
Youfoodz Holdings Limited as at the  
Scheme Record Date**

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**Title**                    **Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)**

**Date**                    [●] 2021

**Parties**                **Youfoodz Holdings Limited** (ABN 38 635 434 801) of 4, 52 Pritchard Road, Virginia QLD 4014 (**Youfoodz**)

**Scheme Shareholders**, each person who is registered as the holder of Youfoodz Shares recorded in the Youfoodz Register as at the Scheme Record Date (**Scheme Shareholders**)

## Operative provisions

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### 1. Definitions and interpretation

#### Definitions

1.1 In this Scheme, unless the context otherwise requires:

**ASIC** means Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Brisbane, Queensland, Sydney, New South Wales and Berlin, Germany.

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

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

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

**Court** means the Federal Court of Australia (Victorian Registry), or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Youfoodz and HelloFresh.

**Deed Poll** means the deed poll executed by HelloFresh and HelloFresh Nominee on [●] 2021 under which HelloFresh and HelloFresh Nominee each covenants in favour of the Scheme Shareholders to perform the obligations attributed to HelloFresh and HelloFresh Nominee under this Scheme.

**Effective** means when used in relation to this Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

**Effective Date** means the date on which this Scheme becomes Effective.

**End Date** means 31 December 2021, or such other date as agreed in writing by the parties.

**Government Agency** means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

**HelloFresh** means HelloFresh SE of Saarbrücker Straße 37a, 10405 Berlin.

**HelloFresh Nominee** means [●] of [●], being a wholly-owned Subsidiary of HelloFresh.

**Implementation Date** means the fifth Business Day after the Scheme Record Date.

**Operating Rules** means the official operating rules of the ASX.

**Registered Address** means in relation to a Youfoodz Shareholder, the address shown in the Youfoodz Register as at the Scheme Record Date.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Youfoodz and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Youfoodz and HelloFresh.

**Scheme Booklet** means the scheme booklet published by Youfoodz and dated on or about [●] 2021.

**Scheme Consideration** means the consideration to be provided by HelloFresh Nominee in consideration for the transfer of the Youfoodz Shares held by a Scheme Shareholder to HelloFresh or HelloFresh Nominee, being, in respect of each Scheme Share, \$0.93 cash.

**Scheme Implementation Deed** means the scheme implementation deed dated [●] July 2021 between Youfoodz and HelloFresh relating to the implementation of this Scheme.

**Scheme Meeting** means the meeting of Youfoodz Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Record Date** means 5.00 pm (Sydney time) on the fifth Business Day after the Effective Date.

**Scheme Share** means a Youfoodz Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Youfoodz Shareholder recorded in the Youfoodz Register as at the Scheme Record Date.

**Scheme Transfer** means a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of HelloFresh or HelloFresh Nominee as transferee, which may be a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned application or appeal is heard.



**Subsidiary** has the meaning set out in the Corporations Act.

**Youfoodz** means Youfoodz Holdings Limited ABN 38 635 434 801.

**Youfoodz Register** means the register of members of Youfoodz maintained in accordance with the Corporations Act.

**Youfoodz Registry** means Boardroom Pty Limited ACN 003 209 836.

**Youfoodz Share** means a fully paid ordinary share in the capital of Youfoodz.

**Youfoodz Shareholder** means each person who is registered as the holder of a Youfoodz Share in the Youfoodz Register.

## Interpretation

### 1.2 In this document:

- (a) unless the context requires otherwise, a reference:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to a gender includes all genders;
  - (iii) to a document or instrument is a reference to that document or instrument as amended, consolidated, supplemented, novated or replaced;
  - (iv) to a clause is to a clause of this document;
  - (v) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
  - (vi) to any time is to Sydney time;
  - (vii) to \$ is to the lawful currency of Australia;
- (b) the words "including" or "includes" mean "including, but not limited to" or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this document;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

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## 2. Preliminary

### Youfoodz

- 2.1 Youfoodz is a public company limited by shares, incorporated in Australia and taken to be registered in New South Wales. Its registered office is at 4, 52 Pritchard Road, Virginia QLD 4014.
- 2.2 Youfoodz has been admitted to the official list of the ASX and the Youfoodz Shares are quoted on ASX.
- 2.3 As at the date of the Scheme Implementation Deed, there were on issue:
- (a) 134,547,468 Youfoodz Shares, which are quoted for trading on the ASX; and
  - (b) 53,332 options to subscribe for Youfoodz Shares, which are not quoted for trading on any stock exchange.

