

**11th March 2020**  
**ASX Announcement**



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## **Oliver's enters into Scheme Implementation Deed with EG Group**

Oliver's Real Food Limited today announces that it has entered into a Scheme Implementation Deed ("SID") with EG FuelCo (Australia) Limited ("EG Group"), under which it is proposed that EG Group will acquire 100% of the issued share capital of Oliver's by way of scheme of arrangement (the "Scheme").

If the Scheme is implemented, Oliver's shareholders will receive \$0.10 cash per Oliver's share (the "Cash Amount").

The Cash Amount values Oliver's diluted equity at approximately \$27 million and represents a:

- 53.8% premium to the closing price prior to receipt of the proposal from EG Group (6 March 2020) of \$0.0653;
- 35.1% premium to the undisturbed 1-month volume weighted average price (VWAP<sup>1</sup>) of \$0.0743;
- 29.9% premium to the undisturbed 3-month VWAP of \$0.0773; and
- 51.5% premium to the undisturbed 6-month VWAP of \$0.0663.

Oliver's board of directors unanimously recommend that Oliver's shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Oliver's shareholders.

Each Director of Oliver's intends to vote all the Oliver's shares held or controlled by him or her in favour of the Scheme, subject to the same qualifications. In addition, The Hauraki Trustee Company, Twenty Second Sepelda Pty Ltd and Niche Group PL as Trustee for The Future Trust, companies associated with Jason Gunn, Steven Metter and Nicholas Dower respectively have granted EG Group call options to acquire up to 19.9% of the Oliver's shares in aggregate at the same \$0.10 per share Cash Amount as provided under the Scheme.

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<sup>1</sup> (VWAP) Volume weighted average price based on cumulative trading volume during the period leading up to and including 6 March 2020, being the trading day prior to receipt of the proposal from EG Group

Oliver's Chairman, Nicholas Dower, said that the Board had reached its unanimous recommendation after extensive discussions and negotiations with EG Group in relation to its proposal, and consideration of our staff, our suppliers, our customers and ultimately our shareholders best interests.

This offer represents a greater certainty for our team members and an enhanced career path, and for our suppliers and supporters an enormous opportunity for quick growth.

For our shareholders this represents a certain improvement in excess of \$22 million in the value of their investment since the same time last year and removes all future risk.

"EG Group's proposal represents a significant premium to Oliver's recent trading levels and represents an attractive value outcome for shareholders," said Mr Dower.

Zuber Issa, EG Group Co-Founder and Co-CEO announced "EG delivers innovative food and convenience offers to customers internationally and we are committed to bringing market leading offers to our Australian customers. In Oliver's we see a concept that meets a global trend towards healthy and sustainable eating."

Mike McMenamin, EG Group Australia CEO expressed: "Oliver's has developed a strong following in Australia, and has been very well received by our customers in trials at a number of our stores. This acquisition presents a great opportunity for us to enter the Australian restaurant market and the potential to enhance our convenience offer across our 500+ store network. We look forward to the Oliver's team joining the EG Australia family."

Jason Gunn, Oliver's Founder, Director & CEO said, "This transaction is a huge positive for our customers, our dedicated team, our suppliers and our shareholders. We are looking forward to working with the EG Group for this next phase of the business."

#### ***Details of the Scheme Implementation Deed***

The implementation of the Scheme is subject to a number of terms and conditions including Oliver's shareholder and Court approval, no material adverse change, no material transaction or prescribed occurrences, confirmation of IP, receipt of option cancellation deeds, change in control consents and net debt not exceeding \$800,000.

The SID contains customary exclusivity provisions including no shop and no talk restrictions, a notification obligation and a matching right, subject to Oliver's Directors' fiduciary obligations.

The SID also details circumstances under which a break fee may be payable to EG Group, or a reverse break fee payable to Oliver's.

A copy of the executed SID with its attachments accompanies this announcement.

EG Group confirms that the Cash Amount is its best and final price in respect of the Scheme in the absence of any competing proposal (including for the shares in Oliver's or any supply or licensing arrangement with a third party), any material business update or any

circumstances which would breach or trigger a condition, warranty or undertaking in the attached SID.

### ***Indicative Timetable and Next Steps***

Oliver's shareholders do not need to take any action at the present time.

An Explanatory Booklet containing among other things information relating to the Scheme, reasons for the Directors' unanimous recommendation and details of the Scheme meeting is expected to be sent to shareholders by the end of April 2020.

Shareholders will be given the opportunity to vote on the Scheme at a meeting which is expected to be held in early June 2020. Subject to shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in early July 2020.

For and behalf of the board

**Nicholas Dower** | Non-Executive Director and Chairman | [Nick.dower@oliversrealfood.com.au](mailto:Nick.dower@oliversrealfood.com.au)

For further information please contact:

**Jason Gunn** | Founder and CEO | [Jason.gunn@oliversrealfood.com.au](mailto:Jason.gunn@oliversrealfood.com.au)

**Nicholas Dower** | Non-Executive Director and Chairman | [Nick.dower@oliversrealfood.com.au](mailto:Nick.dower@oliversrealfood.com.au)

### **About Oliver's Real Food Limited (ASX:OLI)**

Oliver's Real Food Limited (**Oliver's**) listed on the ASX on 21 June 2017. Over its 15-year operating history, Oliver's has established a significant market position providing a healthy fast food alternative for travellers on Australia's major arterial highways. Oliver's Real Food is considered to be the world's first "certified organic fast food chain" and provides its customers with premium quality, "real" food that is fresh, natural, & free from additives and preservatives, 7 days a week.

Oliver's is a conscious business that understands, and is committed to, the interdependency of "all stakeholders" including our, customers, investors, team members, suppliers, the environment, and the communities in which we operate. [www.oliversrealfood.com.au](http://www.oliversrealfood.com.au)

# **SCHEME IMPLEMENTATION DEED**

**DATED 11 MARCH 2020**

**EG FUELCO (AUSTRALIA) LIMITED**

**and**

**OLIVER'S REAL FOOD LIMITED**

**ALLEN & OVERY**

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**THIS DEED** is made on 11 March 2020

**BETWEEN:**

- (1) **EG FUELCO (AUSTRALIA) LIMITED ACN 627 348 645** of Level 39, Northpoint, 100 Miller Street, North Sydney, NSW 2060 (**EG**); and
- (2) **OLIVER'S REAL FOOD LIMITED ACN 166 495 441** of 10 Amsterdam Circuit Wyong, NSW 2259 (**Oliver's**).

**BACKGROUND:**

- (A) EG proposes that BidCo will acquire all of the Scheme Shares by means of the Scheme.
- (B) This deed is entered into to record and give effect to the terms and conditions on which EG and Oliver's propose to implement the Scheme.

**THIS DEED WITNESSES** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this deed:

**Additional Amount** has the meaning given in clause 14.3;

**ASIC** means the Australian Securities and Investments Commission;

**ASIC Review Booklet** means the draft of the Scheme Booklet which is provided to ASIC:

- (a) for approval pursuant to section 411(2) of the Corporations Act; and
- (b) for ASIC's review pursuant to ASIC Regulatory Guide 60;

**Associate** has the meaning given in section 12(2) of the Corporations Act;

**ASX** means ASX Limited or the Australian Securities Exchange, as the context requires;

**ASX Listing Rules** means the official listing rules of ASX as modified by any waiver instrument executed by ASX that applies to Oliver's;

**Authorisation** means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

**BidCo** means EG (Retail) Australia Pty Limited ACN 629 793 933;

**Board** means the board of directors of Oliver's;

**Break Fee** means \$270,000 plus GST, if applicable;

**Break Fee Arrangements** has the meaning given in clause 8.6(a)(i);

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Sydney, Australia for normal business;

**Competing Proposal** means any proposed takeover bid, scheme of arrangement, reverse takeover, capital reduction, sale or licence of assets, sale of securities, strategic alliance, joint venture, partnership, dual listed companies structure, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:

- (a) directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect interest in more than 10% of the shares of Oliver's or more than 10% of the shares in any other Group Member that contributes 10% or more of the consolidated net profit after tax of the Group or whose assets represent 10% or more of the total consolidated assets of the Group;
- (b) directly or indirectly acquiring or being entitled to acquire the whole of the business or assets of the Group or any part of the business or assets of the Group that contributes 10% or more of the consolidated net profit after tax of the Group or that represents 10% or more of the total consolidated assets of the Group;
- (c) licensing the right to use any Oliver's IP Rights;
- (d) acquiring Control of Oliver's or merging or amalgamating with Oliver's or any other Group Member that contributes 10% or more of the consolidated net profit after tax of the Group or whose assets represent 10% or more of the total consolidated assets of the Group,

or which would otherwise require Oliver's to abandon, or otherwise fail to proceed with, the Scheme;

**Conditions** mean the conditions set out in the first column of the table in clause 3.1;

**Confidentiality Agreement** means the confidentiality agreement dated on or around 16 December 2019 between Oliver's and EG Group Limited, as amended from time to time;

**Constitution** means the constitution of Oliver's for the time being;

**Control** has the meaning given in section 50AA of the Corporations Act;

**Consideration** means \$0.10 in respect of each Share held by a Scheme Shareholder;

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

**Counter Proposal** has the meaning given in clause 7.8(b)(iii);

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act as the parties agree in writing;

**Deed Poll** means the deed poll to be entered into by Bidder and BidCo in favour of the Scheme Shareholders in the form attached as Annex 2 or in such other form as the parties agree in writing;

**Director** means each director of Oliver's from time to time;

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

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

**Effective Date** means the date the Scheme becomes Effective;

**EG Group** means EG and its Related Entities (but excluding Group Members) and **EG Group Member** means any of them;

**EG Information** means all information given by EG to Oliver's for inclusion in the Scheme Booklet to the extent it relates to the EG Group;

**EG Undertakings** means the undertakings set out in Part 2 of Schedule 3;

**EG Warranties** means the statements set out in Part 1 of Schedule 3;

**Encumbrance** means any security interest (within the meaning of section 51A of the Corporations Act) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind, and any agreement to create any of the foregoing;

**End Date** means 30 August 2020, or such later date as the parties agree in writing;

**Excluded Shares** means any Shares held by any person on behalf of or for the benefit of any EG Group Member;

**Exclusivity Period** means the period starting on the date of this deed and ending on the first to occur of:

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

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

**Government Agency** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity whether in Australia or elsewhere and includes any self-regulatory organisation established under statute or any stock exchange;

**Group** means Oliver's and any entities under the Control of Oliver's and **Group Member** means any of them;

**GST** has the meaning given in the GST Law;

**GST Exclusive Consideration** has the meaning given in clause 14.2;

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);



**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the Scheme Resolution is passed at the Scheme Meeting by a majority in number of Shareholders present and voting, either in person or by proxy;

**Implementation Date** means the date which is three Business Days after the Record Date, or such other date as the parties agree in writing;

**Incentive Plan** means any incentive plan operated by Oliver's for the benefit of executives or employees of Group Members;

**Indebtedness** means any debt or other monetary liability (whether actual or contingent) together with all interest, fees and penalties incurred thereon, in respect of moneys raised or borrowed or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit;
- (d) finance or capital lease;
- (e) swap, option, hedge, forward, futures or similar transaction; or
- (f) redeemable share or security.

excluding the amount of any trade or account payables;

**Independent Expert** means the person appointed by Oliver's as independent expert to prepare the Independent Expert's Report;

**Independent Expert's Report** means the independent expert's report prepared by the Independent Expert in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report;

**Insolvency Event** means in respect of any person:

- (a) the person becoming unable to or states that it is unable to pay its debts as they fall due or stops or threatens to stop paying its debts as they fall due;
- (b) any indebtedness of the person becoming subject to a moratorium;
- (c) a liquidator, provisional liquidator or administrator has been appointed to the person, a controller (as defined in section 9 of the Corporations Act) has been appointed to any property of the person, or an event which gives any other person a right to seek such an appointment;
- (d) an order has been made, a resolution has been passed or proposed in a notice of meeting or in an announcement to any recognised securities exchange, or an application to court has been made for the winding up or dissolution of the person or for the entry into of any arrangement, compromise or composition with, or assignment for the benefit of, creditors of the person or any class of them (other than frivolous or vexatious orders or applications);
- (e) a security interest (within the meaning of section 51A of the Corporations Act) becomes enforceable or is enforced over, or a writ of execution, garnishee order, mareva injunction or

similar order has been issued over or affecting, all or a substantial part of the assets of the person; or

- (f) the person has otherwise become, or is otherwise taken to be, insolvent in any jurisdiction or an event occurs in any jurisdiction in relation to the person which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (e) above;

**Intellectual Property Rights** means all intellectual and industrial property rights throughout the world from time to time, whether registered or unregistered, including trade marks, designs, patents, inventions, plant breeder's rights, semi-conductor, circuit and other eligible layouts, copyright and analogous rights, proprietary computer systems and software, trade secrets, know-how, processes, concepts, confidential information including any such rights, including any intellectual property rights the subject of any lapsed application, objections to any registrations or applications, any right to file further applications, and any registrations resulting from such applications;

**Key Executives** means, in respect of Oliver's, the Directors, the chief executive officer, chief financial officer, and general manager operations;

**Loss** means all losses, damages, costs, expenses, charges and other liabilities whether present or future, fixed or unascertained, actual or contingent;

**Matching Period** has the meaning given in clause 7.8(b);

**Material Adverse Change** means any matter, event, change in condition, circumstances, information or thing (**Relevant Change**) which occurs, is announced or becomes known to EG after the execution of this deed (whether or not in the public domain) that, either individually or when aggregated with all such Relevant Changes:

- (a) diminishes or could reasonably be expected to diminish:
  - (i) the consolidated earnings before interest, tax, depreciation and amortisation of the Group (excluding for the avoidance of doubt impairments) (**EBITDAI**) in the financial year ending 2020 or 2021 by \$400,000 or more by reference to the underlying EBITDAI, represented by an annualisation of the underlying EBITDAI of \$1,300,000 for the six months ended 31 December 2019 but having regard to the seasonality of the business and further having regard to events and circumstances which have impacted and continue to impact Oliver's earnings which are known by EG prior to this deed, have been announced by Oliver's to the ASX prior to this deed, or have arisen in respect of the period prior this deed to the extent that they were actually known by EG prior to the date of execution of this deed including the outbreak of the Coronavirus, the bushfires and flood events affecting the Eastern seaboard since late 2019; or
  - (ii) the consolidated net assets of the Group by \$800,000 or more;
- (b) has or could reasonably be expected to lead to the termination of any Material Contract or the termination, revocation, variation or restriction of, or limitation on the use of any Oliver's IP Rights; or
- (c) has or could reasonably be expected to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Group taken as a whole;

**Material Contract** means any agreement, licence agreement, contract, or other arrangement or instrument to which any member of the Group is a party or bound by or to which any of the assets of any member of the Group is subject, and which:

- (a) is a material license agreement or a material supply agreement;
- (b) relates to the Group's external financing arrangements;
- (c) imposes obligations or liabilities on any party of at least \$100,000 per annum or \$500,000 over the life of the agreement, contract, or other arrangement or instrument;
- (d) restricts the ability of any member of the Group or any person who Controls Oliver's from engaging in or competing with any business in any place;
- (e) is a Property Lease;
- (f) relates to any Oliver's IP Rights (excluding the Red Dragon trademarks),

and must (except in relation to paragraph (f)) be of material importance to the Group;

**Net Indebtedness** means Indebtedness less the amount of cash, cash equivalents and short term interest bearing deposits, where the terms "cash" and "cash equivalent" are as defined in the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act;

**Oliver's Information** means all information included in the Scheme Booklet other than the EG Information and the Independent Expert's Report;

**Oliver's IP Rights** means material Intellectual Property Rights of Oliver's or the Group, currently used, registered or unregistered or acquired by the Group to carry on its business in Australia, New Zealand, United States and United Kingdom, including the mark or logo "Oliver's Real Food", "Oliver's Pita Pockets", "Oliver's Real Food, Real Fast", "Feed Your Good", the Trade Marks or any of the recipes, copyright or business systems and processes used in operation of the Oliver's Real Food business;

**Oliver's Undertakings** means the undertakings set out in Part 2 of Schedule 2;

**Oliver's Warranties** means the statements set out in Part 1 of Schedule 2;

**Option Cancellation Deed** means a deed between an Optionholder, EG and Oliver's in the form set out in Annex 3;

**Option Consideration** means, in respect of each Option comprised in any tranche of options described in the first column of the table in Schedule 4, the consideration set out in the fourth column of that table;

**Options** means the 4,500,000 options to subscribe for new Shares outstanding at the date of this deed details of which are set out in Schedule 4;

**Optionholder** means a holder of one or more Options;

**Order** has the meaning given in clause 4.6(e);

**Property Lease** means each agreement or instrument under which a Group Member leases (or sub-leases), licences, occupies or otherwise uses any parcel of real property;

