

DRAFT

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by **Woolworths Group Limited** and **PFD Food Services Pty Limited**

Contents

1. Person giving the Undertaking	1
2. Background	1
3. Commencement and duration of this Undertaking	2
4. Cessation of Ongoing Obligations.....	2
5. Undertakings by Woolworths.....	3
6. Undertakings by PFD	3
7. Further undertaking by PFD - Charter.....	4
8. Independent Audit	5
9. Notification of key dates and ACCC requests for information.....	9
10. Disclosure of this Undertaking	10
11. Obligation to procure	10
12. No Derogation.....	11
13. Change of Control	11
14. Costs	11
15. Notices	11
16. Defined terms and interpretation	12
Schedule 1 – Dictionary and interpretation	15
Confidential Schedule 1A – Confidential Dictionary.....	19
Confidential Schedule 2 – PFD Board and Governance Structure.....	20
Confidential Schedule 3 – Confidentiality.....	23
Schedule 4 – PFD Charter	25
Schedule 5 – Approved Independent Auditor.....	26

1. Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Woolworths Group Limited (**Woolworths**) and PFD Food Services Pty Limited (**PFD**).

2. Background

The parties to the proposed transaction

- 2.1 Woolworths is an ASX-listed Australian and New Zealand retailer. It operates several businesses including an Australian retail supermarkets business (**Woolworths Supermarkets**).
- 2.2 PFD is a privately owned wholesale food services distributor in Australia.

The Proposed Transaction

- 2.3 Woolworths proposes to acquire 65% of the shares in PFD, and freehold properties used in the PFD business. PFD and Woolworths will form a partnership for 3 years or more, in which PFD will be managed independently of Woolworths, by its existing management team.
- 2.4 Woolworths also proposes to acquire a call option, and PFD will acquire put options (together the **Put/Call Options**), so as to call for, or to put to Woolworths (respectively), the remaining 35% of PFD's shares, each of which may be exercised after a period of three (3) years, subject to specified exceptions (the **Partnership Period**).
- 2.5 Completion of the transactions in paragraphs 2.3 and 2.4 (together the **Proposed Transaction**) is conditional on clearance from the ACCC.

The ACCC's review

- 2.6 On 23 September 2020, the ACCC commenced its public review of the Proposed Transaction.
- 2.7 The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Transaction, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the *Competition and Consumer Act 2010* (Cth) (**Act**).

The ACCC's competition concerns

- 2.8 On 17 December 2020, the ACCC published a Statement of Issues in relation to the proposed transaction. **[ACCC to draft per usual practice]**

The Undertaking remedy

- 2.9 Woolworths and PFD have put extensive submissions and evidence to the ACCC that the Proposed Transaction will not, nor be likely to have the effect of substantially lessening competition in any market. However, to further address the ACCC's concerns referred to in clause 2.8 above, Woolworths and PFD have offered this Undertaking pursuant to section 87B of the Act.

- 2.10 The objective of this Undertaking is to address the ACCC's concerns as set out above that may otherwise arise as a consequence of the Proposed Transaction. The Undertaking aims to achieve this objective by placing obligations on Woolworths and PFD to:
- (a) implement and maintain a separate Board and governance structure for PFD throughout their partnership;
 - (b) ensure that, throughout their partnership, PFD:
 - (i) will have no access to the trading terms on which Woolworths Supermarkets buys from any Supplier;
 - (ii) will retain and manage its own independent trading terms with Suppliers to its business, separately from Woolworths Supermarkets;
 - (iii) will not disclose to Woolworths Supermarkets information about its dealings with certain customers of PFD which may be competitors of Woolworths Supermarkets as well as its dealings with suppliers to PFD; and
 - (c) provide for the effective oversight of Woolworths' and PFD's compliance with this Undertaking.
- 2.11 In addition, PFD will undertake to implement and comply with a published Charter to apply to its dealings with Suppliers.