### HelloFresh and HelloFresh Nominee

- 2.4 HelloFresh is a European corporation (*Societas Europaea*), incorporated and validly existing under the laws of Germany and registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Charlottenburg (Berlin) under docket number HRB 182382 B. Its entire share capital is listed on the regulated market (*regulierter Markt*) of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*) with simultaneous admission to the sub-segment of the regulated market with additional post-admission obligations (Prime Standard) of the Frankfurt Stock Exchange (ISIN DE 000A161408). Its registered office is at Saarbrücker Straße 37a, 10405 Berlin, Federal Republic of Germany.
- 2.5 HelloFresh Nominee is a wholly-owned Subsidiary of HelloFresh and is a company limited by shares incorporated in Australia.

### Effect of Scheme

- 2.6 If this Scheme becomes Effective:
- (a) HelloFresh Nominee must provide, and HelloFresh must procure that HelloFresh Nominee provides, the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll;
  - (b) all of the Scheme Shares, together with all the rights and entitlements attaching to the Scheme Shares at the Implementation Date, must be transferred to HelloFresh or HelloFresh Nominee and Youfoodz will enter the name of HelloFresh or HelloFresh Nominee in the Youfoodz Register as the holder of the Scheme Shares on the Implementation Date; and
  - (c) in consideration of the transfer of the Scheme Shares, Youfoodz must pay, or procure the payment of, the Scheme Consideration to each Scheme Shareholder in accordance with this Scheme and the Deed Poll.

### Scheme Implementation Deed

- 2.7 Youfoodz and HelloFresh have entered into the Scheme Implementation Deed which sets out the terms and conditions on which HelloFresh and Youfoodz have agreed to implement this Scheme.

## **Deed Poll**

- 2.8 This Scheme attributes actions to HelloFresh and HelloFresh Nominee but does not itself impose an obligation on them to perform those actions. HelloFresh and HelloFresh Nominee have executed the Deed Poll in favour of each Scheme Shareholder under which they have covenanted, subject to this Scheme becoming Effective, to perform certain steps attributed to them under this Scheme and to do all things necessary to implement this Scheme, including to pay or procure the payment of the Scheme Consideration to the Scheme Shareholders.
- 

## **3. Conditions precedent**

### **Conditions precedent to Scheme**

- 3.1 This Scheme is conditional on and will have no force or effect until, the satisfaction of each of the following conditions precedent:
- (a) all the conditions in clause 3.1 of the Scheme Implementation Deed, other than the condition in the Scheme Implementation Deed relating to Court approval of this Scheme, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed before 8.00 am on the Second Court Date;
  - (b) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00 am on the Second Court Date;
  - (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by HelloFresh and Youfoodz;
  - (d) any other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme, and which are agreed to in writing by HelloFresh and Youfoodz, having been satisfied; and
  - (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, under section 411(10) of the Corporations Act on or before the End Date (or any later date Youfoodz and HelloFresh agree in writing).

### **Certificate in relation to conditions precedent**

- 3.2 Youfoodz and HelloFresh will each provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived in accordance with the terms of the Scheme Implementation Deed as at 8.00 am on the Second Court Date.
- 3.3 The certificate referred to in clause 3.2 constitutes conclusive evidence of the satisfaction or waiver of the conditions precedent referred to in the relevant certificate.

## **Termination**

- 3.4 Without limiting any rights under the Scheme Implementation Deed, if the Scheme Implementation Deed is terminated in accordance with its terms before this Scheme becomes Effective, each of Youfoodz, HelloFresh and HelloFresh Nominee are released from:
- (a) any further obligation to take steps to implement this Scheme; and

- (b) any liability with respect to this Scheme.

## **End Date**

- 3.5 This Scheme will lapse and have no further force or effect if the Effective Date has not occurred on or before the End Date unless Youfoodz and HelloFresh otherwise agree in writing.

