

## MIDWAY LIMITED (ASX: MWY)

14 November 2024

### Midway Limited enters into Scheme Implementation Deed with River Capital

#### Highlights

- Midway Limited (**Midway**) has entered into a binding Scheme Implementation Deed (**SID**) with RCM BidCo Pty Ltd (**BidCo**) an entity owned and controlled by funds managed and advised by River Capital Pty Ltd (together, **River Capital**) for the acquisition of all the shares in Midway by way of scheme of arrangement (**Scheme**).
- If the Scheme becomes effective, Midway shareholders will receive \$1.19 cash per Midway share under the Scheme (**Cash Consideration**) which is inclusive of a partially franked special dividend expected to be paid of \$0.38 per Midway Share<sup>1</sup> (**Special Dividend**). The cash amount payable by River Capital will be reduced by the cash amount of any such Special Dividend. Midway shareholders may also elect to receive their consideration in scrip or a combination of cash and scrip (subject to minimum acceptance thresholds).
- The Cash Consideration represents a 56% premium to the undisturbed closing price of \$0.765 per Midway share on 13 November, being the final trading day prior to Midway's announcement that it had entered into a binding SID with River Capital (**Undisturbed Date**).
- The extent to which the Special Dividend is franked will depend on the availability of franking credits but the Special Dividend is expected to be a partially franked dividend equivalent to the aggregate of a \$0.31 per Midway share fully franked dividend and a \$0.07 per Midway share unfranked dividend<sup>2</sup>.
- The Midway Board unanimously recommends that Midway shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Midway shareholders.
- Subject to the same qualifications, each Midway Director intends to vote all Midway shares held or controlled by them in favour of the Scheme.
- Midway's largest shareholder Chebmont Pty Ltd which holds or controls approximately 23.8% of Midway's issued share capital as at the date of this announcement has confirmed to Midway that it intends to vote all Midway shares held or controlled by them in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to

<sup>1</sup> Subject to determination or declaration by the Midway Board to pay the dividend.

<sup>2</sup> Subject to availability of franking credits and based on the estimated franking balance prior to the second court date for the Scheme.

conclude) that the Scheme is in the best interests of Midway shareholders. Two of Midway's directors – Nils Gunnensen and Tom Gunnensen – are also directors of Chebmont Pty Ltd but do not control, or have a relevant interest in the shares of, Chebmont Pty Ltd.

- Another of Midway's largest shareholders, being Mr Gregory McCormack and associated entities (**McCormack Entities**) who in aggregate hold or control approximately 11.2% of Midway's ordinary shares outstanding as at the date of this announcement, have each entered into a Voting Deed with BidCo in relation to the Scheme. The Voting Deed may be terminated by the McCormack Entities if there is a superior proposal that BidCo fails to match or exceed or if an Independent Expert concludes that the Scheme is not in the best interests of Midway shareholders.<sup>3</sup>
- The Scheme is subject to certain conditions, including no material adverse change, payment of the Special Dividend in full, approval by Midway shareholders at a Scheme meeting, court approval and other customary conditions.
- Midway shareholders do not need to take any action at the present time.

#### **Details of the Scheme Consideration**

- The Cash Consideration implies an equity value for Midway of approximately \$104 million<sup>4</sup> and represents an attractive premium<sup>5</sup> for Midway shareholders of:
  - 56% premium to the last trading price of Midway shares to the Undisturbed Date;
  - 44% premium to the 30-day VWAP of Midway shares to the Undisturbed Date;
  - 39% premium to the 60-day VWAP of Midway shares to the Undisturbed Date; and
  - 41% premium to the 90-day VWAP of Midway shares to the Undisturbed Date.

#### **Special Dividend**

Under the SID, Midway is permitted to pay the Special Dividend on or immediately prior to the implementation of the Scheme<sup>6</sup>. This will provide Midway shareholders who can utilise the benefit of franking credits with an additional expected benefit of approximately \$0.13 per Midway share, representing an implied expected value of approximately \$1.32 per Midway share, subject to their marginal tax rate. The benefit of the franking credits to a Midway shareholder will depend on their individual circumstances. The payment and the amount of the Special Dividend remains at the discretion of the Midway Board.

<sup>3</sup> Each of Chebmont Pty Ltd and the McCormack Entities have separately consented to the inclusion of the statements attributed in this announcement.

<sup>4</sup> Based on total shares outstanding of 87,336,222 multiplied by \$1.19.

<sup>5</sup> 60-day and 90-day VWAP calculated to remove impact of Midway's Special Dividend announced on 29 August 2024.

<sup>6</sup> The extent to which the Special Dividend is franked is subject to the availability of franking credits.

To the extent that the Special Dividend is paid, the Cash Consideration to be received under the Scheme will be reduced by the cash amount of the Special Dividend. There will be no reduction to the Cash Consideration for franking credits attached to the Special Dividend (if any)<sup>7</sup>. The extent to which any Special Dividend is franked is subject to the availability of franking credits.

Midway will provide an update on the Special Dividend in due course.