3. Commencement and duration of this Undertaking

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Woolworths and PFD; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).
- 3.2 Subject to clause 4, this Undertaking shall remain in effect for a period of five (5) years from the Completion Date (the **Term**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1 Woolworths or PFD may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4 Unless and until this Undertaking is withdrawn in accordance with clause 4.1, this clause and clauses 4.2, 4.3, 7, 8, 9, 11, 12 and 14 survive completion of the obligations in clauses 5, 6 and 7.

5. Undertakings by Woolworths

PFD to remain separate from Woolworths

- 5.1 Woolworths must ensure that, from the Completion Date for the Partnership Period, the Board and governance structure of PFD will be and remain as set out in Confidential Schedule 2 to this Undertaking.

Ring fencing of PFD customer confidential information

- 5.2 During the Partnership Period, Woolworths must implement, maintain and comply with the obligations and protocols set out in Confidential Schedule 3 to this Undertaking to prevent Woolworths from accessing the terms of PFD's trading arrangements with Specified Counterparties.

Ring fencing of Supplier trading terms

- 5.3 During the Partnership Period, Woolworths must not disclose to PFD any trading terms between Woolworths Supermarkets and any Supplier to Woolworths Supermarkets, without the prior written consent of the Supplier.
- 5.4 During the Partnership Period, Woolworths must ensure that PFD maintains IT and data systems for PFD's Supplier trading terms information, which are separate from the IT and data systems used by Woolworths in relation to its Woolworths Supermarkets business.

Training

- 5.5 Woolworths must implement annual training for relevant Woolworths personnel regarding the obligations on Woolworths set out in this clause 5.
- 5.6 During the Partnership Period, Woolworths must implement annual refresher training for Woolworths Supermarkets' buying personnel regarding Woolworths obligations under clause 25 of the *Food and Grocery Code of Conduct*.

6. Undertakings by PFD

PFD to remain separate from Woolworths

- 6.1 PFD must ensure that, from the Completion Date for the Partnership Period, it will implement a Board and governance structure that is separate from Woolworths as set out in Confidential Schedule 2 to this Undertaking, including as to:

- (a) Board composition and Smith Family representation;
- (b) independent management and the appointment of Kerry Smith as the initial chief executive officer; and
- (c) decision-making and unanimous Shareholder approval of material decisions.

Ring fencing of PFD customer confidential information

- 6.2 During the Partnership Period, PFD must comply with Confidential Schedule 3 to this Undertaking and must not disclose to Woolworths Supermarkets the terms of PFD's trading arrangements with Specified Counterparties.

Ring fencing of Supplier trading terms

- 6.3 During the Partnership Period, PFD must not disclose to Woolworths Supermarkets any trading terms between PFD and any Supplier to PFD, without the prior written consent of the Supplier.
- 6.4 During the Partnership Period, PFD must maintain IT and data systems for PFD's Supplier trading terms information which are separate from the IT and data systems used by Woolworths in relation to its Woolworths Supermarkets business.

Training

- 6.5 PFD must implement annual training for PFD personnel whose principal responsibilities include negotiations with Specified Counterparties and Suppliers regarding the obligations on PFD set out in clause 6.1 and 6.2.

7. Further undertaking by PFD - Charter

PFD to implement, comply with and maintain its Charter

- 7.1 PFD must:
- (a) within one month of the Completion Date, implement and publish on its website, so as to be accessible by all of its Suppliers, the Charter set out in Schedule 4; and
 - (b) for a period of five (5) years from the Completion Date (the **Charter Term**):
 - (i) maintain and comply with the terms of the Charter; and
 - (ii) not amend, revoke or cease to comply with the terms of the Charter without the written approval of the ACCC.

Training

- 7.2 PFD must implement annual training for PFD personnel whose principal responsibilities include negotiations with Suppliers regarding the obligations on PFD set out in this clause 7, during the Charter Term.

8. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 8.1 Woolworths must appoint, and continue to retain an Approved Independent Auditor to audit and report upon Woolworths' and PFD's compliance with:
- (a) clauses 5, 6 and 7.2 of this Undertaking throughout the Partnership Period; and
 - (b) clause 7.1 throughout the Charter Term.