**Potential Competing Proposal** means any offer, proposal or expression of interest which is not, but could likely be expected to become, a Competing Proposal;

**Record Date** means 7.00pm on the date which is five Business Days after the Effective Date or such other time and date agreed to in writing between EG and Oliver's;

**Reference Rate** means in relation to interest payable on any payment due under this deed, the average bid rate displayed on the Reuters Screen BBS Y for a three month term at or about 10.30 am on the first date on which interest accrues on that payment;

**Register** means the register of Shares maintained by Boardroom Pty Limited on behalf of Oliver's;

**Regulatory Guides** means the regulatory guides published by ASIC from time to time;

**Related Entity** means:

- (a) in respect of EG, an entity that:
  - (i) Controls EG;
  - (ii) is under the Control of EG; or
  - (iii) is under the Control of another entity that also Controls EG; and
- (b) in respect of Oliver's, an entity that is under the Control of Oliver's;

**Relevant Interest** has the meaning given in the Corporations Act as modified by any class order or other instrument executed by ASIC that applies to Oliver's;

**Representative** means in relation to a person, any director, officer or senior executive or financial adviser or legal adviser to, that person in the case of Oliver's acting on Oliver's behalf;

**Required Consultation Period** has the meaning given in clause 3.7(c);

**Reverse Break Fee** means \$270,000.00 plus GST, as applicable;

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act under which all of the Shares held by Scheme Shareholders will be transferred to EG and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annex 1 or in such other form as the parties approve in writing and the Court approves under section 411(6) of the Corporations Act;

**Scheme Booklet** means the explanatory memorandum to be sent to Shareholders in advance of the Scheme Meeting and which must include:

- (a) the Scheme;
- (b) explanatory statements under section 412(1) of the Corporations Act;
- (c) the Independent Expert's Report;
- (d) the Deed Poll; and
- (e) the notice of Scheme Meeting and proxy form for the Scheme Meeting;

**Scheme Interest** has the meaning given in clause 2.4(a)(iii)(A);

**Scheme Meeting** means the meeting of Shareholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme and includes any meeting convened following any adjournment or postponement of that meeting;

**Scheme Resolution** means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Shares** means all of the Shares on issue at 7.00pm on the Record Date other than Excluded Shares;

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

**Senior Managers** means, in respect of Oliver's, the national production manager, IT system manager, retail operations manager, national supply chain manager and principal software engineer;

**Share** means a fully paid ordinary share in the capital of Oliver's;

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time;

**Subsidiary Director** has the meaning given in clause 5.8(b);

**Superior Proposal** means a written bona fide Competing Proposal received after the date of this deed that:

- (a) does not result from a breach by Oliver's of any of its obligations under clause 7 or from any act by a Group Member which, if done by Oliver's, would constitute a breach of clause 7 by Oliver's; and
- (b) the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:
  - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
  - (ii) would, if completed substantially in accordance with its terms, be more favourable to Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal and the Scheme;

**Supplier** has the meaning given in clause 14.3;

**Surviving Clauses** means clause 1 (Interpretation), clause 8 (Break Fee), clause 9 (Reverse Break Fee), clause 11 (Announcements), clause 12 (Confidentiality Agreement), clause 14 (GST), clause 15 (Notices), clause 16 (General) (other than clause 16.11 (Further assurance)) and clause 17 (Governing law and jurisdiction);

**Third Party** means a person other than an EG Group Member;

**Timetable** means the timetable set out in Schedule 5, or such other timetable as the parties agree in writing;

**Trade Mark** means any of the trade marks set out in Schedule 6; and

**Transaction** means the acquisition by EG of all the Shares through implementation of the Scheme and cancellation of all Options in accordance with the terms of this deed and any applicable Option Cancellation Deed.

## **1.2 Oliver's awareness**

Where any Oliver's Warranty is qualified by the expression "so far as Oliver's is aware" or any similar expression as to awareness or knowledge, the Oliver's Warranty is limited to and deemed only to comprise:

- (a) all facts, matters and circumstances of which a Key Executive of Oliver's was aware at the time when the warranty is given; and
- (b) all facts, matters and circumstances, of which a Key Executive would have been aware, at the time when the warranty is given, had that person made reasonable enquiries of the Senior Managers as to the accuracy of the representation or warranty.

## **1.3 Reasonable endeavours**

Except as otherwise expressly provided in this deed, any provision of this deed which requires a party to use reasonable endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, does not impose any obligation to:

- (a) commence any legal action or proceeding against any person;
- (b) procure absolutely that that thing is done or happens;
- (c) incur a material expense, except where that provision expressly specifies otherwise; or
- (d) accept any undertakings or conditions required by any third party if those undertakings or conditions, in the reasonable opinion of the party required to give such undertakings or satisfy such conditions, are materially adverse to its commercial interests or fundamentally or materially alter the basis on which it originally agreed to the transaction the subject of this deed.

## **1.4 Things required to be done other than on a Business Day**

Unless otherwise indicated, if the day on which any act, matter or thing is to be is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

## **1.5 Other rules of interpretation**

In this deed:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after signature of this deed;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after signature of this deed under that legislation, including (where applicable) that legislation as amended, extended or

applied as described in clause 1.5(a)(i), or under any legislation which it re-enacts as described in clause 1.5(a)(ii);

- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) references to an individual or a natural person include his estate and personal representatives;
- (d) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to this deed (and the schedules and annexes form part of this deed);
- (e) subject to clause 16.2, references to a party to this deed include the successors or assigns (immediate or otherwise) of that party;
- (f) a reference to any instrument or document includes any variation or replacement of it;
- (g) unless otherwise indicated, a reference to any time is, a reference to that time in Sydney, Australia;
- (h) a reference to \$, A\$ or dollars is to Australian currency;
- (i) singular words include the plural and vice versa;
- (j) a word of any gender includes the corresponding words of any other gender;
- (k) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (l) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (m) nothing is to be construed adversely to a party just because that party put forward this deed or the relevant part of this deed; and
- (n) the headings do not affect interpretation.

## **2. SCHEME OF ARRANGEMENT**

### **2.1 Oliver's to propose Scheme**

Subject to the terms of this deed, Oliver's must propose a scheme of arrangement under which all Scheme Shares will be transferred to BidCo and the Scheme Shareholders will be entitled to the Consideration.

### **2.2 BidCo to pay Consideration and accept transfer**

- (a) EG must procure that BidCo pays the Consideration to each Scheme Shareholder and accept the transfer of the Scheme Shares in accordance with the Scheme and the Deed Poll.
- (b) The Consideration will be reduced by the cash amount of any dividends that are declared and paid to Shareholders on or before the Implementation Date

### 2.3 Recommendation and voting intentions of Directors

Subject to clause 2.4, Oliver's must ensure that each Director:

- (a) recommends that Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert's Report concluding that the Scheme is in the best interests of Shareholders; and
- (b) states that he or she intends to vote, or procure the voting of, all Shares held or Controlled by him or her in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert's Report concluding that the Scheme is in the best interests of Shareholders.

### 2.4 Change to recommendation or voting intentions

- (a) Oliver's must ensure that no Director changes, qualifies or withdraws the recommendation referred to in clause 2.3(a) or the undertaking referred to in clause 2.3(b) or makes any statement inconsistent with that recommendation or that undertaking unless:
  - (i) the Independent Expert's Report concludes that the Scheme is not in the best interests of Shareholders;
  - (ii) Oliver's has received a Superior Proposal, where Oliver's has complied with its obligations under clause 7 and the Matching Period for that Superior Proposal has expired; or
  - (iii) in respect of an executive Director, Oliver's obtains written advice from independent senior counsel of the New South Wales or Victorian bar practising in the field of corporate law, and on the basis of that advice Oliver's reasonably determines:
    - (A) the executive Director has an interest in the Scheme that renders it inappropriate for him to make or maintain that recommendation (**Scheme Interest**)
    - (B) the Court would be unlikely to grant an order:
      - I. under section 411(1) of the Corporations Act directing Oliver's to convene the Scheme Meeting; or
      - II. under sections 411(4)(b) and 411(6) of the Corporations Act approving the Scheme,solely as a result of the Scheme interest,provided that the executive Director does not otherwise adversely qualify his recommendation or recommend, endorse or support a Competing Proposal, whether publicly or otherwise.
- (b) Without limiting clause 7, if a member of the Board proposes to withdraw or change its recommendation in accordance with clause 2.4(a):
  - (i) Oliver's must notify EG in writing immediately; and



- (ii) the parties must consult in good faith for two Business Days after the date on which the notification in clause 2.4(b)(i) is given to consider and determine whether the recommendation in place at the time can be maintained. That recommendation cannot be withdrawn or changed in accordance with clause 2.4(a) until the end of the consultation period.

## **2.5 Promoting Scheme**

During the Exclusivity Period, Oliver's must provide all reasonable co-operation to EG in promoting the merits of the Scheme to Shareholders, including procuring that Directors and senior executives of the Group as may be reasonably available, meet with key Shareholders if reasonably requested to do so by EG.

## **2.6 Nomination of alternative acquirer**

- (a) EG may nominate an EG Group Member to perform its obligations under clause 2.2 by giving written notice to Oliver's of that relevant EG Group Member no later than 5 Business Days prior to the date on which Oliver's intends to provide the ASIC Review Booklet to ASIC for its review.
- (b) EG nominates BidCo to perform its obligations, on and from the date of that nomination:
  - (i) references in this deed to EG acquiring the Scheme Shares are to be read as references to the nominated EG Group Member doing so;
  - (ii) the parties must procure that the Scheme Shares are transferred to the nominated EG Group Member rather than EG;
  - (iii) EG and the nominated EG Group Member will both enter into the Deed Poll;
  - (iv) EG must procure the nominated EG Group Member complies with all of the relevant obligations of EG under this document and the Deed Poll; and
  - (v) any such nomination will not relieve EG of its obligations under this document, including the obligation to pay or procure the payment of the Consideration in accordance with the terms of the Scheme provided that EG will not be in breach of this document for failing to perform an obligation of the nominated EG Group Member if that obligation is fully discharged by the nominated EG Group Member.

## **2.7 No amendment to Scheme without EG's consent**

Oliver's must not consent to any modification of, or amendment to, the Scheme, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without EG's prior written consent.

# **3. CONDITIONS PRECEDENT**

## **3.1 Conditions**

The Scheme will not become Effective and the obligations of EG under clause 2.2 do not become binding unless and until each of the conditions set out in the first column of the following table has been satisfied or waived in accordance with this clause 3.1:

Condition	Responsibility	Waiver
(a) <b>Court approval:</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	EG and Oliver's	None
(b) <b>Shareholder approval:</b> Shareholders approve the Scheme at the Scheme Meeting by the requisite <b>majorities</b> as may be modified by the Court in accordance with section 411(4)(a)(ii)(A) of the Corporations Act;	Oliver's	None
(c) <b>Independent Expert:</b> the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Shareholders) before the date which the Scheme Booklet is lodged with ASIC;	Oliver's	EG and Oliver's
(d) <b>other required approvals:</b> if any other approvals or consents from, or other actions by, any Government Agency are necessary, or in the reasonable opinion of EG desirable, to implement the transactions contemplated by this deed, those approvals or consents are obtained and those actions are taken before 8.00am on the Second Court Date;	EG and Oliver's	EG
(e) <b>no Government Agency intervening action:</b> no Government Agency takes any action, or imposes any legal restraint or prohibition, to prevent implementation of the Scheme which remains in force at 8.00am on the Second Court Date;	EG and Oliver's	EG
(f) <b>Intellectual Property Rights:</b> Oliver's has provided written evidence to the satisfaction of EG that the Group is the sole legal and beneficial owner free of any Encumbrance, or has an enforceable right or licence to use on terms and conditions acceptable to EG, of all Oliver's IP Rights used in relation to, or forming part of, the Group's business;	Oliver's	EG
(g) <b>Property Leases:</b> in respect of: <ul style="list-style-type: none"> <li data-bbox="357 1487 1042 1641">(i) leased properties held by Oliver's Wyong Northbound Pty Ltd (ABN 71 616 523 490) and Oliver's Wyong Southbound Pty Ltd (ABN 55 618 392 920) in relation to the Wyong retail sites;</li> <li data-bbox="357 1659 1042 1868">(ii) leased properties in respect of the Group's other retail stores, excluding the Wyong sites, where the revenue generated from such properties contributed in aggregate to 85% or more of the consolidated gross revenue of the Group, excluding the revenue from the Wyong sites, for the financial year ending 30 June 2019; and</li> <li data-bbox="357 1886 1042 1946">(iii) all leased properties in respect of the Group's central kitchens and distribution centres,</li> </ul> <p data-bbox="357 1964 651 1991">(each a <b>Relevant Site</b>):</p> <ul style="list-style-type: none"> <li data-bbox="357 2009 1042 2036">(iv) all consents, waivers and approvals are</li> </ul>	Oliver's	EG

Condition	Responsibility	Waiver
<p>obtained under the Property Leases in respect of the Relevant Sites on terms and conditions satisfactory to EG; and/or</p> <p>(v) satisfactory evidence is provided to EG that no such consent, waiver or approval is required under the Property Leases in respect of the Relevant Sites,</p> <p>to the extent necessary to satisfy EG that the acquisition of the Scheme Shares, change in Control of Oliver's or suspension or delisting of Oliver's will not and is not likely to result in the Property Leases in respect of the Relevant Sites being terminated or adversely modified.</p>		
<p>(h) <b>third party consents:</b> consents are obtained in respect of and no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which a Group Member is a party, or by or to which any Group Member or any of its assets may be bound or be subject, which results in, or in the opinion of the Bidder (acting reasonably) is likely to result, to an extent which is material in the context of the Group taken as a whole, in:</p> <p>(vi) other than in respect of any Property Lease, any agreement or other instrument being terminated or modified or any action being taken or arising thereunder;</p> <p>(vii) the interest of any Group Member in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified;</p> <p>(viii) the business of any Group Member with any other person being adversely affected,</p> <p>as a result of the acquisition of the Scheme Shares, change in Control of the Target or the suspension or delisting of the Target.</p>	Oliver's	EG
<p>(i) <b>Option Cancellation Deeds:</b> Option Cancellation Deeds have been duly executed and exchanged by the parties in respect of each Optionholder and all Options for the applicable Option Consideration save and except to the extent that the Options have expired prior to the Second Court Date;</p>	Oliver's	EG
<p>(j) <b>Net indebtedness:</b> the consolidated Net Indebtedness of the Group does not exceed \$800,000 at any time between the date of this deed and 8am on the Second Court Date;</p>	Oliver's	EG
<p>(k) <b>no Material Adverse Change:</b> no Material Adverse Change occurs between the date of this deed and 8.00am on the Second Court Date;</p>	Oliver's	EG
<p>(l) <b>no material transactions:</b> no breach of Oliver's</p>	Oliver's	EG

Condition	Responsibility	Waiver
obligations under clause 5.4 occurs between the date of this deed and 8.00am on the Second Court Date;		
(m) <b>no Prescribed Occurrence:</b> no Oliver's Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;	Oliver's	EG
(n) <b>no breach of Oliver's Undertakings:</b> no breach of the Oliver's Undertakings occurs between the date of this deed and 8.00am on the Second Court Date; and	Oliver's	EG
(o) <b>Oliver's Warranties:</b> the Oliver's Warranties are true and correct in all material respects as at 8.00am on the date of this deed and each day up to including the Second Court Date.	Oliver's	EG

### 3.2 Satisfaction of Conditions

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 opposite that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
  - (i) in the case of the Conditions set out as items (b) to (e) of the table in clause 3.1, as at the time set out in the table;
  - (ii) in the case of the Conditions set out as items (a) and (f) to (i) of the table in clause 3.1, as soon as possible and in any event before the End Date;
  - (iii) in the case of the Conditions set out in items (k) to (n) of the table in clause 3.1, at all times before 8.00am on the Second Court Date; and
  - (iv) in the case of the Conditions set out in item (o) of the table in clause 3.1, as at 8.00am on the Second Court Date;
- (b) the other party must promptly provide all information and other assistance reasonably required by the party referred to in clause 3.2(a) for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition.

### 3.3 Information in relation to status of Conditions

Each party specified in the second column of the table in clause 3.1 opposite a Condition must:

- (a) provide to the other party on request reasonable information about the steps it has taken towards satisfaction of the Condition;
- (b) promptly after becoming aware that the Condition is satisfied, give notice to the other party that the Condition is satisfied including reasonable evidence of how it was satisfied; and

- (c) promptly after becoming aware of any matter or circumstance that may result in the Condition not being satisfied give notice to the other party of that matter or circumstance.