### **Scrip Alternative**

Under the Scheme, Midway shareholders may instead of receiving the Cash Consideration elect to receive scrip consideration in BidCo's holding company (**Scrip Consideration**) or a mix of cash and scrip, provided that the holders of at least 5% of Midway shares elect to take scrip, and subject to a cap of 49.99%.

Cash Consideration is the default consideration under the Scheme. If the Scheme is implemented, Midway shareholders that do not elect Scrip Consideration will receive all Cash Consideration.

The Scrip Consideration alternative will enable Midway shareholders to retain an interest in the Midway business after the proposed Scheme has been implemented.

The Scrip Consideration alternative comprises unlisted scrip in RCM RollCo Ltd (**RollCo**), an unlisted newly incorporated Australian entity which will indirectly own 100% of the issued capital in Midway if the Scheme is implemented (**RollCo Scrip Alternative**). Midway shareholders that receive fully paid ordinary shares in RollCo will become parties to the RollCo shareholder's deed, the proposed key terms of which are contained in an annexure to the SID.

The RollCo Scrip Alternative will only be available to Midway shareholders if the minimum scrip threshold is satisfied. That is, if elections made would result in Midway shareholders holding, in aggregate, at least 5% of the total issued capital of RollCo as at the implementation date (**Minimum Scrip Threshold**). If the Minimum Scrip Threshold is not satisfied, all Midway shareholders will receive all Cash Consideration. A scale-back mechanism will apply if elections made by eligible Midway shareholders would result in Midway shareholders holding, in aggregate, more than 49.99% of the total issued capital of RollCo on the implementation of the Scheme.

If a Special Dividend is determined and paid, a Midway shareholder who elects to receive Scrip Consideration will also receive the Special Dividend.

### **Midway Board Recommendation**

The Midway Board unanimously recommends that Midway shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Midway shareholders.

Subject to the same qualifications, the Midway Directors, each intend to vote all the Midway shares held or controlled by them in favour of the Scheme.

The Midway Board makes no recommendation in relation to the RollCo Scrip Alternative.

Commenting on the announcement, Midway Chairman Gordon Davis said:

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<sup>7</sup> Subject to a termination right in favour of BidCo if the Special Dividend is not paid in full.

*“The Midway Board has carefully considered River Capital’s proposal and made an evaluation of Midway’s strategic plan as an independent company and the various operational and execution risks inherent in achieving this strategic plan and is unanimous in its recommendation to shareholders. The Midway Board believes the Scheme is an attractive opportunity for Midway shareholders to receive Cash Consideration at a significant premium, or, alternatively, continue the journey as shareholders in RollCo under the control of River Capital.”*

The Midway Board believe this is an attractive offer for Midway shareholders for the following reasons:

- **Significant premium:** the Cash Consideration represents a premium of 56% to Midway’s closing price on the Undisturbed Date;
- **Optionality:** existing Midway shareholders have the option to elect: Cash Consideration, Scrip Consideration or a combination of the Cash Consideration and the Scrip Consideration. This provides significant flexibility and the opportunity for Midway shareholders to continue ownership of Midway under River Capital’s control;
- **Certainty of value:** the Cash Consideration provides Midway shareholders with the option to realise their investment in full for cash at an attractive premium; and
- **Limited conditionality:** the Scheme is not subject to financing or due diligence conditions.

#### **Details of the SID**

Conditions for implementation of the Scheme include various customary conditions, including but not limited to:

- the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Midway shareholders;
- no Material Adverse Change to Midway and no Prescribed Occurrences (each as defined in the SID that is annexed to this announcement);
- all Midway performance rights and options are dealt with in accordance with the SID;
- approval of Midway shareholders and the Court; and
- certain other customary conditions.

The Scheme is also subject to a termination right in favour of BidCo if Midway is unable, or fails, to pay the Special Dividend in full.

River Capital has advised Midway that it will fund the Cash Consideration (as reduced by the payment of the Special Dividend) through equity committed by certain funds managed or advised by River Capital.

Midway will be subject to customary exclusivity obligations, including “no shop”, “no talk”, “no due diligence” together with a “notification” obligation and a “matching right”. The SID also provides for a break fee of up to approximately \$1.5 million to be payable to River Capital, or a reverse break fee of up to up to approximately \$1.5 million to be paid to Midway, in certain circumstances.

A complete copy of the SID (which sets out all conditions precedent to the Scheme, termination rights and other terms relating to the Scheme and its implementation) is attached to this announcement.

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

Midway shareholders do not need to take any action in relation to the Scheme at this stage. A Scheme Booklet, containing information in relation to the Scheme, reasons for the Midway Board recommendation, an Independent Expert's Report and details of the Scheme will also be sent to Midway shareholders in due course.

Shareholders will have the opportunity to vote on the Scheme at a shareholder meeting. It is currently anticipated that implementation of the Scheme will occur in the first quarter of calendar year 2025 (subject to satisfaction or waiver of the relevant conditions).

### **Advisers**

Midway has engaged PricewaterhouseCoopers Securities Ltd as its financial advisor and Nicholson Ryan Lawyers as its legal adviser. River Capital has engaged Ashurst as its legal adviser.

### **Authorised by**

This announcement has been authorised by the Midway Board.