Process for approving a Proposed Independent Auditor

- 8.2 On or before the Completion Date, Woolworths must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 5 to this Undertaking (Proposed Independent Auditor Notice), including draft terms of appointment and a draft audit plan.
- 8.3 If clauses 8.17, 8.18 or 8.19 apply, Woolworths must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 8.5 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Woolworths and PFD;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 8.6 After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Woolworths must, by the date specified in that notice:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

8.7 If the Approved Independent Auditor has not been appointed:

- (a) by the date specified in the notice issued by the ACCC referred to in clause 8.6;
- (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 8.17, 8.18, or 8.19; or
- (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 8.2;

then clause 8.8 applies.

8.8 If clause 8.7 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct Woolworths to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

8.9 Woolworths and PFD must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from Woolworths and PFD, apart from appointment to the role of Approved Independent Auditor, including not to form any relationship of the types described in paragraph 2(c) of Schedule 5 to this Undertaking with Woolworths or PFD for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 8.12; and
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
- (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

8.10 Woolworths and PFD must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (b) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

8.11 The Approved Independent Auditor must keep all information and documents provided to it by either Woolworths or PFD strictly confidential, subject to any direction by the ACCC under clause 9.4 of this Undertaking.

Compliance Audit

8.12 The Approved Independent Auditor must conduct an audit and prepare a detailed report (Audit Report) that includes:

- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
- (b) a full audit of Woolworths' and PFD's compliance with clauses 5, 6 and 7 of this Undertaking;
- (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in clauses 5, 6 or 7 of this Undertaking;
- (d) all of the reasons for the conclusions reached in the Audit Report;
- (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Woolworths' and PFD's processes or reporting systems in relation to compliance with clauses 5, 6 or 7 of this Undertaking; and
 - (iv) Woolworths' and PFD's compliance with clauses 5, 6 or 7 of this Undertaking; and
- (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

8.13 The Approved Independent Auditor is to provide an Audit Report to the ACCC and Woolworths and PFD at the following times:

- (a) within two months after the appointment of the Approved Independent Auditor (or such other period as agreed in writing with the ACCC), at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved

Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);

- (b) annually during the Partnership Period in respect of the obligations contained in clauses 5, 6 and 7.2 and during the Charter Term in respect of the obligations contained in clause 7.1, from the date of the Establishment Audit.

8.14 Each of Woolworths and PFD must implement any recommendations reasonably made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 20 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

8.15 Woolworths and PFD must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Woolworths' and PFD's obligations in relation to the Approved Independent Auditor

8.16 Without limiting its obligations in this Undertaking, Woolworths and PFD must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund (as agreed between them) the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage are not reasonably incurred or arise out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor provided that such expenses are notified to Woolworths and PFD in advance; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Woolworths and PFD personnel respectively, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 8;
 - (ii) taking all steps necessary to procure information or documents that the Approved Independent Auditor

reasonably considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC.

Resignation, revocation or termination of the Approved Independent Auditor

- 8.17 Woolworths must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 8.18 The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.19 The ACCC may approve any proposal by, or alternatively may direct, Woolworths and PFD to terminate the appointment of the Approved Independent Auditor if, in the ACCC's view, the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Notification of key dates and ACCC requests for information

- 9.1 Woolworths must notify the ACCC and each Approved Independent Auditor in writing of the anticipated date of the Completion Date, prior to that date.
- 9.2 The ACCC may direct Woolworths and/or PFD in respect of its compliance with this Undertaking to, and Woolworths and PFD must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Woolworths' or PFD's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 9.3 Any direction made by the ACCC under clause 9.2 will be notified to Woolworths and PFD, in accordance with clause 15.2.
- 9.4 In respect of Woolworths' and PFD's compliance with this Undertaking or an Approved Independent Auditor's compliance with its Approved Terms of Appointment, the ACCC may request any Approved Independent Auditor to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

- 9.5 Each of Woolworths and PFD will use its best endeavours to ensure that an Approved Independent Auditor complies with any request from the ACCC in accordance with clause 9.4.
- 9.6 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 9 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 9.7 The ACCC may in its discretion to be exercised in good faith:
- (a) advise any Approved Independent Auditor of any request made by it under this clause 9; and/or
 - (b) provide copies to any Approved Independent Auditor of any information furnished, documents and material produced or information given to it under this clause 9.
- 9.8 Nothing in this clause 9 requires the provision of information or documents in respect of which Woolworths or PFD has a claim of legal professional or other privilege.