### **3.4 Waiver of Conditions**

Where the third column of the table in clause 3.1 opposite a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived by:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party; or
- (b) if both parties are specified in the third column of the table in clause 3.1 opposite that Condition, the parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

### **3.5 Method of waiver**

Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both parties jointly, the parties may only waive the Condition by agreeing in writing to do so.

### **3.6 Effect of waiver**

If a party waives or joins in the waiver of a Condition that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this deed; or
- (b) constitute a waiver of any other Condition.

### **3.7 Termination on failure of a Condition**

- (a) If:
  - (i) the Scheme has not become effective by the End Date; or
  - (ii) any event occurs which would, or does in fact, prevent a Condition being satisfied and that Condition is not waived by Oliver's or EG or both (as applicable) in accordance with clause 3.4,

then, the parties must consult in good faith with a view to determining whether:

- (iii) the Scheme or a transaction which results in the EG Group having beneficial ownership of all the Shares may proceed by way of alternative means or methods;
  - (iv) to extend the End Date or the relevant time or date for satisfaction of the Condition;
  - (v) to change the date of the application to be 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 the parties and, if required, approved by the Court.
- (b) If EG and Oliver's are unable to reach agreement under clause 3.7(a) within the Required Consultation Period (as defined below), then, unless:

- (i) the relevant Condition has been waived in accordance with clause 3.4; or
- (ii) the party entitled to waive the relevant Condition in accordance with clause 3.4 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition from being satisfied,

either party may terminate this deed subject to and in accordance with clause 10.2.

(c) For the purposes of clause 3.7(b), the **Required Consultation Period** is:

- (i) if:
  - (A) the Condition in item (b) of the table in clause 3.1 is not satisfied only because of a failure to satisfy the Headcount Test;
  - (B) Oliver's applies to Court for the Order under clause 4.6(e); and
  - (C) the Condition in item (a) of the table in clause 3.1 is not satisfied, five Business Days after the Second Court Date; and
- (ii) in all other instances, the shorter of:
  - (A) 5 Business Days after the date on which both parties become aware that clause 3.7(a)(i) or 3.7(a)(ii) (as the case may be) is triggered; and
  - (B) the period starting at the time both parties become aware that clause 3.7(a)(i) or 3.7(a)(ii) (as the case may be) is triggered and ending at 8.00am on the Second Court Date.

### **3.8 Termination**

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this deed may only be terminated in accordance with clause 10.

## **4. IMPLEMENTATION STEPS**

### **4.1 General implementation obligations**

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with the other party and its Representatives, to implement the Scheme in accordance with this deed and all applicable laws and regulations applicable to the Scheme.

### **4.2 Timetable**

- (a) Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 4.2(a) to the extent that such failure is due to circumstances and matters outside of the party's control, including any action or omission by a Government Agency.

- (c) Oliver's must keep EG informed of its progress against the Timetable and consult with EG on a regular basis about its progress and each party must notify the other immediately if it believes or it becomes apparent to it that any of the dates in the Timetable are not achievable.
- (d) If any date in the Timetable is not able to be achieved due to events outside the control of the parties, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

### 4.3 Oliver's obligations

Without limiting clause 2 or 4.1, Oliver's must:

- (a) **prepare the Scheme Booklet:** prepare the Scheme Booklet using a template provided by EG's counsel so that it:
  - (i) contains all information required by the Corporations Act, the Regulatory Guides, the ASX Listing Rules and any other applicable laws or regulations;
  - (ii) contains the responsibility statements referred to in clause 4.5(c);
  - (iii) contains a statement by the Directors reflecting the recommendation and intention referred to in clause 2.3; and
  - (iv) is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **appoint the Independent Expert:** appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report as soon as reasonably practicable in accordance with the Timetable;
- (c) **consult with EG regarding the Scheme Booklet:** consult with EG regarding the content and presentation of the Scheme Booklet including:
  - (i) giving EG successive drafts of the Scheme Booklet (including the Independent Expert's Report in a timely manner and a reasonable opportunity to review those drafts;
  - (ii) considering in good faith the reasonable comments of EG and its Representatives when preparing revised drafts of the Scheme Booklet; and
  - (iii) keeping EG promptly informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet and use best endeavours, in co-operation with EG, to resolve any such matters.
- (d) **verification:** undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the EG Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to EG of the completion of such processes;

- (e) **obtain Board approval for ASIC Review Booklet:** as soon as practicable after preparation of the ASIC Review Booklet give that draft to EG and procure that a meeting of the Board is convened to approve it for submission to ASIC for review;
- (f) **lodge ASIC Review Booklet and section 411(17)(b) statement:** as soon as practicable after the approval of the Board referred to in clause 4.3(e) and receipt of the confirmation from EG referred to in clause 4.4(e):
  - (i) give ASIC the ASIC Review Booklet as required by section 411(2) of the Corporations Act;
  - (ii) apply to ASIC for the production of a letter that it does not intend to appear before the Court at the hearing held on the First Court Date; and
  - (iii) if clause 8305 of Schedule 8 of the *Corporations Regulations 2001* (Cth) applies, apply to ASIC for its consent in writing to the Independent Expert's Report being included in the Scheme Booklet;
- (g) **Board approval:** as soon as practicable after the end of ASIC's review of the ASIC Review Booklet, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and for dispatch to Shareholders;
- (h) **Court direction:** apply to the Court for orders under section 411(1) of the Corporations Act directing Oliver's to convene the Scheme Meeting;
- (i) **Scheme Meeting:** if the Court makes an order under section 411(1) of the Corporations Act convening the Scheme Meeting:
  - (i) **ASIC registration:** request ASIC to register the Scheme Booklet (in the form to be sent to Shareholders in accordance with section 412(6) of the Corporations Act);
  - (ii) **Dispatch:** dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with that order;
- (j) **update Scheme Booklet:** if Oliver's becomes aware:
  - (i) of new information which, were it known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet; or
  - (ii) that any part of the Scheme Booklet (other than the EG Information) is misleading or deceptive in a material respect (whether by omission or otherwise),

then, if Oliver's considers that supplementary disclosure is required, provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and after consulting with EG (and giving due regard to any comments it or its Representatives may make) as to the content and presentation of that supplementary disclosure;
- (k) **Register:**
  - (i) comply with any request by EG to give directions in accordance with Part 6C.2 of the Corporations Act and give EG the information obtained as a result of giving such directions;



- (ii) procure that its share registry report to Oliver's and EG on the status of proxy forms received by the share registry for the Scheme Meeting:
  - (A) on the day that is 15 Business Days before the Scheme Meeting;
  - (B) on each Business Day following the day that is 15 Business Days before the Scheme Meeting, up to the deadline for receipt of proxy forms; and
  - (C) immediately following the deadline for receipt of proxy forms,
 and provide such other information as it may receive concerning the voting intentions of Shareholders to EG;
- (iii) procure that its share registry provides to EG, in the form reasonably requested by EG, details of the Register and all other information about the Shareholders which EG reasonably requires in order to:
  - (A) canvas approval of the Scheme by Shareholders; or
  - (B) facilitate the provision by EG of the Consideration in accordance with this deed, the Scheme and the Deed Poll; and
- (iv) keep EG up-to-date on, and reasonably consider EG's views in relation to, any significant discussions and correspondence with Shareholders.
- (l) **apply for Court approval and 411(17) statement:** if the Scheme Resolution is passed by the requisite majorities of Shareholders (as may be modified by the Court in accordance with section 411(4)(a)(ii)(A) of the Corporations Act), promptly:
  - (i) apply to the Court for an order approving the Scheme; and
  - (ii) apply to ASIC for a statement pursuant to section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme;
- (m) **certificate:** provide:
  - (i) to EG by 12.00pm on the Business Day before the Second Court Date a draft certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in item (a) of the table in clause 3.1) have been satisfied or waived in accordance with this deed; and
  - (ii) the final signed version of that certificate to the Court at the hearing on the Second Court Date;
- (n) **completion steps:**
  - (i) if the Court approves the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act, as soon as practicable after such time lodge with ASIC an office copy of the Court order approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) use its best endeavours to procure ASX to suspend trading in the Shares from the close of trading on the Effective Date;

- (iii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration; and
- (iv) on the Implementation Date:
  - (A) execute proper instruments of transfer of and effect transfer of the Scheme Shares to BidCo in accordance with the Scheme;
  - (B) register all transfers of Shares held by Scheme Shareholders to BidCo; and
  - (C) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court; and
- (o) **ASX listing:**
  - (i) use best endeavours to maintain Oliver's admission to the official list of ASX and the quotation of the Shares on ASX up to and including the Effective Date; and
  - (ii) apply to ASX to suspend trading in Shares with effect from the close of trading on the Effective Date.

#### 4.4 EG's obligations

Without limiting clause 2 or 4.1, EG must:

- (a) **EG Information:** prepare and give to Oliver's for inclusion in the Scheme Booklet all information about:
  - (i) the EG Group;
  - (ii) the arrangements EG has in place to fund the Consideration; and
  - (iii) EG's intentions in relation to the assets, business and employees of Oliver's if the Scheme is approved and implemented,

required to be included in Scheme Booklet by the Corporations Act, the Regulatory Guides, the ASX Listing Rules and any other applicable laws or regulations including giving Oliver's drafts of the information in a timely manner, giving Oliver's a reasonable opportunity to review those drafts and considering in good faith the reasonable comments of Oliver's and its Representatives when preparing revised drafts of that information;
- (b) **assist Independent Expert:** subject to the Independent Expert entering into confidentiality arrangements with EG reasonably acceptable to EG, provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report and any updates to that report;
- (c) **review Scheme Booklet:** as soon as practicable after receipt of any draft of the Scheme Booklet or any Court documents from Oliver's, review and provide comments on that draft;
- (d) **verification:** undertake reasonable verification processes in relation to the EG Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Oliver's of the completion of such processes;

- (e) **approve and confirm EG Information:** subject to clause 4.4(d) confirm to Oliver's in writing the accuracy of the EG Information in the form and context in which it appears in the Scheme Booklet and before the First Court Date deliver to Oliver's consent from EG to the inclusion of the EG Information in the Scheme Booklet in the form and context it appears;
- (f) **new information:** advise Oliver's if at any time before the Second Court Date, EG becomes aware either:
  - (i) of new information which, were it known at the time the Scheme Booklet was prepared, should have been included in the EG Information; or
  - (ii) that any part of the EG Information is misleading or deceptive in a material respect (whether by omission or otherwise),
 together with such additional information as Oliver's reasonably requires to determine whether supplementary disclosure to Shareholders is required;
- (g) **Deed Poll:** before the First Court Date deliver to Oliver's an executed copy of the Deed Poll and:
  - (i) give to the Court on the Second Court Date the certificate in relation to the status of the Conditions contemplated by the terms of the Scheme; and
  - (ii) if requested by the Court, undertake to the Court to do all such things within its power as are reasonably necessary to ensure that it fulfils its obligations under this deed and the Deed Poll; and
- (h) **accept transfer and pay Consideration:** if the Scheme becomes Effective accept a transfer of the Scheme Shares and provide the Consideration in accordance with clause 2.2 and the Deed Poll on or before the Implementation Date.

#### 4.5 Content of the Scheme Booklet

- (a) **Disagreements regarding content:** If, after a reasonable period of consultation and compliance by Oliver's with its obligations under clause 4.1, the parties, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:
  - (i) if the disagreement relates to the form or content of the EG Information (or any information solely derived from, or prepared solely in reliance on, the EG Information), Oliver's will, acting in good faith, make such amendments to that information in the Scheme Booklet as EG may reasonably require; and
  - (ii) if the disagreement relates to the form or content of the Oliver's Information, Oliver's will, acting in good faith, decide the final form of that information in the Scheme Booklet.
- (b) **EG confirmations and approvals:** If EG requires any change to be made to the form or content of the EG Information as a condition of doing any of the things referred to in clause 4.4(e) then:
  - (i) if EG disagrees with the change, the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and

- (ii) if the parties are unable to reach agreement, Oliver's must make such changes to the EG Information as EG reasonably requires.
- (c) **Responsibility statements:** The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:
  - (i) Oliver's has provided, and is responsible for, the Oliver's Information in the Scheme Booklet, and that none of BidCo and their respective officers and employees assumes any responsibility for the accuracy or completeness of the Oliver's Information;
  - (ii) EG has provided, and is responsible for, the EG Information, and that none of Oliver's and its officers and employees assumes any responsibility for the accuracy or completeness of the EG Information; and
  - (iii) the Independent Expert has provided and is responsible for the Independent Expert's Report, and that none of BidCo, Oliver's and their respective officers and employees assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.

#### 4.6 Court proceedings

- (a) **Court documents:** In relation to each Court hearing held in relation to the Scheme, including any appeal, Oliver's must give EG drafts of all documents required to be given by Oliver's to the Court (including the originating process, affidavits, submissions and draft Court orders) and must consider in good faith the reasonable comments of EG and its Representatives on those documents.
- (b) **Representation:** In relation to each Court hearing held in relation to the Scheme, including any appeal:
  - (i) Oliver's must engage counsel with appropriate qualifications and experience to represent it at the hearing and must, if required, consent to the separate representation of EG by counsel; and
  - (ii) EG may engage counsel to represent it at the hearing.
- (c) **Undertakings:**
  - (i) Nothing in this deed will be taken to give a party any right or power to give undertakings to the Court for or on behalf of the other party without that party's consent.
  - (ii) Each party must give all reasonable undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme.
- (d) **Appeal if orders not made:** If the Court does not make any order sought by Oliver's under clause 4.3 (**Decision**):
  - (i) the parties must consult in good faith as to whether to appeal the Decision; and
  - (ii) if within 10 Business Days after the Decision the parties agree to appeal the Decision or either party obtains an opinion from independent senior counsel of the

Victoria or New South Wales bar practising in the field of corporate law to the effect that there are reasonable prospects of successfully appealing the Decision:

- (A) Oliver's must appeal the Court's decision;
  - (B) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is five Business Days after the appeal from the Decision is finally determined; and
  - (C) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is D days after the original End Date (disregarding the effect of clause 4.6(d)(ii)(B)) where D is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.
- (e) **Non-satisfaction of Headcount Test:** If the Scheme Resolution is not passed by reason only of the non-satisfaction of the Headcount Test, and it appears to either party, acting reasonably, that there are grounds on which an application could be made to the Court under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test (**Order**), that party may give notice to the other within three Business Days after the Scheme Meeting setting out those grounds and if such notice is given:
- (i) Oliver's must promptly after the notice is given apply to Court for the Order; and
  - (ii) the cost of the application for the Order is to be borne equally between the parties.

#### 4.7 Treatment of Options

- (a) Oliver's must promptly after the date of this deed apply to ASX for a necessary waiver of ASX Listing Rule 6.23.2, and a release of any escrow restrictions on any of the Options, in relation to any Option Cancellation Deed.
- (b) Oliver's must not waive or vary any term or condition applicable to the Options unless EG requests Oliver's to do so.

### 5. CONDUCT OF BUSINESS

#### 5.1 Access and information

From the date of this deed until and including the Implementation Date, Oliver's must:

- (a) **access:** procure that EG and its Representatives are given reasonable access to information, documents, properties, books, records, agents, customers, partners and senior executives of any member of the Group during normal business hours and on reasonable notice to Oliver's for the purposes of:
  - (i) enabling EG and its Representatives to understand the Group's business and operations and its financial position (including trading performance, cash flow, working capital position and management control systems of the Oliver's Group), financial performance, assets and prospects, in order to allow EG to develop, finalise and implement its plans for the Group following implementation of the Scheme;

- (ii) implementing the Scheme and enabling EG to prepare for the transition of ownership of the Group to EG;
- (iii) finalisation of EG's structuring arrangements for the Scheme;
- (iv) keeping EG informed of materials developments relating to the Group (including any material correspondence received from or provided to a Government Agency); and
- (v) any other purpose agreed between the parties in writing,

except to the extent that the provision of such access is prohibited by law;

- (b) **Board papers:** give EG and its Representatives copies of papers provided to the Board (including monthly management accounts for the Group) within three Business Days after they are provided to Key Executives;
- (c) **notification:** promptly notify EG and its Representatives in writing of any of the following matters of which Oliver's becomes aware, and such written notification must include a reasonable summary of the relevant matter to the extent the details are known to Oliver:
  - (i) events, facts, matters or circumstances which:
    - (A) would or would be likely to constitute a Material Adverse Change; or
    - (B) would or would be likely to have a material adverse effect on:
      - I. the financial or operational performance, or the reputation, of the Group; or
      - II. the Group's relationships with Government Agencies or key customers, suppliers, licensors, licensees, or other persons with whom the Group has material business dealings;
  - (ii) changes to the composition of the Group's senior management team;
  - (iii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding upon any member of the Group and which is reasonably likely to result in a material liability on the part of any member of the Group; and
  - (iv) any breach of this deed by the Group (including any Oliver's Warranty being or becoming untrue or incorrect);
- (d) **Property Leases:** Oliver's agrees to consult with EG and its Representatives in respect of any Property Lease renegotiations or renewals including promptly providing EG and its Representatives with copies of all material correspondence reasonably requested by EG and its Representatives and take into consideration EG and its Representatives' reasonable comments on the proposed lease teams; and
- (e) **co-operation:** otherwise provide reasonable co-operation to EG and its Representatives, for the purposes of EG and its Representatives:
  - (i) understanding the business and operations of the Group;
  - (ii) doing all things necessary under this deed or in connection with the Transaction; or

- (iii) planning for the integration of the Group into the EG Group following the Implementation Date.