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### **About Midway Limited**

Founded in 1980, Midway Limited is one of Australia's largest woodfibre processors and exporters with a strong and growing plantation and carbon management business. Midway's fibre is used in recyclable paper and packaging, plastic replacement products and coal replacing energy generation in the Asian region. The Company is building a plantation carbon management business to generate carbon abatement and emissions offsets solutions utilising its expertise in the process. Midway has woodchip processing and exporting operations at five major port locations in key forestry areas around Australia including: Bell Bay, Tasmania; Portland and Geelong in Victoria; Brisbane, Queensland; and Melville Island in the Northern Territory's Tiwi Islands. For further information, visit [www.midwaylimited.com.au](http://www.midwaylimited.com.au).

### **About River Capital**

Established in 1996, River Capital Pty Ltd is an Australian fund manager, investing over \$1 billion on behalf of investors, across both listed and unlisted companies.

# Scheme Implementation Deed

RCM BidCo Pty Ltd

Midway Limited

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13 November 2024

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**THIS DEED** is made on

13 November 2024

**BETWEEN:**

- (1) **RCM BidCo Pty Ltd ACN 682 228 280** whose registered office is at Level 18, 644 Chapel Street, South Yarra, Victoria 3141 (**Bidder**); and
- (2) **Midway Limited ACN 005 616 044** whose registered office is at 10 The Esplanade, North Shore, Victoria 3214 (**Midway**).

**RECITALS:**

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

**THE PARTIES AGREE AS FOLLOWS:**

1. **Defined terms and interpretation**

1.1 **Defined terms**

A term of expression:

- (a) starting with a capital letter which is defined in the dictionary in Schedule 1 (**Dictionary**) has the meaning given to it in the Dictionary; and
- (b) which is defined in the GST Law, but is not defined in the Dictionary, has the meaning given to it in the GST Law in clauses relating to GST.

1.2 **Interpretation**

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2. **Agreement to proceed with Transaction**

2.1 **Proposal and implementation of the Scheme**

- (a) Midway agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder agrees to assist Midway to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) Midway must not consent to any modification of, or amendment to, the Scheme, or the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Bidder.
- (d) The parties agree to implement the Scheme on and subject to the terms and conditions of this deed.

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## 2.2 **Scheme Consideration**

The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the effect of the Scheme will be that:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) each Scheme Shareholder will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration in accordance with the terms of this deed and the Scheme.

## 2.3 **Midway Board recommendation**

(a) Midway represents and warrants to Bidder that, as at the date of this deed, each Midway Director has confirmed (by way of a unanimous resolution of the Midway Board) that:

- (i) their recommendation in respect of the Scheme is that Midway Shareholders vote in favour of the Scheme at the Scheme Meeting (**Recommendation**); and
- (ii) they intend to vote, or cause to be voted, all Director Shares in favour of the Scheme at the Scheme Meeting (**Voting Intention**),

in each case subject to:

- (iii) no Superior Proposal emerging; and
  - (iv) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of, Midway Shareholders.
- (b) Midway must procure that no Midway Director changes, withdraws, adversely modifies or qualifies (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that they no longer support the Scheme) his or her Recommendation or Voting Intention, unless:
- (i) Midway has received a Competing Proposal and the Midway Board has determined (after all of Bidder's rights under clause 11.8 have been exhausted and without the Midway Board having determined that it has received a Matching Counterproposal) that the Competing Proposal constitutes a Superior Proposal; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Midway Shareholders or, having previously concluded that the Scheme is in the best interests of, Midway Shareholders, changes that conclusion.
- (c) Subject to a Midway Director withdrawing or changing their Recommendation or Voting Intention in accordance with clause 2.3(b), Midway must ensure, in relation to each Midway Director, that:
- (i) the Scheme Booklet includes statements to the effect that that Midway Director gives the Recommendation and has the Voting Intention; and
  - (ii) no public announcement is made by Midway, and no public statement is made by that Midway Director, which is inconsistent with that Midway Director giving the Recommendation and having the Voting Intention.

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- (d) Without limiting clause 11.8, if Midway becomes aware that a Midway Director proposes to change, withdraw, adversely modify or qualify their Recommendation or Voting Intention, Midway must notify Bidder in writing of that fact, matter or circumstance as soon as practicable.
- (e) For the purposes of this clause 2.3, customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation or Voting Intention to the effect that the Recommendation or Voting Intention is made:
- (i) in the absence of a Superior Proposal;
  - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Midway Shareholders'; and
  - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Midway Shareholders',

will, in each case, not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Intention.

- (f) Despite anything to the contrary in this clause 2.3, a statement made by Midway (or any Midway director) to the effect that no action should be taken by Midway Shareholders pending the assessment of a Competing Proposal by the Midway Board or any statement contemplated by clause 11.10 shall not contravene this clause 2.3.
- (g) For the purposes of this clause 2.3, merely by reason of a statement by Midway or the Midway Board to the effect that the Midway Board recommends that Midway Shareholders vote in favour of the Scheme at the Scheme Meeting on the basis of the All Cash Consideration and does not make a recommendation in relation to the Scrip Consideration will not contravene this clause 2.3 nor trigger the Break Fee under clause 12.