10. Disclosure of this Undertaking

- 10.1 Woolworths and PFD each acknowledges that the ACCC may:
- (a) make this Undertaking publicly available, other than Confidential Schedule 1A, Schedule 2 and Schedule 3, which the ACCC may disclose in accordance with clause 10.2;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 10.2 Nothing in the confidential parts of this Undertaking prevents the ACCC from:
- (a) disclosing such information as is:
 - (i) required by law;
 - (ii) permitted by section 155AAA of the Act; or
 - (iii) necessary for the purposes of enforcement action under section 87B of the Act; or
 - (b) using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

11. Obligation to procure

- 11.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Woolworths or PFD to take or refrain from taking some action, Woolworths or PFD respectively will procure that Related Body Corporate to take or refrain from taking that action.

12. No Derogation

- 12.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Woolworths or PFD of any term of this Undertaking.
- 12.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Woolworths or PFD does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

13. Change of Control

- 13.1 In the event that a Change of Control is reasonably expected to occur, Woolworths or PFD must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Woolworths or PFD pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Woolworths or PFD in writing that a section 87B undertaking under this clause is not required.

14. Costs

- 14.1 Each of Woolworths and PFD must pay all of its own costs incurred in relation to this Undertaking.

15. Notices

Giving Notices

- 15.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:
- Email address: mergers@accc.gov.au
- Attention: Executive General Manager
Merger and Authorisation Review Division
- With a copy sent to:** mergersru@accc.gov.au
- Attention: Director, Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division
- 15.2 Any notice or communication to Woolworths pursuant to this Undertaking must be sent to:
- Name: Chief Legal Officer, Woolworths Group Limited
- Email Address: legalnotices@woolworths.com.au

15.3 Any notice or communication to PFD pursuant to this Undertaking must be sent to:

Name:

Email Address:

15.4 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

15.5 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

15.6 Woolworths and PFD must notify the ACCC of a change to its contact details within three Business Days.

15.7 Any notice or communication will be sent to the most recently advised contact details and subject to clauses 15.3 and 15.5, will be taken to be received.

16. Defined terms and interpretation

Definitions in the Dictionary and the Confidential Dictionary

16.1 A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary;
- (b) which is defined in the Confidential Dictionary in Schedule 2 or 3 (Confidential Dictionary), has the meaning given to it in the Confidential Dictionary; or
- (c) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

16.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by **Woolworths Group Limited** by its authorised signatory:

Signature of authorised signatory		
Name of authorised signatory (print)		
Date		

Executed by **PFD Food Services Pty Limited** by its authorised signatory:

Signature of authorised signatory		
Name of authorised signatory (print)		
Date		

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with clauses 5, 6 and 7 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

Arbiter means the person appointed by Woolworths Supermarkets as Code Arbiter in accordance with the requirements of the Code, from time to time.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 8.12 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Victoria.

Charter means the charter in Schedule 4 of this Undertaking.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Woolworths or PFD to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable Woolworths or PFD to continue to comply with this Undertaking in its entirety.

Code means the *Food and Grocery Code of Conduct* instrument made under section 51AE of the Act, as set out in Schedule 1 to the *Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015* (as amended).

Commencement Date means the date described in clause 3.1 of this Undertaking.

Completion Date means the date on which the Proposed Transaction is completed.

Constitution means the constitution of PFD as amended by the Board from time to time.

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

Dictionary means this dictionary in this Part 1 of Schedule 1.