## 5.2 Conduct of business

From the date of this deed until and including the Implementation Date, Oliver's must ensure that it and each other Group Member carries on its business in the ordinary course and in substantially the same manner as conducted at the date of this deed and does not make any significant changes to the nature or scale of its business or enter into any business or undertake any activities in which it is not engaged as at the date of this deed.

## 5.3 Specific actions

Without limiting clause 5.2 and subject to clause 5.4, from the date of this deed until and including the Implementation Date, Oliver's must ensure that it and each other Group Member use their best endeavours to:

- (a) **preserve and maintain value:** preserve and maintain the value of its businesses and material assets in the manner maintained prior to the date of this deed including maintaining at least its current level of insurance over its business and assets;
- (b) **officers and employees:** keep available the services of its current officers and key employees;
- (c) **stakeholder relationships:** preserve and maintain its relationships with all Government Agencies and all customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) **working capital:** ensures that the working capital of the Group is managed in the ordinary course and consistent with the practice of Oliver's as at the date of this deed;
- (e) **cash:** ensures that the cash in the Group is managed in the ordinary course and consistent with the practice of the Group as at the date of this deed;
- (f) **Prescribed Occurrences:** procure that no Prescribed Occurrence occurs;
- (g) **Options:** procure that no Shares are issued on the exercise of any Option until the Company has received in full the applicable exercise price free or any set-off or deduction;
- (h) **warranties:** procure that none of the Oliver's Warranties are breached;
- (i) **Material Contracts:** comply in all material respects with all Material Contracts; and
- (j) **information:** keep EG informed of the conduct of the business of the Group by providing EG with:
  - (i) monthly updates on operational and financial performance of the Group in a timely manner;
  - (ii) all material correspondence and material notices it receives from a Government Agency in relation to its business or material assets including any tenement or related approval or authorisation (including environmental approvals) as soon as reasonably practicable and, in any case, within five Business Days of receipt from the Government Agency; and

- (iii) any breach by Oliver's of this deed including any undertakings or warranties.

#### 5.4 Prohibited actions

Without limiting clause 5.2, from the date of this deed until and including the Implementation Date, Oliver's must ensure that it and each Group Member does not, except as permitted by clause 5.5:

- (a) **no new securities:** issue any Shares, Options or other securities or financial products;
- (b) **distributions:** announce, declare, determine to pay, make or pay any dividend or other distribution (whether in cash or in specie);
- (c) **material capital expenditure:** incur capital expenditure exceeding \$50,000 or, except in the ordinary course of trading, transfers or otherwise disposes of or creates any Encumbrance in respect of, assets having a value exceeding \$50,000;
- (d) **material acquisitions, disposals or licence:** acquire or dispose of any shares or other securities in any body corporate or any units in any trust, or acquire, dispose of or licence substantially all of the assets of any business or any Oliver's IP Rights;
- (e) **material borrowings:** increase the aggregate level of its borrowings by more than \$100,000, enter into any swap, option, futures contract, forward commitment or other derivative transaction;
- (f) **forgiveness of debts:** forego or extinguish any liabilities or amounts owing from related parties, including Director loans, and uncollected monies from identified misappropriations or cash shortages; or
- (g) **Material Contracts:**
  - (i) enter into, waive any material rights under, vary or terminate any Material Contract; or
  - (ii) varies any existing contract, commitment or arrangement in a way that may increase the annual expenditure by or revenues to the relevant Group Member by more than \$100,000;
- (h) **related party arrangements:** enter into a transaction with any related party of Oliver's (other than a related party which is a Target Group Member) as defined in section 228 of the Corporations Act;
- (i) **guarantees, securities and indemnities:** give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a Group Member;
- (j) **material remuneration:** increase the remuneration of, make or offer to make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any Director or any employee of any Group Member whose total annual employment cost exceeds \$100,000 except in accordance with any contractual entitlement existing as at the date of this deed which have been disclosed in writing to EG prior to the date of this deed;
- (k) **acceleration of incentives:** accelerate the rights of any Director or any employee of any Group Member to receive any benefit under any Incentive Plan, vary any Incentive Plan or introduce a new Incentive Plan;



- (l) **collective agreements:** make or agree to make any award or any certified agreement, enterprise agreement, workplace agreement or other collective agreement;
- (m) **changes to constitution and approvals:** change its constitution or propose to pass any resolution of shareholders or any class of shareholders;
- (n) **Authorisations:** fail to comply in all material respects with all laws and regulations applicable to its business or do or omit to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any Authorisation held by it;
- (o) **trade creditors:** postpone the payment of trade creditors or accelerate the collection of trade debtors, in each case having regard to the policies applied for such payment and collection in the 12 months prior to the date of this deed other than in the ordinary course of business;
- (p) **accounting procedures:** change in any material respect the accounting procedures, principles or practices of any Group Member;
- (q) **litigation:** commence, compromise or settle any litigation or similar proceeding for an amount exceeding \$250,000; or
- (r) **agreements to do things:** agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 5.4, or announce or represent to any person that any of those things will be done.

## 5.5 Exception

Any Group Member may do any thing referred to in clause 5.4:

- (a) if the doing of that thing was specifically disclosed in an announcement by Oliver's to ASX, or a publicly available document lodged with ASIC, in the period from 1 July 2019 to the date of this deed;
- (b) with the prior written consent of EG; or
- (c) to the extent reasonably required to permit that entity to comply with its obligations under any other provision of this deed, including for the avoidance of doubt, actions undertaken in response to a Competing Proposal or to give effect to a Competing Proposal to the extent permitted under clause 7.

## 5.6 Implementation Committee

- (a) As soon as practicable after execution of this deed, EG and Oliver's will establish a joint committee (**Implementation Committee**) comprising two representatives of each of EG and Oliver's.
- (b) From the date of this deed until and including the Implementation Date, the Implementation Committee will act as a forum for consultation and planning by Oliver's and EG and its Representatives to implement the Scheme.
- (c) Oliver's and EG and its Representatives will use reasonable endeavours to procure that the Implementation Committee meets regularly (being at least weekly) in person or by teleconference, commencing on the one-month anniversary of the date of this deed.
- (d) The agenda for each meeting of the Implementation Committee will include:

- (i) the provision of operational and financial briefings by Oliver's, including monthly management accounts and forecasts;
  - (ii) reporting of progress on the implementation of the Scheme against the Timetable;
  - (iii) determining the logistics of the access arrangements contemplated by clause 5.1(a)
  - (iv) resolution of any matter referred to in clause 5.1(a) that has not been resolved to the reasonable satisfaction of EG through the exercise of its rights under that clause; and
  - (v) the development of transition plans following completion of the Transaction,
- together with any other matters which the members of the Implementation Committee see fit to discuss.
- (e) Oliver's will consider in good faith and unless contrary to the fiduciary and other obligations of the Board, such as to act in the best interests of Shareholders, will implement the resolutions and recommendations of the Implementation Committee.
  - (f) Subject to this deed, nothing in this clause 5.6 requires either Oliver's or EG and its Representatives to act at any direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. Oliver's and EG and its Representatives agree that nothing in this deed constitutes the relationship of a partnership or joint venture between the parties.

## 5.7 Net Indebtedness

- (a) Oliver's must provide EG with a written calculation of the consolidated Net Indebtedness of the Group (**Net Debt Statement**) in a form agreed between Oliver's and EG by:
  - (i) no later than the fifth Business Day after the commencement of each calendar month; and
  - (ii) in addition to clause 5.7(a)(i), before 8.00am on the Second Court Date.
- (b) A Net Debt Statement must include the following:
  - (i) reasonable particulars and line items of how the consolidated Net Indebtedness of the Group has been calculated;
  - (ii) all working papers and documents that support the calculation of the consolidated Net Indebtedness of the Group; and
  - (iii) a certificate signed by the chief executive officer and chief financial officer of the Group confirming that the consolidated Net Indebtedness of the Group is less than \$800,000.
- (c) Without limiting any other provision of this deed, Oliver's undertakes to act reasonably and promptly if EG requests any further information or details regarding a Net Debt Statement, including by providing any additional documents or information reasonably requested by EG to verify Oliver's calculation of consolidated Net Indebtedness of the Group.

## 5.8 Board changes

Subject to receipt of applicable regulatory approvals, provisions of consents to act from the proposed directors, Oliver's must take all actions necessary to procure that on and from the Implementation Date:

- (a) the Board is comprised of such nominees as advised by EG in writing before the Effective Date and that each Director who is not a person specified in this clause 5.8(a) resigns from their office as a Director;
- (b) the board of each of Oliver's wholly owned subsidiaries is comprised of such nominees as advised by EG in writing before the Effective Date, and that each director of each of Oliver's wholly owned subsidiaries (each, a **Subsidiary Director**) who is not nominated in accordance with this clause 5.8(b) resigns from their office as a Subsidiary Director; and
- (c) each of the Directors and Subsidiary Directors resigning in accordance with clauses 5.8(a) and 5.8(b) provides written notice to the effect that they have no Claim outstanding for loss of office, remuneration or otherwise against the relevant Group Member, other than pursuant to any deed of access and indemnity or policy of directors and officers insurance,

in each case provided that the composition of the board of each Group Member complies with the relevant Group Member's constitution, the Corporations Act and the ASX Listing Rules.

## 5.9 Consents to change of control

- (a) Without limiting clause 3.2, as soon as practicable after the date of this deed, Oliver's must use all reasonable endeavours to identify all change of control, unilateral termination rights or similar provisions in all Material Contracts and in all Authorisations issued to any Group Member which may be triggered by the implementation of the Scheme.
- (b) In respect of each such Material Contract or Authorisation:
  - (i) Oliver's must, on written request by EG, notify the relevant counterparty or Government Agency of the change of control of Oliver's that will occur if the Scheme becomes Effective and request that such counterparty or Government Agency provides any consents required in relation to that change of control;
  - (ii) Oliver's and EG must promptly provide to the relevant counterparty or Government Agency all information reasonably required for the purposes of making any notification or seeking any consent referred to in clause 5.9(b)(i) and must, if required, make representatives available to meet with such counterparty or Government Agency; and
  - (iii) EG and its Representatives must co-operate with, and provide all reasonable commercial assistance to Oliver's to obtain such consents or confirmations in relation to any identified change of control requirement.

## 6. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

### 6.1 Oliver's representations, warranties and undertakings

- (a) Oliver's represents and warrants to EG that each of the Oliver's Warranties is true, accurate and not misleading:

- (i) on the date of this deed and at 8.00am on the Second Court Date; or
  - (ii) if the representation or warranty is expressly stated to be given at a different time, at the time the representation or warranty is expressed to be given.
- (b) Oliver's undertakes to EG to comply with each of the Oliver's Undertakings.

## **6.2 Qualifications to Oliver's representations and warranties**

The representations and warranties given by Oliver's in clause 6.1 and the Oliver's Warranties are each subject to matters that:

- (a) have been fully and fairly disclosed in an announcement by Oliver's to ASX, or a publicly available document lodged by it with ASIC, in the period from 1 July 2019 to the date of this deed; or
- (b) are required or expressly permitted by this deed.

## **6.3 EG representations, warranties and undertakings**

- (a) EG represents and warrants to Oliver's that each of the EG Warranties is true, accurate and not misleading:
  - (i) on the date of this deed and at 8.00am on the Second Court Date; or
  - (ii) if the representation or warranty is expressly stated to be given at a different time, at the time the representation or warranty is expressed to be given.
- (b) EG undertakes to Oliver's to comply with each of the EG Undertakings.

## **6.4 Qualifications to EG's representations and warranties**

The representations and warranties given by EG in clause 6.3 and the EG Warranties are each subject to matters that:

- (a) have been fairly disclosed in an announcement by EG to ASX, or a publicly available document lodged by it with ASIC, in the period from 1 July 2019 to the date of this deed; or
- (b) are required or expressly permitted by this deed.

## **6.5 Status of representations, warranties, undertakings and indemnities**

Each representation and warranty, undertaking and indemnity made or given under this clause 6 is severable and survives termination of this deed and each undertaking and indemnity given in this clause 6 is a continuing obligation.

## **6.6 Acknowledgements**

Each party acknowledges that:

- (a) in entering into this deed:
  - (i) Oliver's has relied on the EG Warranties;
  - (ii) EG has relied on the Oliver's Warranties; and

- (b) the representations and warranties are not extinguished or affected by any investigation into the affairs or business of EG or Oliver's or any of their Related Entities.

## **6.7 Notice**

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 6, or which may result in undertakings given under this clause 6 not being complied with

## **6.8 Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 6 may only give rise to a claim for damages or under the indemnities in this clause 6 and does not entitle a party to terminate this deed.

## **7. EXCLUSIVITY**

### **7.1 Cessation of existing discussions**

Oliver's represents and warrants to EG that, as at the date of this deed, it has terminated all negotiations and discussions (other than with EG and its Representatives) relating to any Competing Proposal (if any).

### **7.2 No shop restriction**

Subject to clause 7.13, during the Exclusivity Period, Oliver's must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or Potential Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 7.2(a) on its behalf.

### **7.3 No talk restriction**

Subject to clause 7.4 and clause 7.13, during the Exclusivity Period Oliver's must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) enter into or continue negotiations or discussions with any Third Party in relation to a Competing Proposal or Potential Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 7.3(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Oliver's or any of its Representatives or has been publicly announced.

### **7.4 No talk exception**

The restriction in clause 7.1 does not apply to the extent that it restricts Oliver's or the Board from taking or refusing to take any action with respect to a bona fide Competing Proposal if:

- (a) the Board has determined that the Competing Proposal is, or is reasonably likely to constitute, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed; and
- (b) acting in good faith and after having taken advice from its external legal and financial advisers, the Board has determined that failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board.

#### **7.5 No due diligence restriction**

Subject to clause 7.6 and clause 7.13 but without limiting clause 7.3, during the Exclusivity Period, Oliver's must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Oliver's or any of its Related Bodies Corporate that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 7.5(a) on its behalf.

#### **7.6 No due diligence exception**

The restriction in clause 7.5 does not apply in respect of a bona fide Competing Proposal if all of the following requirements are satisfied:

- (a) the Board has determined that the Competing Proposal is, or is reasonably likely to constitute, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed;
- (b) acting in good faith and after having obtained advice from its external legal and financial advisers, the Board has determined that failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board;
- (c) the Third Party has first entered into a written agreement in favour of Oliver's restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party; and
- (d) to the extent that any information made available to the Third Party has not previously been provided to EG, Oliver's provides that information to EG at the same time as it is provided to the Third Party.

#### **7.7 General notification obligations**

During the Exclusivity Period, Oliver's must immediately notify EG if:

- (a) Oliver's or any of its Representatives receives any Competing Proposal or Potential Competing Proposal or any offer or request to do any of the things referred to in clause 7.3(a) or 7.5(a); or
- (b) Oliver's proposes to take any action in reliance on the exceptions in clause 7.4 or 7.6.

## 7.8 Matching rights

If Oliver's or any of its Representatives are contacted in relation to, or receive a Competing Proposal or Potential Competing Proposal then:

- (a) Oliver's must as soon as reasonably practicable give EG a notice setting out all material terms of the Competing Proposal or Potential Competing Proposal including the identity of the proponent of the Competing Proposal or Potential Competing Proposal, the amount and form of consideration to be offered, the source of any cash component of the consideration, the conditions to which it is subject, the proposed timetable and any break fee arrangements (provided that in the case of a Potential Competing Proposal to the extent such information is known to Oliver's);
- (b) from the time that Oliver's receives the Competing Proposal or Potential Competing Proposal until the day that is five Business Days after Oliver's gives notice to EG under clause 7.8(a) in respect of it (**Matching Period**):
  - (i) Oliver's must not enter into, or agree to enter into, any written or unwritten legally binding agreement, arrangement or understanding (other than a confidentiality agreement, provided such agreement does not contain any exclusivity or break fee arrangements) pursuant to which a Third Party, a Group Member or both proposes or propose to undertake or give effect to or implement the Competing Proposal or Potential Competing Proposal;
  - (ii) Oliver's must use all reasonable endeavours to ensure that no Director makes any public statement recommending the Competing Proposal or Potential Competing Proposal to Shareholders; and
  - (iii) EG may offer to amend the terms of the Scheme or make an alternative proposal to Oliver's or Shareholders with a view to providing an equivalent or a superior outcome for Shareholders than those offered under the relevant Competing Proposal (**Counter Proposal**).