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## **4. Implementation of Scheme**

### **Lodgement of Court orders**

- 4.1 Youfoodz must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme by 5.00 pm on the Business Day on which such office copy is received (or such later date as agreed in writing by HelloFresh).

### **Transfer of Scheme Shares**

- 4.2 On the Implementation Date:
- (a) subject to this Scheme becoming Effective and the payment of the Scheme Consideration in accordance with clauses 5.1 to 5.4, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to HelloFresh or HelloFresh Nominee, without the need for any further act by any Scheme Shareholder (other than acts performed by Youfoodz as attorney and agent for Scheme Shareholders under clause 8.8), by:
    - (i) Youfoodz delivering to HelloFresh or HelloFresh Nominee a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Youfoodz, for registration; and
    - (ii) HelloFresh or HelloFresh Nominee duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Youfoodz for registration; and
  - (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), but subject to the stamping of the Scheme Transfer (if required), Youfoodz must enter, or procure the entry of, the name and address of HelloFresh or HelloFresh Nominee in the Youfoodz Register as the holder of all the Scheme Shares.

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## **5. Scheme Consideration**

### **Provision of Scheme Consideration**

- 5.1 HelloFresh Nominee must, and HelloFresh must procure that HelloFresh Nominee does, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder, in an Australian dollar denominated trust account operated by Youfoodz as trustee for the Scheme Shareholders (**Trust Account**) and notified to HelloFresh and HelloFresh Nominee at least five Business Days prior to Implementation Date. Any interest on the amounts deposited (less bank fees and other charges) will be credited to HelloFresh or HelloFresh Nominee's account.
- 5.2 On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1, Youfoodz must pay or procure the payment from the Trust Account to each

Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Youfoodz Register on the Scheme Record Date.

- 5.3 The obligations of Youfoodz under clause 5.2 will be satisfied by Youfoodz (in its absolute discretion):
- (a) making or procuring a deposit into an account with an ADI in Australia notified by the Scheme Shareholder to Youfoodz and recorded in or for the purposes of payments of dividends in the Youfoodz Register as at the Scheme Record Date (**Registered Account**); or
  - (b) if Youfoodz has not been notified by the Scheme Shareholder of a Registered Account, despatching or procuring the despatch to the Scheme Shareholder of a cheque, pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) in an envelope addressed to the Registered Address as at the Record Date.
- 5.4 To the extent that, following satisfaction of Youfoodz' obligations under clause 5.2, there is a surplus in the amount held by Youfoodz as trustee for the Scheme Shareholders in the Trust Account, that surplus will be paid by Youfoodz to HelloFresh or HelloFresh Nominee.

#### **Joint holders**

- 5.5 In the case of Scheme Shares held in joint names:
- (a) subject to clause 5.3, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Youfoodz, the holder whose name appears first in the Youfoodz Register as at the Scheme Record Date or to the joint holders; and
  - (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Youfoodz, the holder whose name appears first in the Youfoodz Register as at the Scheme Record Date or to the joint holders.

#### **Unclaimed monies**

- 5.6 Youfoodz may cancel a cheque issued under this clause 5 if the cheque:
- (a) is returned to Youfoodz (or its agents); or
  - (b) has not been presented by a Scheme Shareholder within six months after the Implementation Date.
- 5.7 During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Youfoodz (or the Youfoodz Registry) (which request may not be made until the date which is 10 Business Days after the Implementation Date), Youfoodz must reissue a cheque that was previously cancelled under clause 5.6.
- 5.8 The *Unclaimed Money Act* 1995 (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act* 1995 (NSW)).