### 3. Conditions

#### 3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in clause 4.1 in relation to the implementation of the Scheme will not be binding, until and unless each of the following Conditions is satisfied or waived (to the extent and in the manner set out in this clause 3).

- (a) **Shareholder approval:** Midway Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act.
- (b) **Independent Expert's Report:** the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Midway Shareholders on or before the date on which the Scheme Booklet is registered

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with ASIC under the Corporations Act (and does not formally change or publicly withdraw that conclusion at any time before 8.00 am on the Second Court Date).

- (c) **No Material Adverse Change:** no Material Adverse Change occurs or is announced or becomes known to Bidder between the date of this deed and 8.00 am on the Second Court Date.
- (d) **No Prescribed Occurrence:** no Prescribed Occurrence occurs between the date of this deed and 8.00 am on the Second Court Date.
- (e) **Midway Rights:** Midway has taken all necessary steps by 8.00 am on the Second Court Date to ensure that all Midway Rights have been dealt with in accordance with clause 9 and on terms acceptable to Bidder (acting reasonably).
- (f) **CBA:** before 8.00 am on the Second Court Date:
  - (i) the CBA Facilities remain in full force and effect as it is at the date of this deed, with no 'defaults', 'events of default', 'review events' or acceleration of repayment (as those terms are defined in the CBA Facility Agreement) or any other similar events or rights in favour of CBA, and no circumstances which could give rise to any such events or rights in favour of CBA exist; and
  - (ii) CBA has provided written consent to the change of control or ownership of Midway (or another Midway Group Member) that will arise from the implementation of the Scheme, in a form satisfactory to Bidder (acting reasonably), and such consent is not withdrawn, cancelled or revoked.
- (g) **ASIC and ASX:** ASIC and ASX issue or provide any consents, waivers, relief or approvals, or have done any other acts as are necessary, or which Bidder and Midway agree in writing (acting reasonably) are desirable to implement the Scheme before 8.00 am on the Second Court Date, and those consents, waivers, relief, approvals or other acts have not been withdrawn, cancelled or revoked.
- (h) **No restraints:** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing or materially restricting the Scheme is in effect at 8.00 am on the Second Court Date.
- (i) **Court approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.

### 3.2 Reasonable endeavours

- (a) Each of Bidder and Midway must use their respective reasonable endeavours to ensure or procure that:
  - (i) the Condition in clause 3.1(i) (Court approval) is satisfied as soon as practicable after the satisfaction of the Condition in clause 3.1(a) (Shareholder approval) and remains satisfied;
  - (ii) that Condition 3.1(h) (No restraints) is not triggered; and
  - (iii) there is no occurrence within its control or the control of any of its related bodies corporate that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition.

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- (b) Midway must use reasonable endeavours to procure that the Conditions in clauses 3.1(a) (Shareholder approval), 3.1(b) (Independent Expert's Report), 3.1(c) (No Material Adverse Change), 3.1(d) (No Prescribed Occurrence), 3.1(e) (Midway Rights), and 3.1(f) (CBA) are satisfied.
- (c) Midway will not be in breach of its obligations to use reasonable endeavours under clause 3.2(a) and 3.2(b) to the extent that it takes an action or omits to take an action:
  - (i) as required or expressly permitted to be done or expressly permitted not to be done, by this deed;
  - (ii) in connection with an actual, proposed or potential Competing Proposal as permitted by clause 11;
  - (iii) which has been consented to in writing by Bidder.
- (d) In respect of the Condition in 3.1(h) (No restraints):
  - (i) Bidder and Midway must each use their reasonable endeavours to challenge or otherwise seek to release or overturn the applicable law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree prior to 8.00 am on the Second Court Date; and
  - (ii) if any restraint contemplated in the Condition in clause 3.1(h) (No restraints) is in effect at 5.00 pm on the Business Day prior to the Second Court Date, Bidder and Midway shall consult with each other (each acting reasonably and in good faith) to consider delaying the Second Court Date and, if applicable, extend the End Date in order to facilitate the satisfaction of the Condition in clause 3.1(h) (No restraints).
- (e) In respect of the Conditions in clauses 3.1(c) (No Material Adverse Change) and 3.1(d) (No Prescribed Occurrence) if:
  - (i) a Material Adverse Change occurs between (and including) the date of this deed and 8.00 am on the Second Court Date, the Condition in clause 3.1(c) (No Material Adverse Change) will not be taken to have been breached or not satisfied; or
  - (ii) a Prescribed Occurrence occurs between (and including) the date of this deed and 8.00 am on the Second Court Date, the Condition in clause 3.1(d) (No Prescribed Occurrence) will not be taken to have been breached or not satisfied,

unless:

  - (iii) either party has given, or should have given, written notice to the other party in accordance with clause 3.5, setting out the relevant circumstances of the breach; and
  - (iv) Midway has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date) after the date on which such notice is given (or should have been given).