## 7.9 Oliver's response to Counter Proposal

If during the Matching Period EG makes a Counter Proposal:

- (a) Oliver's must use all reasonable endeavours to procure that the Board considers the Counter Proposal in good faith; and
- (b) if the Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
  - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
  - (ii) Oliver's must use all reasonable endeavours to procure that each Director makes a public statement recommending the Counter Proposal to Shareholders.

## **7.10 Changes to proposals**

Any material change to a Competing Proposal or Potential Competing Proposal including any material change to the terms referred to in clause 7.8(a) will be taken to constitute a new Competing Proposal or Potential Competing Proposal in respect of which Oliver's must separately comply with its obligations under clause 7.7 to clause 7.9 but an incomplete or non-binding proposal which becomes a binding proposal on the same terms as a Potential Competing Proposal and with no additional details will not be considered to be a further Competing Proposal.

## **7.11 Standstill arrangements with other parties**

- (a) Oliver's represents and warrants to EG that the execution of this deed by Oliver's will not affect any waiver or amendment of any standstill agreement or arrangement between Target and any person other than a Bidder Group Member.
- (b) During the Exclusivity Period, except with the prior written consent of EG, Oliver's must not amend or waive the terms of any standstill agreement or arrangement between Oliver's and any person other than an EG Group Member.

## **7.12 Return of confidential information**

If Oliver's has at any time in the 12 months before the date of this deed provided any confidential information to a person other than a EG Group Member in connection with a Competing Proposal, Oliver's must promptly request in writing the immediate return or destruction by that person of such confidential information, and must promptly exercise all rights available to it to ensure compliance with that request.

## **7.13 Normal provision of information**

Nothing in this clause 7 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the rules of ASX or any other recognised stock exchange; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.

## **7.14 Amendments to exclusivity arrangements**

- (a) If any of the following occurs:
  - (i) ASIC indicates to either party in writing that it requires any modification to this clause 7 as a condition of not opposing the Scheme;
  - (ii) the Court requires any modification to this clause 7 as a condition of making orders convening the Scheme Meeting; or
  - (iii) as a result of an application to the Takeovers Panel by a party other than Oliver's or its Representatives, the Takeovers Panel indicates to either party in writing that, in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify this clause 7, it will make a declaration of unacceptable circumstances,



the parties must amend this clause 7 to the extent required to give effect to the requirements of ASIC or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 7.14(a)(iii) must give the required undertakings.

- (b) The parties must not request ASIC to review, or make or cause or permit to be made any application to the Court or the Takeovers Panel in respect of, the arrangements in this clause 7.

## **8. BREAK FEE**

### **8.1 Acknowledgement and agreement by each party**

Each party:

- (a) believes that the implementation of the Transaction will provide significant benefits to its shareholders and the shareholders of the other party; and
- (b) acknowledges and agrees that if it enters into this deed and the Transaction is subsequently not implemented, EG will have incurred significant costs, including significant opportunity costs.

### **8.2 Acknowledgement and agreement by Oliver's**

Oliver's acknowledges and agrees that:

- (a) EG and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
  - (i) legal, financial and other professional advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by EG and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by EG and its Related Entities in pursuing the Transaction;
- (d) EG has negotiated the inclusion of clause 8.3 in this deed and would not have entered into this deed without it; and
- (e) the Board has received external legal and financial advice in relation to this clause 8 and has concluded that it is reasonable and appropriate for Oliver's to agree to payment of the Break Fee in the circumstances described in clause 8.3 in order to secure EG's entry into this deed.

### **8.3 Circumstances where Break Fee payable**

Subject to clause 8.4 and clause 8.6, Oliver's must pay the Break Fee to EG if:

- (a) **completion of Competing Proposal:** at any time before this deed is terminated a Competing Proposal is announced and, within 12 months after the date of that announcement, the person making the Competing Proposal or one or more Associates of that person completes in all material respects a transaction of the kind referred to in paragraphs (a) to (d) of the definition of Competing Proposal;
- (b) **failure of change to recommendation:** any Director fails to make the recommendation referred to in clause 2.3(a) or to give the undertaking referred to in clause 2.3(b) or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking, except where:
  - (i) the withdrawal or change in recommendation occurs in accordance with clause 2.4(a)(iii); or
  - (ii) the Independent Expert's Report concludes that the Scheme is not in the best interests of Oliver's Shareholders and the reasons for the Independent Expert's conclusion or amended conclusion do not include the existence of a Competing Proposal;
- (c) **EG termination:** EG terminates this deed under clause 10.1 where the circumstances giving rise to the right of termination arose as a result of any act or omission that could have been prevented by Oliver's.

#### 8.4 Break fee not payable

- (a) Notwithstanding anything else in this deed, if the Scheme becomes Effective:
  - (i) the Break Fee is not payable by Oliver's to EG; and
  - (ii) if the Break Fee has been paid in whole or part by Oliver's to EG, it must be refunded by EG to Oliver's within five Business Days after receiving a written demand for payment from Oliver's.
- (b) The Break Fee is payable only once.

#### 8.5 Payment of Break Fee

- (a) If the Break Fee becomes payable under this deed, Oliver's must pay it without withholding or set-off within five Business Days after receipt of a written demand, which may only be issued after the occurrence of the relevant event in that clause giving rise to the right to payment and must:
  - (i) set out in reasonable detail the circumstances which give rise to payment of the Break Fee; and
  - (ii) nominate a bank account into which Oliver's is to pay the Break Fee.
- (b) The Break Fee is payable by Oliver's to EG only once and, if actually paid to EG, EG cannot make any Claim against Oliver's for any further payment of the Break Fee.
- (c) EG acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to EG in connection with any event or occurrence referred to in clause 8.3 or otherwise under or in respect of this deed and Oliver's is not liable for any loss or damage

arising in connection with any such event or occurrence other than for any liability that it may have to pay EG the Break Fee under this clause 8.

## **8.6 Amendments to Break Fee arrangements**

- (a) If any of the following occurs:
- (i) ASIC indicates to either party in writing that it requires any modification to the amount of the Break Fee or the circumstances in which it is to be paid (**Break Fee Arrangements**) as a condition of not opposing the Scheme;
  - (ii) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting; or
  - (iii) as a result of an application to the Takeovers Panel by a party other than Oliver's or its Representatives, the Takeovers Panel indicates to either party in writing that, in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the Break Fee Arrangements, it will make a declaration of unacceptable circumstances,

then the parties must amend this clause 8 to the extent required to give effect to the requirements of ASIC, the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 8.6(a)(iii) must give the required undertakings.

- (b) The parties must not request ASIC to review, or make or cause or permit to be made any application to the Court or the Takeovers Panel in respect of, the Break Fee Arrangements.

## **9. REVERSE BREAK FEE**

### **9.1 Acknowledgement and agreement by each party**

Each party:

- (a) believes that the implementation of the Transaction will provide significant benefits to its shareholders and the shareholders of the other party; and
- (b) acknowledges and agrees that if it enters into this deed and the Transaction is subsequently not implemented, Oliver's will have incurred significant costs, including significant opportunity and implementation costs.

### **9.2 Acknowledgement and agreement by EG**

EG acknowledges and agrees that:

- (a) Oliver's and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
  - (i) legal, financial and other professional advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) funding costs;
  - (iv) out of pocket expenses; and

- (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by Oliver's and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Reverse Break Fee is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by Oliver's and its Related Entities in pursuing the Transaction;
- (d) Oliver's has negotiated the inclusion of clause 9.3 in this deed and would not have entered into this deed without it; and
- (e) the Board has received external legal and financial advice in relation to this clause 9 and has concluded that it is reasonable and appropriate for EG to agree to payment of the Reverse Break Fee in the circumstances described in clause 9.3 in order to secure EG's entry into this deed.

### **9.3 Payment of Reverse Break Fee**

Subject to clauses 9.4 or 9.5, if:

- (a) the Scheme has not been implemented by the End Date; or
- (b) this deed has been terminated,

other than:

- (c) as a result of:
  - (i) any material breach by Oliver's of this deed (including any warranty); or
  - (ii) in whole or part the receipt by Oliver's of a Competing Proposal or Potential Competing Proposal; and/or
- (d) in circumstances where the Break Fee is payable under clause 8,

EG will pay Oliver's within 10 Business Days after the earlier of such event, the Reverse Break Fee.

### **9.4 Reverse Break Fee not payable**

- (a) Notwithstanding anything else in this deed, if the Scheme becomes Effective:
  - (i) the Reverse Break Fee is not payable by EG to Oliver's; and
  - (ii) if the Reverse Break Fee has been paid in whole or part by EG to Oliver's, it must be refunded by Oliver's to EG within five Business Days after receiving a written demand for payment from EG.
- (b) The Reverse Break Fee is payable only once.

### **9.5 Payment of Reverse Break Fee**

- (a) If the Reverse Break Fee becomes payable under this deed, EG must pay it without withholding or set-off within five Business Days after receipt of a written demand, which

may only be issued after the occurrence of the relevant event in that clause giving rise to the right to payment and must:

- (i) set out in reasonable detail the circumstances which give rise to payment of the Reverse Break Fee; and
  - (ii) nominate a bank account into which EG is to pay the Reverse Break Fee.
- (b) The Reverse Break Fee is payable by EG to Oliver's only once and, if actually paid to Oliver's, Oliver's cannot make any Claim against EG for any further payment of the Reverse Break Fee.
- (c) Oliver's acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to Oliver's in connection with any event or occurrence referred to in clause 9.3 or otherwise under or in respect of this deed and EG is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Oliver's the Reverse Break Fee under this clause 9.

## 10. TERMINATION

### 10.1 Termination for breach or material events

- (a) **EG termination rights:** EG may terminate this deed by giving notice in writing to the other parties before 8.00am on the Second Court Date if:
- (i) any Director fails to make the recommendation referred to in clause 2.3(a) or to give the undertaking referred to in clause 2.3(b) or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking;
  - (ii) the Independent Expert does not opine that the Scheme is in the best interests of Shareholders or withdraws that opinion;
  - (iii) there is a material breach of any Oliver's Warranty or any event occurs or circumstance arises that would cause any Oliver's Warranty to be untrue in any material respect as at 8.00am on the Second Court Date;
  - (iv) Oliver's is in material breach of clause 5.4, any Oliver's Undertaking or any other material obligation under this deed;
  - (v) an Oliver's Material Adverse Change or a Prescribed Occurrence occurs; or
  - (vi) an Insolvency Event occurs in respect of Oliver's or any of its Related Entities.
- (b) **Oliver's termination rights:** Oliver's may terminate this deed by giving notice in writing to the other parties before 8.00am on the Second Court Date if:
- (i) there is a material breach of any EG Warranty or any event occurs or circumstance arises that would cause any EG Warranty to be untrue in any material respect as at 8.00am on the Second Court Date;
  - (ii) EG is in material breach of any EG Undertaking or any other material obligation under this deed;
  - (iii) an Insolvency Event occurs in respect of EG; or

- (iv) Oliver's enters into binding documentation to effect or implement a Competing Proposal or the Oliver's Directors recommend a Competing Proposal having complied in all respect with clause 7;
- (v) the Independent Expert does not opine that the Scheme is in the best interests of Shareholders or withdraws that opinion (other than as a result of a Competing Proposal).

## **10.2 Conditions not satisfied**

Either party may terminate this deed by giving notice in writing to the other party if:

- (a) it is entitled to do so under clause 3.7(a)(v) or 3.7(b) because of failure of a Condition;
- (b) the relevant Condition has not been waived; and
- (c) the terminating party has complied with its obligations under clause 3.2 and this deed.

## **10.3 Effect of termination**

If this deed is terminated under this clause 10 then:

- (a) except as provided in clause 10.4(c), all the provisions of this deed cease to have effect and each party is released from its obligations to further perform this deed;
- (b) each party retains all rights that it has against each other party in respect of any breach of this deed occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 10 and each of the Surviving Clauses survive termination of this deed.

## **11. ANNOUNCEMENTS**

### **11.1 Initial announcements**

As soon as reasonably practicable after this deed is signed, Oliver's must issue an announcement in the form set out in Annex 4 and including:

- (a) a statement that each Director:
  - (i) recommends that Shareholders vote in favour of the Scheme; and
  - (ii) intends to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,

in each case in the absence of a Superior Proposal and subject to the Independent Expert's Report concluding that the Scheme is in the best interests of Shareholders;

- (b) a statement that each Optionholder has entered into an Option Cancellation Deed in respect of all of its Options;
- (c) a statement that entities Controlled by the Directors have entered into call option deeds in favour of EG giving EG the right but not the obligation to acquire a total of 19.9% of the Shares.

## **11.2 Other announcements**

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this deed other than:

- (a) the announcement referred to in clause 11.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (c) if required by law, any court of competent jurisdiction, any Government Agency or the rules of ASX or any other stock exchange, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

## **12. CONFIDENTIALITY AGREEMENT**

Each party acknowledges and agrees that:

- (a) it continues to be bound by the Confidentiality Agreement and that the terms of the Confidentiality Agreement apply to this deed; and
- (b) its rights and obligations under the Confidentiality Agreement survive termination of this deed.

## **13. PAYMENTS**

### **13.1 Manner of payments**

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this deed must be made in \$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than three Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

### **13.2 Default interest**

If a party defaults in making any payment when due of any sum payable under this deed, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 2% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

## **14. GST**

### **14.1 Interpretation**

Words and expressions that are defined in the GST Law have the same meaning when used in this clause 14. For the purposes of this clause 14, references to GST payable and input tax credit entitlements of any entity include GST payable by, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

## **14.2 Consideration exclusive of GST**

Except as otherwise expressly provided in this deed, all amounts payable or consideration to be provided under or in connection with this deed are exclusive of GST (**GST Exclusive Consideration**).

## **14.3 Payment of GST**

If GST is payable on any supply made under or in connection with this deed the recipient must pay to the party that has made or will make the supply (**Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST payable on that supply (**Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required to pay the Additional Amount unless and until the Supplier has issued a tax invoice under clause 14.4.

## **14.4 Tax invoice**

For any supply to which clause 14.3 applies, the Supplier must issue a tax invoice which complies with the GST Law.

## **14.5 Adjustments**

If any adjustment event occurs in respect of a supply to which clause 14.3 applies:

- (a) the Additional Amount paid or payable by the recipient must be recalculated, taking into account any previous adjustments under this clause 14.5, to reflect the occurrence of that adjustment event and the Supplier or the recipient, as the case requires, must pay to the other the amount required to reflect the recalculation of the Additional Amount; and
- (b) the Supplier must provide an adjustment note to the recipient as soon as practicable after the Supplier becomes aware of the occurrence of that adjustment event.

## **14.6 Input tax credits**

Notwithstanding any other provision of this deed, if an amount payable under or in connection with this deed is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

## **15. NOTICES**

### **15.1 Manner of giving notice**

Any notice or other communication to be given under this deed must be in writing (which includes email) and may be delivered or sent by post or email to the party to be served as follows:

- (a) to Oliver's at:

Address:	10 Amsterdam Circuit, Wyong, New South Wales 2259
Email:	nick.dower@oliversrealfood.com.au; jason@oliversrealfood.com.au
For the attention of:	Nick Dower (Chairman) and Jason Gunn (CEO);



(b) to EG at:

Address: Level 39, Northpoint, 100 Miller Street, North Sydney New South Wales 2060  
Email: mike.mcmenamin@eg-australia.com; ekta.shandil@eg-australia.com  
For the attention of: Mike McMenamin (Chief Executive Officer) and Ekta Shandil (General Counsel),

with a copy via email to Michael Parshall (michael.parshall@allenoverly.com) and James Nicholls (james.nicholls@allenoverly.com) for information purposes only,

or at any such other address or email address notified for this purpose to the other parties under this clause 15. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

## **15.2 When notice given**

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (c) if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon delivery to the recipient's server,

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

## **15.3 Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail, or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

## **15.4 Documents relating to legal proceedings**

This clause 15 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this deed.

## **16. GENERAL**

### **16.1 Amendments**

This deed may only be amended in writing and where such amendment is signed by all the parties.

## **16.2 Assignments**

None of the rights or obligations of a party under this deed may be assigned or transferred without the prior written consent of the other party.

## **16.3 No partnership or joint venture**

Subject to the terms of this deed, the business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

## **16.4 Consents and approvals**

Except as otherwise expressly provided in this deed a party may give or withhold its consent to or approval of any matter referred to in this deed in its absolute discretion and may give such consent or approval conditionally or unconditionally. A party that gives its consent to or approval of any matter referred to in this deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent or approval.