Establishment Audit has the meaning given to it in clause 8.13(a) of this Undertaking.

Holding Company has the meaning given by section 9 of the Corporations Act.

Partnership Period means the period from the Completion Date ending at the completion of the sale of all of the shares in PFD held by Smith Family to Woolworths, pursuant to an exercise of the Call Option by Woolworths, or one or more of the Put Options by Smith Family.

PFD means the entity referred to in clause 1.1 of this Undertaking.

Proposed Independent Auditor means a person named in Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 8.1 of this Undertaking.

Proposed Transaction is defined in clause 2.5 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Put Option Commencement Date means three (3) years from the Completion Date.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Share means a fully paid ordinary share in the capital of PFD having the rights and restrictions attaching to it set out in the Constitution.

Shareholders Agreement means the shareholders agreement to be entered into by Woolworths, PFD and the Smith Family on the Completion Date.

Smith Family means Joan Simpson Smith or Richard Smith as initial shareholders of PFD, and any of their respective Permitted Transferees that become registered holders of Shares from time to time.

Specified Counterparties has the meaning set out in Confidential Schedule 3.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Supplier means a supplier of food products.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Woolworths means the entity referred to in clause 1.1 of this Undertaking.

Woolworths Supermarkets means the Australian retail supermarket business operated by Woolworths referred to in clause 2.1 of this Undertaking.

2. Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;

- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;

- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, each of Woolworths and PFD will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 1A – Confidential Dictionary

Please note - the full proposed clauses in Confidential Schedule 1A have been redacted for confidentiality reasons. Below is a summary of the obligations proposed in this Confidential Schedule 1A.

The Call Option Commencement Date is the third anniversary of the Completion Date.

The Call Option Commencement Date could be triggered to occur earlier than the third anniversary of the Completion Date, subject to circumstances that are dependent on PFD's CEO. For example, the Call Option Commencement Date occurs if the CEO of PFD ceases to be involved in the day to day management of PFD on a full time basis, due to a reason listed in this Confidential Schedule 1A.

Put/Call Options means the options briefly described in paragraph 2.4 of this Undertaking, being:

- (a) Woolworths' call option to acquire; and
- (b) PFD's put option to require Woolworths to acquire,

the remaining 35% of Shares, after the Put Option Commencement Date or the Call Option Commencement Date.

The Put/Call Options can be exercised before the Put Option Commencement Date or the Call Option Commencement Date if certain default events occur that are referred to in this Confidential Schedule 1A.

Summary of Confidential Schedule 2 – PFD Board and Governance Structure

Please note - the full proposed clauses in Confidential Schedule 2 have been redacted for confidentiality reasons. Below is a summary of the obligations proposed in this Confidential Schedule 2.

The PFD Board

Board composition and quorum

1. The Board will consist of up to 5 Directors. 3 Directors will be appointed by Woolworths. Depending on the Equity Proportions held by the Smith Family, the Smith Family will have the ability to appoint up to two Directors.
2. For a meeting of the Board to proceed there must be in attendance at all times during the meeting:
 - (a) a majority of directors;
 - (b) at least one person who is a director appointed by Woolworths; and
 - (c) at least one person who is a director appointed by Smith Family.

Board decisions

3. A resolution of the Directors may only be carried if it is passed by a majority of the votes cast by Directors entitled to vote on that resolution.

Recusal from voting in relation to Commercially Sensitive Information

4. Woolworths or any director or secretary of a PFD Group Company appointed or nominated by Woolworths can vote on a Deemed Conflict Decision, if they are unanimously approved to do so by the other Directors.

Management of PFD

Overall Management vested in Board of PFD

5. To the extent permitted by law, the overall direction and management of PFD is vested in the Board.
6. The role of the Board is:
 - (a) to determine the strategic plans for the Business and ensure that those plans are included in the approved Business Plan and Budget;
 - (b) to monitor the performance of the Business in accordance with the Shareholders Agreement and the Business Plan and Budget; and
 - (c) to make decisions which are not part of the day to day management of PFD.