### 3.3 Waiver of Conditions

- (a) The Conditions in clauses 3.1(a) (Shareholder Approval) and 3.1(i) (Court approval) cannot be waived.
- (b) The Conditions in clause 3.1(g) (ASIC and ASX) and 3.1(h) (No restraints) are for the benefit of both Bidder and Midway and any breach or non-fulfilment of that Condition may only be waived by written agreement between Bidder and Midway.
- (c) The Conditions in clause 3.1(c) (No Material Adverse Change), 3.1(d) (No Prescribed Occurrence) and 3.1(e) (Midway Rights) are for the sole benefit of Bidder and any breach or non-fulfilment of any of these Conditions may only be waived by Bidder (in its absolute discretion) in writing.
- (d) The Condition in clause 3.1(b) (Independent Expert's Report) is for the sole benefit of Midway and any breach or non-fulfilment of such Condition may only be waived by Midway (in its absolute discretion) in writing.
- (e) If Bidder or Midway waives the breach or non-fulfilment of a Condition, that waiver does not prevent the relevant party from suing the other for any breach of this deed that resulted in such breach or non-fulfilment.
- (f) Waiver of a breach or non-fulfilment of a Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### 3.4 Failure of Condition

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition and
    - (A) the breach or non-fulfilment has not been waived in accordance with clause 3.3; or
    - (B) each party having the benefit of that Condition confirms in writing to the other party that it will not waive the breach or non-fulfilment in accordance with clause 3.3;
  - (ii) a Condition becomes incapable of satisfaction and:
    - (A) the breach or non-fulfilment of that Condition that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.3; or
    - (B) each party having the benefit of that Condition confirms in writing to the other party that it will not waive the breach or non-fulfilment of that Condition that has occurred or would otherwise occur in accordance with clause 3.3; or
  - (iii) the Scheme has not become Effective by 11.59 pm on the End Date, then either Bidder or Midway may give the other party written notice (**Consultation Notice**) within 5 Business Days after it becomes aware of the relevant event (**Potential Termination Event**), which notice must require Bidder

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and Midway to consult in good faith to determine whether they can reach agreement with respect to:

- (iv) extending the time for satisfaction of the relevant Condition or the End Date (as the case may be);
  - (v) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed between Bidder and Midway (as applicable);
  - (vi) the Transaction proceeding by way of alternative means or methods; or
  - (vii) any combination of the matters contemplated in clauses 3.4(a)(iv) to 3.4(a)(vi).
- (b) Subject to clause 6.6(c) (if applicable), if Bidder and Midway are unable to reach agreement under clause 3.4(a) within 5 Business Days after a Consultation Notice is given (or if earlier, 5.00 pm on the Business Day before the Second Court Date), either Bidder or Midway (in this clause 3.3, the **Terminating Party**) may terminate this deed by giving written notice (**Termination Notice**) to the other, provided that:
- (i) where the Terminating Party is seeking to terminate this deed due to the occurrence of an event described in clause 3.4(a)(i) or 3.4(a)(ii), the Terminating Party has the benefit of the benefit of the relevant Condition (as set out in clause 3.3); and
  - (ii) the Terminating Party has not breached its obligations under this deed, where that breach directly and materially, whether alone or when taken together with other deliberate acts or omissions of that party has caused or materially contributed to the circumstances forming the basis for the Condition being breached, not fulfilled, or becoming incapable of satisfaction (provided that this clause does not limit either party's right to terminate under clause 15.1).
- (c) Where a Termination Notice is given under clause 3.4(a), this deed will terminate with immediate effect and clause 15.2 will apply.

### 3.5 Notifications

Each of Bidder and Midway must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Condition; and
- (b) promptly notify the other party in writing if it becomes aware:
  - (i) that a Condition has been satisfied or breached; or
  - (ii) of any fact, matter or circumstance that has resulted or is reasonably likely to result in:
    - (A) a Condition becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;
    - (B) a Representation and Warranty provided by that party under this deed ceasing to be true and correct in all material respects; or

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(C) a material breach of this deed by that party,

and keep the other party informed of any material development of which it becomes aware that may lead to non-fulfilment of a Condition.

### 3.6 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by 11.59 pm on the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

## 4. Scheme Consideration

### 4.1 Scheme Consideration

- (a) The Scheme Consideration to be provided by Bidder to each Scheme Shareholder in respect of the transfer of each Scheme Share in accordance with the Scheme is one of the following:
- (i) the All Cash Consideration;
  - (ii) the All Scrip Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold); or
  - (iii) the Mixed Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold).
- (b) If the Scheme becomes Effective, subject to clause 4.1(e):
- (i) each Scheme Shareholder that is not an Ineligible Shareholder is entitled to receive either the All Cash Consideration, the All Scrip Consideration or the Mixed Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold in respect of any Scrip Consideration), in respect of all Scheme Shares held by that Scheme Shareholder, in accordance with that Scheme Shareholder's Election and if no Valid Election is made by a Scheme Shareholder, they will receive the All Cash Consideration in respect of all Scheme Shares held by that Scheme Shareholder; and
  - (ii) each Scheme Shareholder that is an Ineligible Shareholder is entitled to receive the All Cash Consideration in respect of all Scheme Shares held by that Scheme Shareholder,
- in accordance with and subject to the terms and conditions of this deed and the Scheme.
- (c) Subject to clauses 4.1(d) and 4.1(e), Bidder undertakes and warrants to Midway (in its own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will:
- (i) accept that transfer; and