## **16.5 Costs**

Except as otherwise expressly provided in this deed, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this deed, the Scheme and the Deed Poll.

## **16.6 Duty**

EG is liable for and must pay all Duty on or relating to this deed, the Scheme and any transfer of the Scheme Shares.

## **16.7 No third party beneficiary**

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person except that EG holds the benefit of each indemnity, promise and obligation in this deed to the extent expressed to be for the benefit of BidCo, on trust for BidCo.

## **16.8 Entire agreement**

This deed contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement.

## **16.9 Execution in counterparts**

This deed may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this deed by executing a counterpart. Pdf signatures are taken to be valid and binding to the same extent as original signatures.

## **16.10 Exercise and waiver of rights**

The rights of each party under this deed:

- (a) may be exercised as often as necessary;

- (b) except as otherwise expressly provided by this deed, are cumulative and not exclusive of rights and remedies provided by law; and
  - (c) may be waived only in writing and specifically,
- and delay in exercising or non-exercise of any such right is not a waiver of that right.

#### **16.11 Further assurance**

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this deed.

#### **16.12 No merger**

Each of the obligations, warranties and undertakings set out in this deed (excluding any obligation which is fully performed at the Implementation Date) must continue in force after the Implementation Date.

#### **16.13 No reliance**

Each party acknowledges that in agreeing to enter into this deed it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of the other party before the entering into of this deed. To the maximum extent permitted by law, each party waives all rights and remedies which, but for this clause 16.13 might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance including all rights and remedies under Part 7.10 of the Corporations Act, Part 2 Division 2 of the *Australian Securities and Investments Act 2001* (Cth), section 18, Schedule 2 (Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth) or any corresponding or equivalent provision of any legislation having effect in any relevant jurisdiction.

#### **16.14 Severability**

The provisions contained in each clause of this deed are enforceable independently of each other clause of this deed and the validity and enforceability of any clause of this deed will not be affected by the invalidity or unenforceability of any other clause.

### **17. GOVERNING LAW AND JURISDICTION**

#### **17.1 Governing law**

This deed and any non-contractual obligations arising out of, or in connection with, it is governed by the law applying in Victoria.

#### **17.2 Jurisdiction**

The courts having jurisdiction in Victoria have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to any non-contractual obligations arising out of or in connection with this deed) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Victoria.

**THIS DEED** has been executed and delivered by the parties on the date stated at the beginning of this deed.

## **SCHEDULE 1**

### **PRESCRIBED OCCURRENCES**

1. Oliver's converts all or any of its shares into a larger or smaller number of shares.
2. Any Group Member resolves to reduce its share capital in any way.
3. Any Group Member enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. Any Group Member issues Shares, shares or grants an option or similar right over its shares, convertible notes or any other securities convertible into shares or agrees to make such an issue or grant such an option or similar right other than an issue of Shares in Oliver's pursuant to the valid exercise of any Option set out in Schedule 4.
5. Any Group Member announces, declares or determines to pay any dividend or announces or makes any other distribution to its members.
6. Any Group Member disposes of or licenses, or agrees to dispose of or license, the whole, or a substantial part of its business or property or the Intellectual Property Rights used in connection with its business.
7. Any Group Member grants, or agrees to grant, a security interest (within the meaning of section 51A of the Corporations Act) in the whole, or a substantial part of, its business or property.
8. Any Group Member resolves to be wound up.
9. A liquidator or provisional liquidator of any Group Member is appointed.
10. A court makes an order for the winding up of any Group Member.
11. An administrator of any Group Member is appointed under section 436A, 436B or 436C of the Corporations Act.
12. Any Group Member executes a deed of company arrangement.
13. A receiver or a receiver and manager is appointed in relation to the whole or a substantial part of the property of any Group Member.

## SCHEDULE 2

### OLIVER'S WARRANTIES AND UNDERTAKINGS

#### PART 1

##### OLIVER'S WARRANTIES

1. Oliver's is a corporation validly existing under the laws of its place of incorporation.
2. Oliver's has the power to execute this deed and to perform its obligations under this deed and the Scheme, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. Oliver's obligations under this deed are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. The execution by Oliver's of this deed and the performance of its obligations under this deed and the Scheme do not and will not conflict with or constitute a default under any provision of:
  - (a) any agreement or instrument to which any Group Member is a party;
  - (b) its Constitution or the constitution of any other Group Member; or
  - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Oliver's or any Group Member is bound.
5. There is no Insolvency Event in effect in respect of a Group Member.
6. Oliver's has filed with ASIC and ASX all documents required to be filed with ASIC or ASX including pursuant to ASX Listing Rule 3.1A (**Oliver's Reporting Documents**), is not in breach of its continuous and periodic disclosure obligations under the Corporations Act and the ASX Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from public disclosure.
7. The Oliver's Reporting Documents are not misleading or deceptive and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later Oliver's Reporting Document.
8. As at the date of this deed there are:
  - (a) 270,731,917 Shares on issue;
  - (b) 4,500,000 Options,

and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or performance rights or other instruments which are convertible into securities in Oliver's nor has Oliver's offered or agreed to issue any such shares, options or other securities or performance rights or other instruments to any third party whether pursuant to an employee incentive plan or otherwise and Oliver's has received in full prior to the execution of this deed all subscription moneys in respect of the issue and allotment of the 270,731,817 Shares (aside from the amount of \$110,000 in respect of the exercise of the 5,000,000 Options by Nicholas Dower where the \$110,000 subscription moneys will be received by Oliver's on or prior to 12 March 2020)..

9. All information disclosed by or on behalf of Oliver's to EG or its Representatives (other than forecasts, budgets, estimates, projections and statements of opinion or intention), has been collated and prepared in good faith and with all reasonable care and skill and is true and correct in all material respects and is not misleading or deceptive in any material respect, including by omission.
10. All information that Oliver's or its Representatives have provided to EG or its Representatives, the Government Agencies and the Court is true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise).
11. Oliver's financial statements for the financial year ended 30 June 2019 and half year ended 31 December 2019:
  - (a) are, in all material respects, a true and fair reflection of Oliver's financial position as of 30 June 2019 and half year ended 31 December 2019 and of Oliver's performance during the relevant period; and
  - (b) comply with Australian Account Standards and the *Corporations Regulations 2001* (Cth).
12. There is no litigation, mediation or arbitration current or pending, nor is there, to the best of the knowledge, information and belief of Oliver's, any threatened litigation, mediation or arbitration, in each case which may materially affect the value of Oliver's or of the assets of the Group.
13. Oliver's and the other Group Members are the legal and beneficial owners free of any Encumbrances of all Intellectual Property Rights used in connection with the Group's business including without limit the mark or logo "Oliver's Real Food", the Trade Marks or any of the recipes, copyright or business systems and processes used in the operation of the Oliver's Real Food business and no person has any right to prevent or restrict the Group's use of the same in connection with its business and the use of the same in connection with Group's business is not misleading or deceptive or likely to mislead or deceive and no person has any right to use the same (whether under any licence, franchise or otherwise) other than a member of the Group.
14. As at the date of this deed, so far as Oliver's is aware:
  - (a) all Material Contracts are in full force and of full effect and are legally binding as between the parties to those contracts in accordance with their terms;
  - (b) neither Oliver's nor any of its subsidiaries is in material default under or material dispute in respect of any Material Contract nor has anything occurred which is or would be with the giving of notice or lapse of time constitute an event of default, prepayment or similar event, or give another party thereto a termination right or right to accelerate any material right or obligation under any such Material Contract with such an effect; and
  - (c) none of the Material Contracts contain any unusual, abnormal or onerous provisions or contain any provisions that could not be fulfilled or performed without undue or unusual expenditure of money or effort on the part of any Group Member.
15. As at the date of this deed, Oliver's is not aware of any event or circumstance that would result in or is reasonably likely to result in:
  - (a) one or more of the Conditions becoming incapable of fulfilment; or
  - (b) the Transaction not being implemented in accordance with the Timetable and the terms of this deed.

16. Other than as already publicly disclosed by Oliver's, there are no material off-balance sheet liabilities, underestimated liabilities, undisclosed material contingencies or liabilities, pending and/or outstanding litigation processes, or other liabilities due to non-compliance with law.
17. There are no material break fees, or make-whole payments associated with the repayment of principal or any debt facilities, or termination or default rights triggered under any leases, material contracts, or other obligations which may be triggered by implementing this Revised Proposal.
18. Oliver's and its subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them, including for the avoidance of doubt all laws and regulations relating to tax.
19. Oliver's and each of its subsidiaries have all material licences, authorisations, permits and franchises necessary for them to conduct their respective business as presently being conducted and each of those licences, authorisations, permits and franchises are in good-standing and do not contain any unusual, abnormal or onerous provisions or contain any provisions that could not be fulfilled or performed without undue or unusual expenditure of money or effort on the part of any Group Member.
20. Neither Oliver's, nor any of its subsidiaries:
  - (a) is in default under any document, agreement or instrument binding on it or its assets; nor
  - (b) has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event or given another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect,in each case where such default, occurrence or event would result in a material adverse change to the Group.
21. The Group has duly complied with its obligations to pay its employees their remuneration in full in all material respects and each contractor to the Group is not, and is not be deemed to be, an employee of the Group under any law or for any other purpose.

## **PART 2**

### **OLIVER'S UNDERTAKINGS**

1. Oliver's will ensure that the Oliver's Information:
  - (a) is prepared in good faith and on the understanding that EG will rely on that information for the purposes of considering and approving the EG Information in the Scheme Booklet;
  - (b) complies with the Corporations Act and all other applicable laws, Regulatory Guides and the ASX Listing Rules; and
  - (c) is in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the Scheme Booklet is sent to Shareholders.
2. Oliver's will provide to Shareholders and EG all new information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which

is necessary to ensure that the Oliver's Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect (whether by omission or otherwise).

3. All information provided by or on behalf of Oliver's to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive in any material respect (whether by omission or otherwise).



### **SCHEDULE 3**

#### **EG WARRANTIES AND UNDERTAKINGS**

##### **PART 1**

##### **EG WARRANTIES**

1. EG is a corporation validly existing under the laws of its place of incorporation.
2. EG has the power to execute and deliver and to perform its obligations under this deed and the Deed Poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
3. The obligations of EG under this deed are, and the obligations of EG under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. The execution and delivery by EG of this deed and the execution and delivery by EG of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
  - (a) any agreement or instrument to which EG is a party;
  - (b) the constitution or equivalent documents of EG; or
  - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which EG is bound.

##### **PART 2**

##### **EG UNDERTAKINGS**

1. EG will ensure that the EG Information:
  - (a) is prepared in good faith and on the understanding that each of the Oliver's Indemnified Persons will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Corporations Act;
  - (b) complies with the Corporations Act and all other applicable laws, Regulatory Guides and the ASX Listing Rules; and
  - (c) is in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the Scheme Booklet is sent to Shareholders.
2. EG will provide to Oliver's all new information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the EG Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect (whether by omission or otherwise).
3. All information provided by or on behalf of EG to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet, will be

true and correct in all material respects and will not be misleading or deceptive in any material respect (whether by omission or otherwise).

## SCHEDULE 4

### OPTIONS

Option issue date	Option expiry date	Number of options	Holders	Exercise price	Option Consideration
3 May 2017	20 April 2021	500,000	Kathy Hatzis	30 cents	Nil
21 April 2017	20 June 2020.	2,000,000	Veritas Securities Limited	30 cents	Nil
2 January 2020		2,000,000	David McMahon	2.8 cents	7.2 cents per Option
<b>Total</b>		<b>4,500,000</b>			

## SCHEDULE 5

### TIMETABLE

<b>Event</b>	<b>Date</b>
Execution of this deed and announcement	11 March 2020
First draft of Scheme Booklet circulated	25 March 2020
Scheme Booklet provided to ASIC for review	8 April 2020
First Court Date	24 April 2020
Scheme Booklet sent to Shareholders	30 April 2020
Scheme Meeting	2 June 2020
Second Court Date	22 June 2020
Effective Date	22 June 2020
Record Date	29 June 2020
Implementation Date	6 July 2020

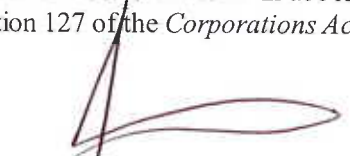
## SCHEDULE 6

### TRADE MARKS


Number	Trade Mark	Class	Status	Registered owner	
1066598		O Oliver's Real Food. Real Fast.	43	Registered: Registered/protected	Oliver's Real Food Limited
1088023		O Oliver's Pita Pockets	29, 30	Registered: Registered/protected	Oliver's Real Food Limited
1541703		O Oliver's Real Food	29, 30, 32, 43	Registered: Registered/protected	Oliver's Real Food Limited
1565966		O	29, 30, 32, 43	Registered: Registered/protected	Oliver's Real Food Limited
1708835	Feed Your Good		43	Registered: Registered/protected	Oliver's Real Food Limited
1950978	Red Dragon		30, 32	Published: Under examination	Oliver's Real Food Limited
1950981			30, 32	Published: Under examination	Oliver's Real Food Limited

EXECUTION PAGE

EXECUTED AS A DEED by OLIVER'S )  
REAL FOOD LIMITED in accordance with )  
section 127 of the Corporations Act 2001 (Cth): )

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

Jason A. Gunn  
\_\_\_\_\_  
Name of director

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

Nicholas Dowse  
\_\_\_\_\_  
Name of director/company secretary

EXECUTED AS A DEED by EG FUELCO )  
(AUSTRALIA) LIMITED in accordance with )  
section 127 of the Corporations Act 2001 (Cth): )

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

\_\_\_\_\_  
Name of director

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

\_\_\_\_\_  
Name of director/company secretary

**EXECUTION PAGE**

**EXECUTED AS A DEED** by **OLIVER'S** )  
**REAL FOOD LIMITED** in accordance with )  
section 127 of the *Corporations Act 2001* (Cth): )

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


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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**EXECUTED AS A DEED** by **EG FUELCO** )  
**(AUSTRALIA) LIMITED** in accordance with )  
section 127 of the *Corporations Act 2001* (Cth): )

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

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

**PAUL A. SCHWAGER**  
\_\_\_\_\_  
Name of director

**MICHAEL MCMENAMIN**  
\_\_\_\_\_  
Name of director/company secretary

**ANNEX 1**  
**SCHEME**



# **SCHEME OF ARRANGEMENT**

**DATED ● 2020**

**OLIVER'S REAL FOOD LIMITED**

**and**

**THE HOLDERS OF FULLY PAID ORDINARY SHARES IN THE CAPITAL OF OLIVER'S REAL  
FOOD LIMITED**

**ALLEN & OVERY**

**THIS SCHEME OF ARRANGEMENT** under section 411 of the *Corporations Act 2001* (Cth) is made on ● 2020

**BETWEEN:**

- (1) **OLIVER'S REAL FOOD LIMITED** ACN 166 495 411 of 10 Amsterdam Circuit, Wyong NSW 2259 (**Oliver's**); and
- (2) The Scheme Shareholders.

**BACKGROUND:**

- (A) Oliver's has agreed in the Implementation Deed to propose this Scheme the effect of which will be that all Scheme Shares, and all rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo and BidCo will provide or procure the provision of the Consideration to Scheme Shareholders.
- (B) EG and BidCo have executed the Deed Poll under which it has covenanted in favour of Scheme Shareholders to provide or procure the provision of the Consideration to the Scheme Shareholders and to perform certain of its other obligations under the Scheme.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this document:

**Aggregate Consideration** means the Consideration multiplied by the number of Scheme Shares;

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited or the Australian Securities Exchange as the context requires;

**ASX Listing Rules** means the official listing rules of ASX as modified by any waiver instrument executed by ASX that applies to Oliver's;

**BidCo** means EG (Retail) Australia Pty Ltd ACN 629 793 933;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Sydney, Australia for normal business;

**CHESS Holding** has the meaning given in the Settlement Rules;

**Consideration** means A\$0.10 for every Share held by a Scheme Shareholder, subject to the terms of this Scheme;

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act as EG and Oliver's agree in writing;

**Deed Poll** means the deed poll to be entered into by EG and BidCo in favour of the Scheme Shareholders substantially in the form of Annex 1 or in such other form as the parties agree in writing;

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

**Effective Date** means the date the Scheme becomes Effective;

**EG** means EG Fuelco (Australia) Limited ACN 627 348 645 ;

**EG Group** means EG and its related bodies corporate (excluding, at any time Oliver's and its subsidiaries) and a reference to **EG Group Member** means a reference to any of them;

**End Date** means 31 July 2020, or such other date as EG and Oliver's agree in writing;

**Excluded Shares** means any Shares held by any person on behalf of or for the benefit of any EG Group Member;

**Government Agency** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity whether in Australia or elsewhere and includes any self-regulatory organisation established under statute or any stock exchange;

**Implementation Date** means the date which is three Business Days after the Scheme Record Date, or such other date as EG and Oliver's agree in writing;

**Implementation Deed** means the Scheme Implementation Deed dated 11 March 2020 between EG and Oliver's;

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules;

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

**Options** means an option to subscribe for new Shares;

**Record Date** means 7.00 pm on the date which is five Business Days after the Effective Date or such other time and date agreed to in writing between Oliver's and EG;

**Register** means the register of Shares maintained by Oliver's or the Registry in accordance with the Corporations Act;

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

**Registry** means Boardroom Pty Limited ABN 14 003 209 836 or any other replacement provider of share registry services to Oliver's from time to time;

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Oliver's and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by the parties in writing;

**Scheme Meeting** means the meeting of Shareholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme and includes any meeting convened following any adjournment or postponement of that meeting;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Shares** means all of the Shares on issue at the Record Date other than Excluded Shares;

**Scheme Transfer** means a proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of BidCo 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 the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard;

**Settlement Rules** means the ASX Settlement Operating Rules;

**Share** means a fully paid ordinary share in the capital of Oliver's;

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time; and

**Trust Account** means an Australian dollar denomination account established by, or on behalf of, Oliver's as trustee for the Scheme Shareholders.