#### **Orders of a court or Government Agency**

- 5.9 If written notice is given to Youfoodz (or the Youfoodz Registry) of an order or direction made by a court of competent jurisdiction or by a Government Agency that:

- For personal use only
- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Youfoodz in accordance with this clause 5, then Youfoodz will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (b) prevents Youfoodz from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Youfoodz will be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that order or direction or otherwise by law.
- 5.10 To the extent that amounts are so deducted or withheld in accordance with clause 5.9, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.
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## **6. Dealings in Youfoodz Shares**

### **Determination of Scheme Shareholders**

- 6.1 Each Scheme Shareholder will be entitled to participate in this Scheme.
- 6.2 To establish the identity of the Scheme Shareholders, dealings in Youfoodz Shares will only be recognised if:
- (a) in the case of dealings of the type to be effected by CHESS, the transferee is registered in the Youfoodz Register as the holder of the relevant Youfoodz Shares on or before 5.00 pm on the Scheme Record Date; and
  - (b) in all other cases, share transfer forms in registrable form or transmission applications in respect of those dealings are received by the Youfoodz Registry on or before 5.00 pm on the Scheme Record Date,

and Youfoodz must not accept for registration, nor recognise for any purposes (except a transfer to HelloFresh or HelloFresh Nominee pursuant to this Scheme and any subsequent transfer by HelloFresh or HelloFresh Nominee or its successors in title), any transfer or transmission application or other request received after such time, or received prior to such times but not in registrable or actionable form, as appropriate.

### **Youfoodz' obligation to register**

- 6.3 Youfoodz must register any registrable transfers or transmission applications of the Scheme Shares in accordance with clause 6.2(b) on or before 5.00 pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.3 requires Youfoodz to register a transfer that would result in a Youfoodz Shareholder holding a parcel of Youfoodz Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.3 'marketable parcel' has the meaning given in the Operating Rules).

### **Transfers after the Scheme Record Date**

- 6.4 If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them on or after the Scheme Record Date, other than in accordance with this Scheme, and any attempt to do so will have no effect and Youfoodz will be entitled to disregard any such disposal.

### **Maintenance of Youfoodz Register**

- 6.5 For the purpose of determining entitlements to the Scheme Consideration, Youfoodz must, until the Scheme Consideration has been paid to the Scheme Shareholders, maintain the Youfoodz Register in accordance with this clause 6. The Youfoodz Register in this form will solely determine entitlements to the Scheme Consideration.

### **Effect of holding statements**

- 6.6 All statements of holding for Youfoodz Shares (other than statements of holding in favour of HelloFresh or HelloFresh Nominee) will cease to have effect after the Scheme Record Date as a document of title in respect of those shares.
- 6.7 Each entry on the Youfoodz Register as at the Scheme Record Date (other than entries on the Youfoodz Register in respect of HelloFresh or HelloFresh Nominee) will cease to have any effect except other than as evidence of the entitlements of the Scheme Shareholders to the Scheme Consideration in respect of the Youfoodz Shares relating to that entry.

### **Information to be made available to HelloFresh**

- 6.8 As soon as practicable on or after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Youfoodz will ensure that details of the names, Registered Addresses, Registered Accounts and holdings of Youfoodz Shares for each Scheme Shareholder as shown in the Youfoodz Register are available to HelloFresh in the form HelloFresh reasonably requires.

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## **7. Quotation of Youfoodz Shares**

- 7.1 Youfoodz must apply to ASX to suspend trading of Youfoodz Shares on ASX with effect from the close of trading on the Effective Date.
- 7.2 On a date after the Implementation Date to be determined by HelloFresh, Youfoodz must take all steps reasonably necessary and within its power (including by applying to ASX and satisfying any conditions reasonably required by ASX) to procure:
- (a) the termination of the official quotation of Youfoodz Shares on the ASX; and
  - (b) the removal of Youfoodz from the official list of the ASX.

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## **8. General Scheme provisions**

### **Consent to amendments to this Scheme**

- 8.1 If the Court proposes to approve this Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act:
- (a) Youfoodz may by its counsel, and with the consent of HelloFresh, consent to those alterations or conditions on behalf of all persons concerned including, for the avoidance of doubt, all Scheme Shareholders; and

- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for Youfoodz has consented to.

### **Scheme Shareholders' agreements and warranties**

#### **8.2 Each Scheme Shareholder irrevocably:**

- (a) agrees to the transfer of their Youfoodz Shares together with all rights and entitlements attaching to those Youfoodz Shares to HelloFresh or HelloFresh Nominee in accordance with the terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Youfoodz Shares constituted by or resulting from this Scheme;
- (c) acknowledges and agrees that this Scheme binds Youfoodz and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Youfoodz; and
- (d) consents to Youfoodz, HelloFresh and HelloFresh Nominee doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme,

without the need for any further act by that Scheme Shareholder.