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- (ii) provide to each Scheme Shareholder (or procure the provision to each Scheme Shareholder of) the Scheme Consideration for each Scheme Share in accordance with and subject to the terms and conditions of this deed and the Scheme (including the payment of the Aggregate Cash Consideration and the issue of RollCo Shares pursuant to the terms of the Scheme).
- (d) Notwithstanding anything to the contrary in this clause 4.1, Bidder will be under no obligation under this deed or the Scheme to procure the issue of, and RollCo will be under no obligation under this deed or the Scheme to issue, any RollCo Shares under the Scheme to any Ineligible Shareholder.
- (e) Notwithstanding anything to the contrary in this clause 4.1, the issue of the RollCo Shares as Scheme Consideration under the Scheme is subject to the Scaleback Arrangements and the Minimum Scrip Threshold.

#### 4.2 **Scheme Consideration election mechanism**

- (a) Midway must ensure that the Scheme Booklet sent to Midway Shareholders (other than Ineligible Shareholders) is accompanied by a form of election under which each Midway Shareholder that is not an Ineligible Shareholder is able to elect to receive the All Cash Consideration, the All Scrip Consideration or the Mixed Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold) in accordance with the provisions of the Scheme in respect of all of their Midway Shares, and which sets out the election process (**Election Form**).
- (b) The Election Form must include the relevant matters set out in the Scheme (including clause 6 of the Scheme) and include the following terms and conditions:
  - (i) for an Election to be valid (**Valid Election**):
    - (A) the Scheme Shareholder must not be an Ineligible Shareholder;
    - (B) the Scheme Shareholder must complete and sign the Election Form in accordance with the instructions in the Scheme Booklet and the terms and conditions set out in the Election Form; and
    - (C) the Election Form must be received by the Midway Registry by the Election Time at the address specified by Midway in the Scheme Booklet and on the Election Form;

provided that Bidder may, with the agreement of Midway in writing, settle as it thinks fit any difficulty, matter or interpretation or dispute which may arise in connection with interpreting the validity of any Election, and any such decision will be conclusive and binding on Bidder, Midway and the relevant Scheme Shareholder, with Bidder having no obligation to communicate with any Scheme Shareholder prior to making this determination;

- (ii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to Midway;
- (iii) Ineligible Shareholders may not make an Election and that any purported Election by such persons will be of no effect;



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- (iv) if a Midway Shareholder does not make a Valid Election on or before the Election Time, that Midway Shareholder will receive the All Cash Consideration in respect of the Scheme Shares held by that Midway Shareholder;
- (v) an Election will be deemed to apply in respect of the greater of the Midway Shareholder's entire registered holding of Scheme Shares at the Election Time and at the Scheme Record Date, provided that if the amount so calculated would otherwise exceed its entire registered holding at the Scheme Record Date, the amount will be taken to be its entire registered holding at the Scheme Record Date;
- (vi) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time agree to become members of RollCo from the Implementation Date and become bound by the RollCo Constitution, the Nominee Deed and the RollCo Shareholders' Deed from the Implementation Date, pursuant to the Scheme;
- (vii) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time agree that any Scrip Consideration to which it is entitled pursuant to the terms of the Scheme will be issued to that Scheme Shareholder (either directly or indirectly through the Nominee to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), in accordance with the terms of the Nominee Deed and the RollCo Shareholders' Deed; and
- (viii) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time must provide, before the Election Time, the information and documents described in the Election Form as being required by Bidder or Midway;
- (ix) in the manner considered appropriate by Bidder and Midway (acting reasonably), a Midway Shareholder who holds one or more parcels of Midway Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Midway Shares (subject to providing to Bidder and Midway substantiating information they reasonably require). If a Midway Shareholder does so, it will be treated as a separate Midway Shareholder for each such parcel in respect of which a separate Election is made (and for any balance of its holding), provided that if, at the Election Date, it holds fewer Midway Shares than it held at the time it made the Election the Election Form is made available to Midway Shareholders with the Explanatory Booklet sent to each of them then, unless it has at the time of any sale of Midway Shares notified the Midway whether the Midway Shares sold relate to, any such separate Election (and if so, which separate Election the Midway Shares sold relate to), it will be treated as not having made a Valid Election in respect of any of its Midway Shares or otherwise be treated in any other manner that Bidder and Midway agree is fair and appropriate; and
- (x) the Scaleback Arrangements and the Minimum Scrip Threshold apply to the issue of any Scrip Consideration,

and must otherwise be in a form agreed by the parties in writing (after negotiating in good faith).

- (c) Midway must procure that, to the extent reasonably practicable, Midway Shareholders who acquire Midway Shares after the date of the dispatch of the Scheme Booklet and Election Form receive an Election Form on request to the Midway.