## **1.2 Things required to be done other than on a Business Day**

Unless otherwise indicated, if the day on which any act, matter or thing is to be done under this document is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

## **1.3 Other rules of interpretation**

In this document:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after the date of this document;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after the date of this document under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.3(a)(i), or under any legislation which it re-enacts as described in clause 1.3(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) references to an individual or a natural person include his estate and personal representatives;
- (d) the schedules and annexes form part of this document and, unless otherwise indicated, a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to this document;
- (e) references to a party to this document include the successors or assigns (immediate or otherwise) of that party;

- (f) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (g) a reference to \$, A\$ or dollars is to Australian currency;
- (h) singular words include the plural and vice versa;
- (i) a word of any gender includes the corresponding words of any other gender;
- (j) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (k) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words; and
- (l) the headings do not affect interpretation.

## **2. PRELIMINARY**

### **2.1 Background**

- (a) Oliver's is a public company limited by shares, registered in New South Wales, Australia and admitted to the official list of ASX.
- (b) The Shares are officially quoted on ASX.
- (c) Oliver's' registered office is at 10 Amsterdam Circuit, Wyong, New South Wales 2259.
- (d) As at 8.00am on the Second Court Date, Oliver's' capital structure, is as set out below:
  - (i) 270,731,917 Shares on issue which are officially quoted on ASX; and
  - (ii) 4,500,000 Options on issue which are not quoted on any financial market.
- (e) EG is an unlisted public company limited by shares, registered in Australia.
- (f) BidCo is a proprietary company limited by shares, registered in Australia.
- (g) EG's and BidCo's registered office is at Level 39, Northpoint, 100 Miller Street, North Sydney, New South Wales 2060.
- (h) Oliver's and EG have agreed by executing the Implementation Deed to implement this Scheme.

### **2.2 Consequence of this Scheme becoming Effective**

If this Scheme becomes Effective:

- (a) BidCo will provide or procure the provision of the Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll;
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to BidCo;

- (c) Oliver's will enter the name of BidCo in the Register as the holder of the Scheme Shares with the result that Oliver's will become a wholly owned subsidiary of BidCo;
- (d) it will bind Oliver's 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
- (e) it will override the constitution of Oliver's, to the extent of any inconsistency.

### **3. CONDITIONS PRECEDENT**

#### **3.1 Conditions precedent to the Scheme**

The Scheme is conditional on and will have no force or effect unless and until each of the following conditions precedent is satisfied:

- (a) as at 8.00am on the Second Court Date all the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(a) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) neither the Implementation Deed nor the Deed Poll have been terminated before 8.00am on the Second Court Date;
- (c) the Court approves this Scheme pursuant to section 411(4)(b) of the Corporations Act, including with or without any modification made or required by the Court under section 411(6) of the Corporations Act and agreed to by EG;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by EG have been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act approving this Scheme have come into effect in accordance with section 411(10) of the Corporations Act on or before the End Date (or any later date as Oliver's and EG agree in writing).

#### **3.2 Certificates**

- (a) At the Court hearing on the Second Court Date each of Oliver's and EG must provide to the Court a certificate, or such other evidence as the Court requests, confirming (in respect of the matters within their knowledge) whether or not the conditions set out in clause 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificates provided by Oliver's and EG under clause 3.2(a) constitute conclusive evidence as to whether or not those conditions have been satisfied or waived.

#### **3.3 Termination**

Without limiting any rights under the Implementation Deed, if one or both of the Implementation Deed or the Deed Poll is terminated in accordance with their respective terms before the Scheme becomes Effective, Oliver's is released from any further obligation to take steps to implement the Scheme and any liability with respect to the Scheme.

## **4. THE SCHEME**

### **4.1 Effective Date**

Subject to clause 4.3, the Scheme will take effect on and from the Effective Date.

### **4.2 Effect of the Scheme**

If the Scheme becomes Effective then:

- (a) all of the Scheme Shares (together with all rights and entitlements attaching to them as at the Implementation Date) will be transferred to BidCo without the need for any further act by any Scheme Shareholder (other than acts performed by Oliver's as attorney and agent for Scheme Shareholders under clause 9.4(a)) and Oliver's will enter BidCo's name in the Register as the holder of the Scheme Shares;
- (b) the transfer of Scheme Shares will be taken to be effective on the Implementation Date;
- (c) each Scheme Shareholder will be entitled to receive the Consideration in respect of each Scheme Share registered in the name of that Scheme Shareholder as at the Record Date; and
- (d) the Consideration will be provided to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll.

### **4.3 End Date**

The Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date, or the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless Oliver's and EG otherwise agree in writing.

## **5. IMPLEMENTATION OF THE SCHEME**

### **5.1 Lodgement of Court orders**

Oliver's undertakes to lodge with ASIC office copies of the Court orders made under section 411(4)(b) of the Corporations Act approving the Scheme as soon as practicable after such orders are made and in any event by 5.00pm on the first Business Day after those orders are made.

### **5.2 Transfer of Scheme Shares**

Subject to this Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Consideration in the manner contemplated by clause 6, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date must be transferred to BidCo, without the need for any further act by any Scheme Shareholder (other than acts performed by Oliver's as attorney and agent for Scheme Shareholders under clause 9.4(a)), by:
  - (i) Oliver's delivering to BidCo a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Oliver's, for registration;
  - (ii) BidCo duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering to Oliver's for registration; and

- (b) immediately after receipt of the Scheme Transfer in accordance with clause 5.2(a)(ii) (but subject to the stamping of the Scheme Transfer if required) Oliver's will procure that BidCo's name is entered in the Register as the holder of all the Scheme Shares transferred to BidCo in accordance with this Scheme.

### **5.3 Beneficial entitlement to Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, transferred under this Scheme to BidCo will, at the time of transfer, vest in BidCo 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 any interests of third parties of any kind, whether legal or otherwise, and free from all other restrictions on transfer.
- (b) Immediately upon the provision of the Consideration, BidCo will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending the entry of BidCo's name in the Register as the holder of the Scheme Shares.

## **6. CONSIDERATION**

### **6.1 Entitlement to Consideration**

Subject to the terms of this Scheme, each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share registered in the name of the Scheme Shareholder.

### **6.2 Payment of Consideration**

BidCo must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit, or procure the deposit of, in cleared funds an amount equal to the Aggregate Consideration into the Trust Account, such amount to be held by Oliver's on trust for the Scheme Shareholders for the purposes of paying the Aggregate Consideration to Scheme Shareholders in accordance with clause 6.3.

### **6.3 Dispatch of Consideration**

- (a) Subject to BidCo complying with its obligations under clause 6.2, Oliver's within five Business Days after the Implementation Date must pay or procure the payment, from the Trust Account, to each Scheme Shareholder an amount equal to the Consideration due to that Scheme Shareholder in accordance with this Scheme by:
  - (i) where a Scheme Shareholder has before the Record Date made a valid election in accordance with the requirements of the Oliver's Registry to receive dividend payments from Oliver's by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying or procuring the payment of the relevant amount of Australian currency by electronic means in accordance with that election; or
  - (ii) whether or not the Scheme Shareholder has made an election referred to in clause 6.3(a)(i), dispatching or procuring the dispatch of a cheque drawn in the name of the Scheme Shareholder for the relevant amount in Australian currency to the Scheme Shareholder by prepaid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by prepaid airmail post) to their Registered Address. In the case of Scheme Shares held in joint names, any cheque required to be paid to Scheme Shareholders must be payable to the joint holders and be



forwarded to the holder whose name appears first in the Oliver's Register as at the Record Date.

#### **6.4 Fraction entitlements**

Where the calculation of the Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

#### **6.5 Unclaimed monies**

Oliver's may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to Oliver's; or
- (b) has not been presented for payment within 6 months after the date on which the cheque was sent.

During the period of one year commencing on the Implementation Date, on request from a Scheme Shareholder, Oliver's must reissue a cheque that was previously cancelled under this clause 6.5.

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

If written notice is given to Oliver's (or the Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (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 Oliver's in accordance with this clause 6, then Oliver's shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Oliver's from providing consideration to any particular Scheme Shareholder in accordance with this clause 6, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Oliver's will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration until such time as provision of the Consideration in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.

#### **6.7 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) 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 Oliver's, the holder whose name appears first in the Share Register as at the 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 Oliver's, the holder whose name appears first in the Share Register as at the Record Date or to the joint holders.

## **7. DEALINGS IN SHARES**

### **7.1 Recognition of dealings**

- (a) To establish the identity of the Scheme Shareholders, dealings in Shares and other alterations to the Register will only be recognised if:
- (i) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant Shares on or before the Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Record Date at the place where the Register is kept,

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

- (b) Oliver's must register registrable transmission applications or transfers of the Scheme Shares of the kind referred to in clause 7.1(a)(ii) before the Record Date provided that, for the avoidance of doubt, nothing in this clause 7.1(b) requires Oliver's to register a transfer that would result in a Shareholder holding a parcel of Shares that is less than a 'marketable parcel' (as that term is defined in the Operating Rules).

### **7.2 Dealings after Record Date**

If the Scheme becomes Effective, a holder of Scheme Shares (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 Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Oliver's shall be entitled to disregard any such disposal.

### **7.3 Maintenance of Register**

For the purpose of determining entitlements to the Consideration, Oliver's must maintain the Register in accordance with the provisions of this clause 7 until the Consideration has been paid to all Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.

### **7.4 Holding statements and Register entries**

Following the Record Date all statements of holding for Shares (other than statement of holding in favour of BidCo) will cease to have effect as documents of title in respect of those shares and each entry on the Register current at that date (other than entries on the Register in respect of BidCo) will cease to have effect except as evidence of entitlement to the Consideration in respect of the Shares relating to that entry.

### **7.5 Availability of Register**

As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Oliver's will ensure that details of the names,

Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register are available to BidCo in the form BidCo reasonably requires.

## **8. QUOTATION OF SHARES**

- (a) Oliver's will apply to ASX to suspend trading on the ASX in Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by EG, Oliver's will apply:
  - (i) for termination of the official quotation of Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX.

## **9. GENERAL SCHEME PROVISIONS**

### **9.1 Consent to amendments**

If the Court proposes to approve the Scheme subject to any amendments or conditions:

- (a) Oliver's may by its counsel consent on behalf of all persons concerned (including the Scheme Shareholders) to those amendments or conditions to which EG has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Oliver's has consented to on its behalf.

### **9.2 Scheme Shareholders' agreements**

Each Scheme Shareholder:

- (a) agrees to the transfer of their Shares together with all rights and entitlements attaching to those Shares in accordance with this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attaching to their Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of EG, destroy any holding statements or share certificates relating to their Shares;
- (d) who holds their Shares in a CHESS Holding agrees to the conversion of those Shares to an Issuer Sponsored Holding and irrevocably authorises Oliver's to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
- (e) acknowledges and agrees that this Scheme binds Oliver's 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 Oliver's.

### **9.3 Warranties**

Each Scheme Shareholder is taken to have warranted to Oliver's, EG and BidCo that:

- (a) all of the Scheme Shares (including all rights and entitlements attaching to them as at the Implementation Date) 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 free from all other restrictions on transfer;

- (b) that Scheme Shareholder has full power and capacity to sell and transfer those Scheme Shares (together with all rights and entitlements attaching to them as at the Implementation Date) to BidCo under the Scheme,

and Oliver's undertakes that it will provide the warranties in this clause 9.3 to EG and BidCo as agent and attorney of each Scheme Shareholder. Oliver's will not be responsible for the accuracy or completeness of the warranties in this clause 9.3.

#### **9.4 Oliver's Appointment of attorneys**

(a) **Appointment of Oliver's:**

- (i) Each Scheme Shareholder, without the need for any further act:
  - (A) on the Effective Date, irrevocably appoints Oliver's 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 EG, BidCo or both, and Oliver's undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against EG, BidCo or both on behalf of and as agent and attorney for each Scheme Shareholder; and
  - (B) on the Implementation Date, appoints Oliver's 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 and any document necessary to give effect to clause 9.4(b) below,

and Oliver's accepts each such appointment.

- (ii) Oliver's, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under clause 9.4(a)(i) to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).
- (b) **Appointment of BidCo:** Immediately upon the provision of the Consideration to each Scheme Shareholder in the manner contemplated by clause 6, and until the Register registers BidCo as the sole holder of all Scheme Shares in the Share Register, each Scheme Shareholder:
- (i) is deemed to have appointed BidCo as attorney and agent, and directs BidCo in each such capacity, to appoint any director, officer, secretary or agent of BidCo as sole proxy and, where applicable or appropriate, corporate representative of that Scheme Shareholder to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in the name of that Scheme Shareholder and sign any shareholders' resolution or other document;
  - (ii) undertakes not to attend any shareholders' meeting or exercise the votes attaching to the Scheme Shares registered in the name of that Scheme Shareholder or sign any

shareholders' resolutions or other documents, whether in person, by proxy or corporate representative; (other than pursuant to this clause 9.4(b)(i));

- (iii) must take all other actions as registered holder of those Scheme Shares as BidCo reasonably directs; and
- (iv) acknowledges and agrees that in exercising the powers conferred under clause 9.4(b)(i), BidCo and any director, officer, secretary or agent of BidCo may act in the best interests of BidCo as the intended registered holder of the Scheme Shares.

## **9.5 Consent for necessary or incidental acts**

Each of the Scheme Shareholders consents to Oliver's doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of Scheme Shareholders, Oliver's or otherwise.

## **10. GENERAL**

### **10.1 Stamp duty**

BidCo must pay any stamp, transaction and registration duties and similar charges and any related interest, fees, fines or penalties payable under Australian law in connection with this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under the Deed Poll including the transfer of the Scheme Shares to BidCo.

### **10.2 Further action**

Oliver's must, at its own expense, do all things and execute all documents necessary to give full effect to the Scheme and the transactions contemplated by it and the Scheme Shareholders consent to Oliver's doing all such things and executing all such documents and doing all other things necessary or incidental to the implementation of the Scheme.

### **10.3 Notices and other documents sent by post**

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

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

Each Scheme Shareholder agrees that neither Oliver's, EG nor BidCo, nor any director, officer or secretary or employee of any of those companies, shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## **11. GOVERNING LAW AND JURISDICTION**

- (a) This Scheme is governed by the law applying in Victoria.
- (b) The courts having jurisdiction in Victoria have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme and each of Oliver's and each

Scheme Shareholder irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Victoria.

**ANNEX 1**  
**DEED POLL**

**ANNEX 2**  
**DEED POLL**



# **DEED POLL**

**DATED ● 2020**

**made by**

**EG FUELCO (AUSTRALIA) LIMITED**

**and**

**EG (RETAIL) AUSTRALIA PTY LTD**

**in favour of**

**EACH HOLDER OF FULLY PAID ORDINARY SHARES IN THE CAPITAL OF OLIVER'S REAL  
FOOD LIMITED**

**ALLEN & OVERY**

**THIS DEED POLL** is made on [●]

**BY:**

- (1) **EG FUELCO (AUSTRALIA) LIMITED ACN 627 348 645** of Level 39, Northpoint, 100 Miller Street, North Sydney, NSW 2060 (**EG**); and
- (2) **EG (RETAIL) AUSTRALIA PTY LTD ACN 629 793 933** of Level 39, Northpoint, 100 Miller Street, North Sydney, NSW 2060 (**BidCo**) **BidCo**.