#### **8.3 Each Scheme Shareholder is taken to have warranted to Youfoodz, HelloFresh and HelloFresh Nominee on the Implementation Date, and appointed and authorised Youfoodz as its attorney and agent to warrant to HelloFresh and HelloFresh Nominee on the Implementation Date, that:**

- (a) all of its Youfoodz Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
- (b) it has full power and capacity to transfer its Youfoodz Shares to HelloFresh or HelloFresh Nominee together with any rights and entitlements attaching to those shares; and
- (c) it has no existing right to be issued any Youfoodz Shares, options exercisable into Youfoodz Shares, Youfoodz performance rights, Youfoodz convertible notes or any other Youfoodz securities.

#### **8.4 Youfoodz undertakes in favour of each Scheme Shareholder that it will provide the warranties in clause 8.3, to the extent enforceable, to HelloFresh and HelloFresh Nominee on behalf of that Scheme Shareholder.**

### **Title to and rights in Scheme Shares**

#### **8.5 To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to HelloFresh or HelloFresh Nominee will, at the time of transfer of them to HelloFresh or HelloFresh Nominee, vest in HelloFresh or HelloFresh Nominee free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12**



of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.

- 8.6 On and from the Implementation Date, subject to the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, and pending registration by Youfoodz of HelloFresh or HelloFresh Nominee as the holder of all Scheme Shares in the Youfoodz Register, HelloFresh or HelloFresh Nominee will be beneficially entitled to the Scheme Shares.

### **Appointment of sole proxy**

- 8.7 Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, and until registration by Youfoodz of HelloFresh or HelloFresh Nominee as the holder of all Scheme Shares in the Youfoodz Register, each Scheme Shareholder:
- (a) is deemed to have appointed HelloFresh or HelloFresh Nominee as attorney and agent (and directed HelloFresh or HelloFresh Nominee in each such capacity) to appoint any director, officer, secretary or agent nominated by HelloFresh or HelloFresh Nominee as its sole proxy and, where applicable or appropriate, corporate representative to:
    - (i) attend shareholders' meetings;
    - (ii) exercise the votes attaching to the Scheme Shares registered in their name; and
    - (iii) sign any shareholders' resolution;
  - (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.7(a));
  - (c) must take all other actions in the capacity of a registered holder of Scheme Shares as HelloFresh or HelloFresh Nominee reasonably directs; and
  - (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), HelloFresh or HelloFresh Nominee and any director, officer, secretary or agent nominated by HelloFresh or HelloFresh Nominee under clause 8.7(a) may act in the best interests of HelloFresh or HelloFresh Nominee as the intended registered holder of the Scheme Shares.

### **Authority given to Youfoodz**

- 8.8 Each Scheme Shareholder, without the need for any further act:
- (a) on the Effective Date, irrevocably appoints Youfoodz and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against HelloFresh and HelloFresh Nominee, and Youfoodz undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against HelloFresh and HelloFresh Nominee on behalf of and as agent and attorney for each Scheme Shareholder; and
  - (b) on the Implementation Date, irrevocably appoints Youfoodz and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer.

- 8.9 Youfoodz accepts each such appointment contemplated by clause 8.8. Youfoodz as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under clause 8.8 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

### **Binding effect of Scheme**

- 8.10 This Scheme binds Youfoodz and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote on this Scheme, do not vote at the Scheme Meeting, or vote against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Youfoodz.

### **Costs and stamp duty**

- 8.11 HelloFresh Nominee will, and HelloFresh must procure that HelloFresh Nominee will:
- (a) pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
  - (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.11(a).

### **Consent**

- 8.12 Each of the Scheme Shareholders consents to Youfoodz doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Youfoodz or otherwise.