Chief executive officer

7. The Shareholders who hold voting Shares have the right to appoint, remove and replace the chief executive officer of PFD from time to time.
8. The chief executive officer reports to, and is subject to any lawful direction or delegation from, the Board.

9. The chief executive officer performs any duties that the Board may from time to time lawfully direct including:
- (a) managing the Business day to day in accordance with the Business Plan and Budget; and
 - (b) managing the selection and appointment of all employees of PFD as necessary for the proper conduct of the Business.
10. The initial chief executive officer is Kerry Smith of PFD.

Meetings and resolutions of Shareholders

Quorum for Shareholders' meetings

11. For a meeting of the Shareholders to proceed there must be Shareholders present in person or by proxy, representative or attorney representing:
- (a) Woolworths; and
 - (b) Smith Family.
12. If a meeting is adjourned on 2 successive occasions due to a lack of quorum, then those present at the reconvened meeting will be taken to be the quorum, provided that at least one proxy, representative or attorney representing Woolworths is present.

Shareholders' voting rights

13. Each Shareholder is entitled to the following number of votes on a resolution of the Shareholders:
- (a) on a show of hands at a meeting of the Shareholders, each Shareholder is entitled to one vote. For avoidance of doubt, the Smith Family is entitled to only one vote (in total); and
 - (b) on a poll at a meeting of the Shareholders, each Shareholder is entitled to one vote for each voting Share held by that Shareholder.

Shareholders' decisions

14. A resolution of the Shareholders may only be carried:
- (a) if it is passed in accordance with the Corporations Act; and
 - (b) in the case of a resolution approving an action which requires unanimous approval, if it is also passed by all Shareholders in accordance with clause [10] or by all Shareholders signing a written document to that effect.

Actions which require unanimous Shareholders' approval

15. Certain actions require unanimous Shareholder approval.

Additional definitions in Confidential Schedule 2 (and Confidential Schedule 3) to the Undertaking

Board means the board of directors of PFD as constituted from time to time.

Business means the business of distributing food and beverage and ancillary products (such as takeaway cups, containers and disposable cutlery) carried on by PFD or a Subsidiary of PFD as varied from time to time.

Business Plan and Budget means the business plan and budget for PFD or a Subsidiary of PFD and any updated business plan and budget of PFD or a Subsidiary of PFD from time to time.

Confidentiality Protocols means the protocols in Confidential Schedule 3 to this Undertaking.

Director means a director of PFD from time to time.

Interested Person means Woolworths or any of its Related Entities (or any of their respective employees or contractors), or any director or secretary of a PFD Group Company appointed or nominated by Woolworths.

Permitted Transferee means:

- (a) in respect of Woolworths, a wholly owned Subsidiary of Woolworths; and
- (b) in respect of Smith Family, key family members or entities controlled by those family members:

PFD Group Company means any of PFD and its subsidiaries.

Shareholders means each of Woolworths and the Smith Family and each other person that becomes a registered holder of Shares from time to time.

Summary of Confidential Schedule 3 – Confidentiality

Please note - the full proposed clauses in Confidential Schedule 3 have been redacted for confidentiality reasons. Below is a summary of the obligations proposed in this Confidential Schedule 3.

Confidentiality - Obligations to Shareholders

1. Each Shareholder must only use any Confidential Information for the purposes of the Business, to make decisions regarding its investment in PFD or to exercise its rights or perform its obligations under the Shareholders Agreement and, in particular, must not use any Confidential Information for its own commercial purposes or to the current or potential competitive disadvantage of PFD.

Confidentiality Protocols

2. The confidentiality protocols in clauses 2 to 7 in this Confidential Schedule 3 set out confidentiality obligations which apply to all Shareholders, PFD and PFD Group Companies. In summary, the key obligations that are redacted for confidentiality reasons include obligations to:
 - (a) preclude Woolworths from receiving Commercially Sensitive Information unless the other shareholder (the Smith Family) in PFD agrees, subject to clauses 3, 4 and 5 of this Confidential Schedule 3; and
 - (b) preclude Woolworths from using Commercially Sensitive Information, in connection with Woolworths and certain third parties.