#### 4.3 **Minimum Scrip Threshold not reached**

If the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold and Bidder has not waived the Minimum Scrip Threshold prior to the Scheme Meeting:

- (a) Bidder will not:
  - (i) comply with any Elections made on or before the Election Time; or
  - (ii) procure that RollCo issue any Scrip Consideration to any Scheme Shareholders;
- (b) each Scheme Shareholder who gives an Election on or before the Election Time will be entitled to receive only the All Cash Consideration for the Scheme Shares they hold; and
- (c) Bidder must, by the time required by the terms of the Scheme, pay or procure the payment of, to a trust account operated by or on behalf of Midway, to be held on trust for Scheme Shareholders, an amount in immediately available funds equal to the Maximum Cash Consideration.

#### 4.4 **Scrip Consideration**

Bidder must ensure that:

- (a) the RollCo Shares to be issued under the Scheme will rank equally in all respects with each existing share (if any) of the same class and will have the rights set out in the RollCo Constitution and the RollCo Shareholders' Deed;
- (b) each RollCo Share will be duly and validly issued in accordance with all applicable laws, the RollCo Constitution and the RollCo Shareholders' Deed, fully paid and free from any Encumbrance;
- (c) RollCo does not make a choice under subsection 124-795(4) of the Tax Act to deny roll-over relief to the Midway Shareholders electing to receive Scrip Consideration;
- (d) RollCo is the ultimate holding company of the wholly-owned group for the purposes of subparagraph 124-780(3)(c)(ii) of the Tax Act of which Bidder is a member; and
- (e) no member of the wholly-owned group (as defined in section 975-500 of the Tax Act) of which RollCo is the ultimate holding company (as defined in section 124-780 of the Tax Act) will:
  - (i) issue equity to (other than the RollCo Shares, being the replacement interest for the purposes of section 124-780 of the Tax Act); or
  - (ii) raise new debt from,

an entity that is not a member of the wholly-owned group in relation to the issue of the RollCo Shares to the relevant Scheme Shareholders under the Scheme.

For the avoidance of doubt, Bidder has no obligation to provide, and will not provide, under the Scheme any Scrip Consideration to Ineligible Shareholders, regardless of any

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Election made by those persons, but must pay Cash Consideration to each Ineligible Shareholder for the Scheme Shares they hold in accordance with the Scheme.

**4.5 Provision of Election updates, Midway Share Register and proxy appointments**

In order to facilitate the provision of the Scheme Consideration, Midway must provide, or procure the provision of, to Bidder:

- (a) weekly written updates of the Elections that have been received in the period up to the Election Time (and to the extent practicable, acting reasonably, daily updates in the week prior to Election Time);
- (b) written details of the final Elections made by each Midway Shareholder as soon as reasonably practicable following the Election Time and in any event no later than 3 Business Days after the Election Time, including the name and address of each Midway Shareholder who has made an Election on or before the Election Time and the number of RollCo Shares that RollCo must issue to that Midway Shareholder to meet its obligations under the Scheme in accordance with that Midway Shareholder's Election and subject to the Scaleback Arrangements; and
- (c) a complete copy of the Midway Register (which must include the name, registered address and registered holding of each Midway Shareholder) as at the Scheme Record Date, within 1 Business Day after the Scheme Record Date.

**4.6 Scaleback Arrangements**

- (a) If the Aggregate RollCo Elected Shares are less than or equal to the Available RollCo Shares, each Scheme Shareholder (or Nominee on that Scheme Shareholder's behalf) who is entitled to be issued RollCo Shares will receive as Scrip Consideration the number of RollCo Shares the subject of their Valid Elections to receive All Scrip Consideration or Mixed Consideration in full, subject to the other conditions in this Scheme.
- (b) If the Aggregate RollCo Elected Shares exceed the Available RollCo Shares, each Scheme Shareholder (or Nominee on that Scheme Shareholder's behalf) who is entitled to be issued RollCo Shares will receive the number of RollCo Shares as Scrip Consideration calculated in accordance with the formula below (**Scaleback Shares**), and that Scheme Shareholder will receive the Cash Consideration and not the Scrip Consideration in respect of the remaining number of Scheme Shares that would otherwise have received Scrip Consideration but for the calculation below:

$$\text{Scaleback Shares} = A \times \left(\frac{B}{C}\right)$$

where:

**A** is the number of RollCo Shares that would have been received in exchange for the Scheme Shares the subject of the Scheme Shareholder's Valid Election to receive All Scrip Consideration or Mixed Consideration;

**B** is the Available RollCo Shares; and

**C** is the Aggregate RollCo Elected Shares.

**4.7 Rounding**

Where the calculation of Scheme Consideration (including in calculating the Scaleback Shares) to be provided to a Scheme Shareholder would result in the Scheme

Shareholder becoming entitled to a fraction of a cent or a fraction of a RollCo Share (as the case may be):

- (a) where that entitlement is to half a cent or more or half a RollCo Share or more, the number of cents or number of RollCo Shares (as the case may be), will be rounded up to the nearest whole number; and
- (b) where that entitlement is to less than half a cent or less than half a RollCo Share, the number of cents or number of RollCo Shares (as the case may be), will be rounded down to the nearest whole number.

#### 4.8 **Share Splitting**

If Bidder and Midway are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, before the Election Time, been party to Share Splitting or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding as contemplated by clause 6.10 of the Scheme, Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered address of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice will, for the purposes of the Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice will, for the purposes of the Scheme, be taken to hold no Scheme Shares.