### **No liability when acting in good faith**

- 8.13 Neither Youfoodz, HelloFresh nor HelloFresh Nominee, nor any of their respective directors, officers, agents or employees will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

### **Notices**

- 8.14 Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Youfoodz, it will not be deemed to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Youfoodz' registered office or at the office of the Youfoodz Registry.
- 8.15 The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Youfoodz Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **Further assurances**

- 8.16 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Scheme and the transactions contemplated by this Scheme.

### **Governing law and jurisdiction**

8.17 This Scheme is governed by the laws of New South Wales. Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

### **Schedule 3**

#### **Deed Poll**

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Refer attached.

For personal use only

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## **Deed Poll**

**HelloFresh SE**

**HelloFresh Nominee**

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**Title**                      **Deed Poll**

**Date**                      [●] 2021

**Parties**                      **HelloFresh SE** of Saarbrücker Straße 37a, 10405 Berlin (**HelloFresh**)

**HelloFresh Nominee** (ACN [●]) of [●] (**HelloFresh Nominee**)

**In favour of each person registered as a holder of fully paid ordinary shares in Youfoodz in the Youfoodz Register as at the Scheme Record Date.**

## Recitals

- A      Youfoodz and HelloFresh entered into the Scheme Implementation Deed.
- B      In the Scheme Implementation Deed, HelloFresh agreed to enter into, and agreed to procure that HelloFresh Nominee enter into, this Deed Poll.
- C      HelloFresh and HelloFresh Nominee are entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform their obligations under the Scheme Implementation Deed and the Scheme.

## Operative provisions

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### 1. Definitions and interpretation

- 1.1      The meanings of the terms used in this Deed Poll are set out below.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Youfoodz and the Scheme Shareholders, the form of which is set out in Schedule 2 to the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by HelloFresh and Youfoodz.

**Scheme Implementation Deed** means the scheme implementation deed entered into between Youfoodz and HelloFresh dated [●] July 2021.

- 1.2      Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this Deed Poll.
- 1.3      Section 1.2 of the Scheme apply to the interpretation of this Deed Poll, except that references to 'this document' are to be read as references to 'this Deed Poll'.

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## **2. Nature of Deed Poll**

- 2.1 Each of HelloFresh and HelloFresh Nominee acknowledge that:
- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
  - (b) under the Scheme, each Scheme Shareholder irrevocably appoints Youfoodz and each of its directors and officers (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against HelloFresh and HelloFresh Nominee.
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## **3. Conditions precedent and termination**

### **Conditions precedent**

- 3.1 The obligations of HelloFresh and HelloFresh Nominee under this Deed Poll are subject to the Scheme becoming Effective.

### **Termination**

- 3.2 The obligations of HelloFresh and HelloFresh Nominee under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no force or effect if:
- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
  - (b) the Scheme is not Effective on or before the End Date,
- unless HelloFresh and Youfoodz otherwise agree in writing (and, if required, as approved by the Court).

### **Consequences of termination**

- 3.3 If this Deed Poll terminates under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:
- (a) HelloFresh and HelloFresh Nominee are released from their obligations to further perform this Deed Poll; and
  - (b) each Scheme Shareholder retains the rights they have against HelloFresh and HelloFresh Nominee in respect of any breach of this Deed Poll which occurred before it was terminated.
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## **4. Payment of Scheme Consideration**

- 4.1 Subject to clause 3, HelloFresh Nominee undertakes, and HelloFresh undertakes to procure HelloFresh Nominee, to:
- (a) by no later than one Business Day before the Implementation Date, deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Youfoodz as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to HelloFresh or HelloFresh Nominee's account; and

- (b) undertake all other actions attributed to it under the Scheme,  
subject to and in accordance with the terms of the Scheme and in favour of each Scheme Shareholder.

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## 5. Representations and warranties

Each of HelloFresh and HelloFresh Nominee represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has the legal right and corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

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## 6. Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until:

- (a) HelloFresh and HelloFresh Nominee have fully performed their obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 3.