Depending on the identity of the third party, the definition of Commercially Sensitive Information within this Confidential Schedule 3 differs, and may be broader or narrower.

3. Interested Persons who are directors or secretaries of PFD or any PFD Group Company are not entitled to receive Commercially Sensitive Information.
4. An Interested Person who works in or has management responsibility in relation to the Woolworths Supermarkets business (including small format 'Metro' branded stores) operated by the Woolworths Group (comprising of Woolworths and its Subsidiaries but excluding PFD and any PFD Group Company) is not entitled to and may not receive any Commercially Sensitive Information, unless the Smith Family determines otherwise.
5. An Interested Person who works in or has management responsibility in relation to the Woolworths Supermarkets business (including small format 'Metro' branded stores) operated by the Woolworths Group (comprising of Woolworths and its Subsidiaries but excluding PFD and any PFD Group Company) is not entitled to and may not receive any Confidential Information that constitutes trading terms or details of any agreement, arrangement, proposal or strategy relating to the supply of products by a Supplier to PFD.
6. Woolworths will not seek to appoint an Interested Person who works in or has management responsibility in relation to the Woolworths Supermarkets business (including small format 'Metro' branded stores) operated by the Woolworths Group (comprising of Woolworths and its Subsidiaries but excluding PFD and any PFD Group Company) to the Board of PFD.
7. If an Interested Person (or any of its Representatives) provides any services on behalf of PFD or any PFD Group Company, it must implement (or ensure the implementation of) appropriate firewalls and other measures, including staff training, to:
 - (a) ensure that it will in practice be able to comply with these confidentiality protocols; and

- (b) demonstrate that compliance at any time to the reasonable satisfaction of the Board.

Additional Definitions in this Confidential Schedule 3 to the Undertaking

Confidential Information means:

- (a) all information relating to the operations or affairs of any PFD Group Company including all financial or accounting information, all customer names and lists, terms and conditions of supply, sales records, marketing analysis, research and reports and other marketing information and all trade secrets, know how, operating procedures and technical information;

other than Excluded Information.

Excluded Information means information that:

- (a) is in or comes into the public domain, or was already known to a party other than as a result of breach of an obligation of confidence;
- (b) was made available to a party by a person with no connection to any PFD Group Company or their Representatives and who is not under any obligation of confidence in respect of that information.

Interested Person means Woolworths or any of its Related Entities (or any of their respective employees or contractors), or any director or secretary of PFD or a PFD Group Company appointed or nominated by Woolworths.

Related Entity means:

- (a) in respect of Woolworths,
 - (i) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
 - (ii) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (i), directly or indirectly:
 - A. controls the right to appoint the trustee;
 - B. is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - C. holds or is in a position to control the disposal of more than one half of the issued units of the trust; and
- (b) in respect of the Smith Family, any person who would qualify as a Permitted Transferee.

Representative means, in relation to PFD, Woolworths and the Smith Family, all officers, employees, professional advisers, agents and attorneys of the party and its Related Entities.

Share means a fully paid share of any class in the capital of PFD having the rights and restrictions attaching to it set out in the constitution of PFD.

Share Sale Agreement means the "Share Sale Agreement" between Woolworths (as buyer) and Joan Simpson Smith and Richard Smith (as sellers) on 19 August 2020 in respect of certain Shares.

Schedule 4 – PFD Charter

It is a core value of PFD that we treat our suppliers fairly. Maintaining long-term, collaborative and sustainable relationships with our suppliers is essential to delivering the best outcomes for our customers.

This Charter sets out some of PFD's most important basic commitments in our dealings with suppliers.

1. **Dealing with suppliers lawfully and in good faith**

1.1 PFD will deal with its suppliers lawfully and in good faith.

1.2 For PFD, good faith means:

- (a) we act honestly;
- (b) we cooperate with suppliers to achieve our mutual objectives;
- (c) we do not act arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
- (d) we don't hold a grudge for past complaints or disputes;
- (e) we never act with duress; and
- (f) we recognise the importance of certainty regarding the risks and costs of trading, particularly in relation to production, delivery and payment.