**IN FAVOUR OF:**

Each holder of fully paid ordinary shares in the capital of Oliver's Real Food Limited ACN 166 495 441 (**Oliver's**) on issue as at the Scheme Record Date (**Scheme Shareholders**).

**BACKGROUND:**

- (A) Oliver's and EG have entered into the Implementation Deed.
- (B) EG and BidCo are entering into this deed poll in accordance with the terms of the Implementation Deed for the purpose of covenanting in favour of Scheme Shareholders to perform certain of their obligations under the Implementation Deed and the Scheme.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed poll:

- (a) **Implementation Deed** means the scheme implementation deed dated 11 March 2020 between EG and Oliver's; and
- (b) **Scheme** means the scheme of arrangement between Oliver's and Scheme Shareholders in the form set out in Annex 1, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by EG and Oliver's in writing; and
- (c) words defined in the Scheme which are not separately defined in this deed poll have the same meaning when used in this deed poll.

**1.2 Interpretation**

Sections 1.2 and 1.3 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

**2. NATURE OF THIS DEED POLL**

**2.1 Enforceability**

EG and BidCo acknowledge that this deed poll may be relied upon and enforced by any Scheme Shareholder subject to and in accordance with its terms, even though the Scheme Shareholders are not party to it.

## **2.2 Appointment of Attorney**

EG and BidCo acknowledge that each Scheme Shareholder irrevocably appoints Oliver's and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against EG and BidCo on behalf of that Scheme Shareholder.

## **2.3 Continuing obligations**

This deed poll is irrevocable and, subject to clause 3.1 remains in full force and effect until either:

- (a) EG and BidCo have fully performed their obligations under it; or
- (b) it is terminated under clause 3.2.

## **3. CONDITION PRECEDENT AND TERMINATION**

### **3.1 Condition precedent**

The obligations of EG and BidCo under this deed poll do not become binding on EG and BidCo unless and until the Scheme becomes Effective.

### **3.2 Termination**

The obligations of EG and BidCo under this deed poll to Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Scheme does not become Effective on or before the End Date,

unless EG and Oliver's otherwise agree in writing.

### **3.3 Effect of termination**

If this deed poll is terminated under clause 3.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) EG and BidCo are released from their obligations to further perform this deed poll except those obligations under clause 7.5; and
- (b) each Scheme Shareholder retains the rights they have against EG and BidCo in respect of any breach of this deed poll which occurred before it was terminated.

## **4. CONSIDERATION**

### **4.1 Consideration**

Subject to clause 3, EG and BidCo undertakes in favour of each Scheme Shareholder to:

- (a) provide, or procure the provision of, the Consideration to the Trust Account in accordance with the terms of the Scheme; and
- (b) undertake all other actions attributed to it under the Scheme,

subject to and in accordance with the provisions of the Scheme.

#### 4.2 Manner of payment

The obligations of EG and BidCo to provide the Consideration to Oliver's on behalf of each Scheme Shareholder will be satisfied if, on or before 5.00pm on the date that is one Business Day prior to the Implementation Date, BidCo pays or procures the payment of, in Immediately Available Funds, an amount equal to the Aggregate Consideration into the Trust Account, on trust for the Scheme Shareholders (except that the amount of any interest on the amount deposited will be to EG's account).

### 5. REPRESENTATIONS AND WARRANTIES

EG and BidCo each represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to execute and deliver and to perform its obligations under this deed poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations;
- (c) its obligations under this deed poll are legal, valid and binding obligations enforceable in accordance with their terms; and
- (d) the execution and delivery by it of this deed poll do not and will not conflict with or constitute a default under any provision of:
  - (i) any agreement or instrument to which it is a party;
  - (ii) its constitution; or
  - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound.

### 6. NOTICES

#### 6.1 Manner of giving notice

- (a) Any notice or other communication to be given under this deed poll (**Notice**) must be in writing and must be delivered or sent by post to EG and BidCo as follows:

**EG and BidCo**

Address: Level 39, Northpoint

100 Miller Street

North Sydney NSW 2060

For the attention of: Mike McMenamin (Managing Director) and Ekta Shandil (General Counsel)

with a copy via email to Michael Parshall ([michael.parshall@allenovery.com](mailto:michael.parshall@allenovery.com)) and James Nicholls ([james.nicholls@allenovery.com](mailto:james.nicholls@allenovery.com)) for information purposes only

- (b) Any Notice sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

(c) A Notice must not be given by electronic means.

## **6.2 When notice given**

Any Notice is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another),

but if the Notice would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

## **7. GENERAL**

### **7.1 Amendments**

A provision of this deed poll may not be amended unless the amendment is agreed to by EG and BidCo and:

- (a) if before the First Court Date, the amendment is agreed to by Oliver's; or
- (b) if on or after the First Court Date, the amendment is agreed to by Oliver's and the Court indicates that the amendment would not of itself preclude approval of the Scheme;

in which event EG and BidCo will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the amendment.

### **7.2 Assignment**

- (a) The rights and obligations of EG BidCo and each Scheme Shareholder under this deed poll are personal and cannot be assigned, charged or otherwise dealt with at law or in equity.
- (b) Any purported dealing in contravention of this clause 7.2 is invalid.

### **7.3 Cumulative rights**

The rights, powers and remedies of EG BidCo and Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this deed poll.

### **7.4 Further assurance**

EG and BidCo must, each at its own expense, do all things reasonably required of it to give full force and effect to this deed poll.

### **7.5 Duties and similar charges**

BidCo must pay any stamp, transaction and registration duties and similar charges and any related interest, fees, fines or penalties payable under Australian law in connection with this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll.

## **7.6 Waiver**

- (a) Neither EG nor BidCo may rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on the words or conduct of EG or BidCo as a waiver of any right unless the waiver is in writing and signed by EG and BidCo.

## **8. GOVERNING LAW AND JURISDICTION**

- (a) This deed poll is governed by the law applying in New South Wales.
- (b) The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed poll and EG irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.

**THIS DEED POLL** has been executed and delivered on the date stated at the beginning of this deed poll.

**EXECUTION PAGE**

**EXECUTED AS A DEED** by **EG FUELCO** )  
**(AUSTRALIA) PTY LTD** in accordance with )  
section 127 of the *Corporations Act 2001* (Cth): )

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

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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**EXECUTED AS A DEED** by **EG (RETAIL)** )  
**AUSTRALIA PTY LTD** in accordance with )  
section 127 of the *Corporations Act 2001* (Cth): )

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

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

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**ANNEX 1**  
**SCHEME**



**ANNEX 3**  
**OPTION CANCELLATION DEED**

[insert date] 2020

[insert name and address of Option holder]

Dear [insert Option holder name],

### **Oliver's Real Food Limited ACN 629 495 441 (Oliver's) – Cancellation of Oliver's options**

We are writing to you as the holder of [insert number] options exercisable at \$[insert exercise price] on or before [insert expiry date] (**Options**) to subscribe for Oliver's ordinary shares.

**[On [insert date] Oliver's announced that it had/Oliver's has]** entered into a scheme implementation deed (**Implementation Deed**) with EG FuelCo (Australia) Limited, ACN 627 348 645 in respect of the proposed acquisition by EG (Retail) Australia Limited, ACN 629 793 933 (**EG**) of 100% of the ordinary shares in Oliver's via a scheme of arrangement (**Scheme**) in consideration for \$0.10 for every 1 Share held.

By duly executing and returning this letter, you have agreed to the cancellation of all of your Options, in consideration for the payment by EG [for every option held/\$insert] for every Option held (**Consideration**), on the terms and conditions set out below (**Cancellation**). The Cancellation is subject to the following conditions:

- (a) the Scheme coming into effect pursuant to section 411(10) of the *Corporations Act 2001* (Cth) by the order of the court made under section 411(4)(b) in relation to the Scheme; and
- (b) Oliver's having obtained from ASX Limited a waiver of any requirement under ASX Listing Rule 6.23.2 to obtain shareholder approval for the cancellation of the Option

(together the **Cancellation Conditions**).

We will advise you when the Cancellation Conditions have been satisfied. The Consideration will only be paid under this letter if your Options have not lapsed or otherwise been cancelled before the Cancellation Conditions are satisfied.

By agreeing to cancel your Options, you: (a) agree not to exercise or attempt to exercise your Options at any time from the date you accept this Offer; (b) authorise Oliver's to act as your attorney with all rights necessary to cancel your Options; (c) consent to the cancellation of your Options by Oliver's following the satisfaction or waiver of the Cancellation Conditions; and (d) release and discharge Oliver's and EG from all claims that you may have against Oliver's or EG in respect of your Options except those arising under this letter.

Completion of the cancellation of the Options will take place at the registered office of EG 14 days after the Cancellation Conditions are satisfied or at such other time and place as EG, Oliver's and you agree in writing (**Completion Date**). On the Completion Date: (a) EG will pay you \$[insert] per Option, being the Consideration due to you under this Offer, by cheque in Australian dollars by regular post to your registered address (as specified in Oliver's' register of option holders); and (b) Oliver's will cancel the Options, do all things necessary to give effect to the cancellation and update the register of option holders to show that you are no longer an option holder.

By executing this letter, you represent and warrant to Oliver's and EG that as at the date of your execution of this letter, and as at the time immediately before cancellation of your Options: (a) you are not in breach of any provision or condition of your Options; (b) all of your Options are free from any mortgage, charge,

pledge, lien, encumbrance, assignment, security interest, preferential right, trust arrangement, contractual right of set off and any other security agreement or arrangement in favour of any person; (c) you have full power and capacity to agree to the cancellation of your Options; and (d) on the Completion Date you confirm all certificates or other indicia of ownership of the Options are null and void and you will not rely upon such material.

While this document is expressed as a letter, upon execution by all parties, it will operate as a deed governed by the laws in force in Victoria. This document may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this deed by executing a counterpart. PDF signatures are taken to be valid and binding to the same extent as original signatures.

If you have any questions regarding this letter, we recommend you consult your financial, legal or other professional adviser.

Yours sincerely,

**Nicholas Dower**  
Chairman  
**Oliver's Real Food Limited**

**Mike McMenamin**  
Chief Executive Officer  
**EG (Retail) Australia Limited**

**Executed as a deed**

**Executed as a Deed by Oliver’s Real Food Limited ACN 629 495 441** in accordance with section 127 of the *Corporations Act 2001 (Cth)*

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Print full name of Director

\_\_\_\_\_  
Print full name of Director/Secretary

**Executed as a Deed by EG (Retail) Australia Limited, ACN 629 793 933** in accordance with section 127 of the *Corporations Act 2001 (Cth)*

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Print full name of Director

\_\_\_\_\_  
Print full name of Director/Secretary

***Optionholder - individual***

**Executed as a Deed** )  
by **[insert Option holder name]** )

.....  
**[insert Option holder name]**  
.....  
Date:

.....  
Signature of witness

.....  
Name of witness (print)

***Optionholder - company***

**Executed as a Deed by [insert Option holder name]** in accordance with section 127 of the *Corporations Act 2001 (Cth)*

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Print full name of Director

\_\_\_\_\_  
Print full name of Director/Secretary

**ANNEX 4**  
**OLIVER'S ANNOUNCEMENT**

**11th March 2020**  
**ASX Announcement**



**PO Box 3678**  
**TUGGERAH NSW**  
**(02) 4353 8055**

## **Oliver's enters into Scheme Implementation Deed with EG Group**

Oliver's Real Food Limited today announces that it has entered into a Scheme Implementation Deed ("SID") with EG FuelCo (Australia) Limited ("EG Group"), under which it is proposed that EG Group will acquire 100% of the issued share capital of Oliver's by way of scheme of arrangement (the "Scheme").

If the Scheme is implemented, Oliver's shareholders will receive \$0.10 cash per Oliver's share (the "Cash Amount").

The Cash Amount values Oliver's diluted equity at approximately \$27 million and represents a:

- 53.8% premium to the closing price prior to receipt of the proposal from EG Group (6 March 2020) of \$0.0653;
- 35.1% premium to the undisturbed 1-month volume weighted average price (VWAP<sup>1</sup>) of \$0.0743;
- 29.9% premium to the undisturbed 3-month VWAP of \$0.0773; and
- 51.5% premium to the undisturbed 6-month VWAP of \$0.0663.

Oliver's board of directors unanimously recommend that Oliver's shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Oliver's shareholders.

Each Director of Oliver's intends to vote all the Oliver's shares held or controlled by him or her in favour of the Scheme, subject to the same qualifications. In addition, The Hauraki Trustee Company, Twenty Second Sepelda Pty Ltd and Niche Group PL as Trustee for The Future Trust, companies associated with Jason Gunn, Steven Metter and Nicholas Dower respectively have granted EG Group call options to acquire up to 19.9% of the Oliver's shares in aggregate at the same \$0.10 per share Cash Amount as provided under the Scheme.

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<sup>1</sup> (VWAP) Volume weighted average price based on cumulative trading volume during the period leading up to and including 6 March 2020, being the trading day prior to receipt of the proposal from EG Group

Oliver's Chairman, Nicholas Dower, said that the Board had reached its unanimous recommendation after extensive discussions and negotiations with EG Group in relation to its proposal, and consideration of our staff, our suppliers, our customers and ultimately our shareholders best interests.

This offer represents a greater certainty for our team members and an enhanced career path, and for our suppliers and supporters an enormous opportunity for quick growth.

For our shareholders this represents a certain improvement in excess of \$22 million in the value of their investment since the same time last year and removes all future risk.

"EG Group's proposal represents a significant premium to Oliver's recent trading levels and represents an attractive value outcome for shareholders," said Mr Dower.

Zuber Issa, EG Group Co-Founder and Co-CEO announced "EG delivers innovative food and convenience offers to customers internationally and we are committed to bringing market leading offers to our Australian customers. In Oliver's we see a concept that meets a global trend towards healthy and sustainable eating."

Mike McMenamin, EG Group Australia CEO expressed: "Oliver's has developed a strong following in Australia, and has been very well received by our customers in trials at a number of our stores. This acquisition presents a great opportunity for us to enter the Australian restaurant market and the potential to enhance our convenience offer across our 500+ store network. We look forward to the Oliver's team joining the EG Australia family."

Jason Gunn, Oliver's Founder, Director & CEO said, "This transaction is a huge positive for our customers, our dedicated team, our suppliers and our shareholders. We are looking forward to working with the EG Group for this next phase of the business."

#### ***Details of the Scheme Implementation Deed***

The implementation of the Scheme is subject to a number of terms and conditions including Oliver's shareholder and Court approval, no material adverse change, no material transaction or prescribed occurrences, confirmation of IP, receipt of option cancellation deeds, change in control consents and net debt not exceeding \$800,000.

The SID contains customary exclusivity provisions including no shop and no talk restrictions, a notification obligation and a matching right, subject to Oliver's Directors' fiduciary obligations.

The SID also details circumstances under which a break fee may be payable to EG Group, or a reverse break fee payable to Oliver's.

A copy of the executed SID with its attachments accompanies this announcement.

EG Group confirms that the Cash Amount is its best and final price in respect of the Scheme in the absence of any competing proposal (including for the shares in Oliver's or any supply or licensing arrangement with a third party), any material business update or any

circumstances which would breach or trigger a condition, warranty or undertaking in the attached SID.

### ***Indicative Timetable and Next Steps***

Oliver's shareholders do not need to take any action at the present time.

An Explanatory Booklet containing among other things information relating to the Scheme, reasons for the Directors' unanimous recommendation and details of the Scheme meeting is expected to be sent to shareholders by the end of April 2020.

Shareholders will be given the opportunity to vote on the Scheme at a meeting which is expected to be held in early June 2020. Subject to shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in early July 2020.

For and behalf of the board

**Nicholas Dower** | Non-Executive Director and Chairman | [Nick.dower@oliversrealfood.com.au](mailto:Nick.dower@oliversrealfood.com.au)

For further information please contact:

**Jason Gunn** | Founder and CEO | [Jason.gunn@oliversrealfood.com.au](mailto:Jason.gunn@oliversrealfood.com.au)

**Nicholas Dower** | Non-Executive Director and Chairman | [Nick.dower@oliversrealfood.com.au](mailto:Nick.dower@oliversrealfood.com.au)

### **About Oliver's Real Food Limited (ASX:OLI)**

Oliver's Real Food Limited (**Oliver's**) listed on the ASX on 21 June 2017. Over its 15-year operating history, Oliver's has established a significant market position providing a healthy fast food alternative for travellers on Australia's major arterial highways. Oliver's Real Food is considered to be the world's first "certified organic fast food chain" and provides its customers with premium quality, "real" food that is fresh, natural, & free from additives and preservatives, 7 days a week.

Oliver's is a conscious business that understands, and is committed to, the interdependency of "all stakeholders" including our, customers, investors, team members, suppliers, the environment, and the communities in which we operate. [www.oliversrealfood.com.au](http://www.oliversrealfood.com.au)