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## 7. Notices

- 7.1 Any notice (including any other communication) given to HelloFresh or HelloFresh Nominee under or in connection with this Deed Poll must be:

- (a) in writing and in English;
- (b) addressed to HelloFresh and HelloFresh Nominee at the address or email address set out below:

Address:	Saarbrücker Straße 37a, 10405 Berlin
Attention:	Christian Gärtner and Dr. Christian Ries
Email:	cg@hellofresh.com and cr@hellofresh.com



With a copy to:

rmoriarty@claytonutz.com  
kgrellinger@claytonutz.com

- (c) signed by or on behalf of the person giving the notice. If the notice is sent by email and does not contain a signature, it is deemed to be signed by the person identified as the sender of the email;
- (d) sent to HelloFresh and HelloFresh Nominee by hand, prepaid post (airmail if to or from a place outside Australia) or email; and
- (e) if sent by email, in a form which:
  - (i) identifies the sender; and
  - (ii) clearly indicates the subject matter of the notice in the subject heading of the email.

7.2 Without limiting any other means by which a person may prove that a notice has been received by HelloFresh or HelloFresh Nominee, a notice is deemed to be received:

- (a) if sent by hand, when left at the address of HelloFresh and HelloFresh Nominee;
- (b) if sent by prepaid post, five Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
- (c) if sent by email:
  - (i) at the time the email was delivered to the recipient's email server or the recipient read the email, as stated in an automated message received by the sender; or
  - (ii) one hour after the email was sent (as recorded on the device from which it was sent), unless within 24 hours of sending the email the sender receives an automated message that it was not delivered,

whichever is earlier, but any notice or other communication that, pursuant to this clause 7.2, would be considered to have been received by HelloFresh or HelloFresh Nominee if a notice would otherwise be deemed to be received by HelloFresh or HelloFresh Nominee on a day that is not a Business Day, or after 5.00 pm (HelloFresh and HelloFresh Nominee's local time) on a Business Day, the notice is deemed to be received by HelloFresh and HelloFresh Nominee at 9.00 am (HelloFresh and HelloFresh Nominee's local time) on the next Business Day.

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## 8. General

### Stamp duty

8.1 HelloFresh and HelloFresh Nominee:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under the Scheme and this Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.1(a).

## **Waiver**

- 8.2 A waiver by a person of a provision of, or of a right under, this Deed Poll is only binding on the person granting the waiver if it is given in writing and is signed by the person or an authorised officer of the person granting the waiver.
- 8.3 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 8.4 A single or partial exercise of a right by a person does not preclude another exercise of that right or the exercise of another right.
- 8.5 The failure to exercise, or the delay in exercising, a right does not operate as a waiver or prevent the person so failing or exercising its right from later doing so.

## **Variation**

- 8.6 A provision of this Deed Poll may not be varied unless the variation is agreed to by HelloFresh and HelloFresh Nominee and:
- (a) if before the First Court Date, the variation is agreed to by Youfoodz; or
  - (b) if on or after the First Court Date, the variation is agreed to by Youfoodz and the Court indicates that the variation would not of itself preclude approval of the Scheme,
- in which event HelloFresh and HelloFresh Nominee will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

## **Rights cumulative**

- 8.7 The rights, powers and remedies of HelloFresh, HelloFresh Nominee and the Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.

## **Assignment**

- 8.8 The rights created by this Deed Poll are personal to HelloFresh, HelloFresh Nominee and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of HelloFresh or HelloFresh Nominee.
- 8.9 Any purported dealing in contravention of clause 8.8 is invalid.

## **Joint and several obligations**

- 8.10 HelloFresh and HelloFresh Nominee are jointly and severally liable for each obligation imposed on both of them by the terms of this Deed Poll.

## **Further assurances**

- 8.11 HelloFresh and HelloFresh Nominee must, at their own expense, do all things and execute all documents necessary to give full effect to this Deed Poll and the transactions contemplated by it.

## **Governing law and jurisdiction**

- 8.12 This Deed Poll is governed by the laws of New South Wales.
- 8.13 HelloFresh and HelloFresh Nominee irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales.

## Execution

**Executed** as a deed poll.

**Signed, sealed and delivered** for and on behalf of  
**HelloFresh SE** by its duly authorised  
representatives in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised representative

**Signed sealed and delivered**  
by **HelloFresh Nominee**  
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of secretary / director

\_\_\_\_\_  
Name of director (please print)

\_\_\_\_\_  
Name of secretary / director (please print)