1.3 PFD will not enter into a supply agreement that contains a provision that limits or excludes an obligation to act in good faith, and, if it does, the provision has no effect.

1.4 As with all good trading relationships, PFD also expects that suppliers, in dealing with PFD, will also act lawfully and in good faith.

2. **Confidentiality**

2.1 PFD respects supplier confidential information. Where suppliers disclose confidential information about their products to PFD, including confidential information about product development or pricing, PFD will:

- (a) not use that information other than for a purpose for which it was disclosed; and
- (b) only disclose that confidential information or make it available to PFD's team members who need to have that information in connection with that purpose.

3. **Retrospective variation of agreement**

PFD will not vary its agreements with suppliers with retrospective effect.

4. **Amendment of this Charter**

This Charter reflects some of PFD's core values. We do not expect them to change. However, this Charter may need to be updated in the future. If PFD wishes to update or change this Charter, it will notify all of its suppliers well in advance of doing so.

* Our **suppliers** include manufacturers, producers, and other suppliers of food products.

Schedule 5 – Approved Independent Auditor

This form sets out the information required by the ACCC in relation to the proposed appointment of the Independent Auditor. Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Approved Independent Auditor form, along with the additional requested information is to be provided to the ACCC with the subject line "*Proposed Independent Auditor Form – Woolworths/PFD s87B Undertaking*" to the below email addresses:

(a) mergers@accc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

(b) **With a copy sent to:**
mergersru@accc.gov.au
Attention: Director
Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a Proposed Independent Auditor (i.e. the relevant Approved Independent Auditor).

1. Proposed Approved Independent Auditor Details:
 - (a) the name of the Proposed Approved Independent Auditor; and
 - (b) the name of the proposed Approved Independent Auditor's employer and contact details including:
 - (i) address;
 - (ii) contact name;
 - (iii) telephone number; and
 - (iv) other contact details.
2. A submission containing the following information:
 - (a) details of the Approved Independent Auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking;
 - (b) the names of the owner/s and/or the directors (delete any that do not apply) of the Approved Independent Auditor's employer;
 - (c) details of any of the following types of relationships between Woolworths or PFD and the Approved Independent Auditor or the Approved Independent Auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Woolworths/PFD and the Approved Independent Auditor's employer are Associated Entities;

- (ii) Woolworths/PFD is an Entity Connected with the Approved Independent Auditor's employer;
 - (iii) The Approved Independent Auditor's employer is an Entity Connected with Woolworths/PFD;
 - (iv) Woolworths/PFD and the Approved Independent Auditor's employer are Related Entities;
 - (v) Woolworths/PFD and the Approved Independent Auditor's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Woolworths/PFD is a Related Party, Related Entity or Entity Connected with the Approved Independent Auditor;
 - (vii) Woolworths/PFD and the Approved Independent Auditor or the Approved Independent Auditor's employer have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Approved Independent Auditor's employer is a supplier of Woolworths/PFD or has been in the past three years;
 - (ix) Woolworths/PFD is a supplier of the the Approved Independent Auditor's employer or has been in the past three years;
 - (x) any other relationship between Woolworths/PFD and the Approved Independent Auditor or the Approved Independent Auditor's employer that allows one to affect the business decisions of the other; and
- (d) details of any existing or past contractual relationships between the Approved Independent Auditor or the Approved Independent Auditor's employer and the ACCC.
3. A document outlining the terms of appointment for the Proposed Approved Independent Auditor.

Specific Information required for Approved Independent Auditors

The ACCC requires the below information in relation to the relevant Approved Independent Auditor.

Proposed Approved Independent Auditor

A finalised draft audit plan, drafted by the Proposed Approved Independent Auditor and outlining (to the extent possible) the Proposed Approved Independent Auditor's plans in regard to the establishment audit and the Audit Report.