### 5. **Special Dividends**

#### 5.1 **Payment of Special Dividend**

- (a) Notwithstanding any other provision of this deed but subject to clause 15.1(d) and subject to the requirements of this clause 5, Midway may (in its absolute discretion) declare or determine and pay to Midway Shareholders a dividend of up to \$0.3835 in aggregate per Midway Share and which may be partially or fully franked (**Special Dividend**), provided that:
  - (i) Midway must consult with Bidder prior to any announcement, determination, declaration or payment of a Special Dividend; and
  - (ii) the payment of a Special Dividend must otherwise comply with any agreement made between the parties in writing and the Corporations Act (including section 254T of the Corporations Act),

and that:

- (iii) without limiting any other provision of this clause 5, any Special Dividend may be franked to the maximum amount possible; and not be in breach of the 'benchmark rule' under the Tax Act;

- (iv) the franking account of Midway must not be in deficit at any time after the payment of a Special Dividend due to the payment of a Special Dividend and/or tax refunds received by Midway, nor prior to the determination or declaration of, or resolution to pay, the Special Dividend; and
- (v) Midway must provide a copy of the Midway franking account to Bidder, for information purposes only, on the following dates:
  - (A) 15 Business Days before the determination or declaration or resolution to pay the Special Dividend is passed; and
  - (B) 5 Business Days prior to the Implementation Date.
- (b) The record date for the Special Dividend must be at least 2 days before the Scheme Record Date.
- (c) The payment date for any Special Dividend must be on or before the Implementation Date.
- (d) If Midway announces, determines or declares (in its discretion), and pays the Special Dividend in accordance with this clause 5.1, the Special Dividend is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of the Midway Group existing immediately prior to the determination or declaration of that dividend.
- (e) Any Midway Group Member may settle intercompany balances or enter into other intercompany transactions or pay a dividend out of its profits, retained earnings or distributable reserves (or a combination of all or some of them) to another Midway Group Member for the purpose of ensuring that sufficient profits or distributable reserves in Midway exist to pay the Special Dividend, provided that any such dividend does not result in any franking account deficit and is otherwise in accordance with the Corporations Act.
- (f) Midway undertakes that no amount of the Special Dividend shall be directly or indirectly funded before implementation of the Scheme from the issue of equity interests (as defined in section 995-1 of the Income Tax Assessment Act, 1997) by any Midway Group Member, where such equity interests are issued before the implementation of the Scheme.
- (g) Bidder undertakes (on behalf of itself and Bidder Group) that no amount of the Special Dividend shall be directly or indirectly funded on or after implementation of the Scheme from the issue of equity interests (as defined in section 995-1 of the Income Tax Assessment Act, 1997) by any company, whether such equity interests are issued before or after the implementation of the Scheme. For the avoidance of doubt, this entails an undertaking that no proceeds from an equity issuance will be applied by the Bidder Group towards repayment of any portion of a debt facility that has been drawn by the Midway Group prior to the Implementation Date to pay part or all of the Special Dividend.
- (h) Midway must fund the payment of the Special Dividend from Midway's existing available cash (as determined by Midway) and, subject to clause 10, may also use and draw down on working capital facility forming part of the CBA Facilities in accordance with clause 10 for such purpose.

## 5.2 Class ruling

- (a) Midway will seek a Class Ruling from the ATO to confirm:

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- (i) whether Midway Shareholders are prima facie entitled to franking credits and associated tax offsets in accordance with Division 207 of the Tax Act in respect of the Special Dividend; and
  - (ii) that the Commissioner of Taxation will not make a determination under section 204-30(3) of the Tax Act or section 177EA(5) of the Tax Act in respect of the Special Dividend; and
  - (iii) that qualifying Australian resident Midway Shareholders who hold their Scheme Shares on capital account will be eligible to choose scrip for scrip roll-over relief under subdivision 124-M of the Tax Act to the extent to which they receive RollCo Shares in exchange for their Scheme Shares under the Scheme.
- (b) In respect of any Class Ruling referred to in clause 5.2(a):
- (i) Midway:
    - (A) must provide to Bidder a draft of the relevant request to the ATO within a reasonable time before submission with the ATO for the purpose of enabling Bidder to comment on the request; and
    - (B) must consider in good faith, for the purpose of amending the draft request, any reasonable comments from Bidder on the draft request, which Bidder must provide on a timely basis; and
  - (ii) each party must provide the other party with such assistance and information as may reasonably be requested by the other party in relation to obtaining the class ruling or ruling.
- (c) For the avoidance of doubt, neither the payment of the Special Dividend nor the franking of the Special Dividend is contingent on Midway receiving any class ruling, ruling, confirmation or comfort from the ATO.

### 5.3 **Adjustment to Scheme Consideration**

The Scheme Consideration will be reduced by the aggregate cash amount per Scheme Share of any dividend or distribution announced, delivered or paid by Midway (including the Special Dividend) but, for the avoidance of doubt, will not be reduced by:

- (a) the value attributed to any franking credits attached to the Special Dividend; or
- (b) the amount of any dividend announced, declared or paid by Midway prior to the date of this deed.

## 6. **Implementation**

### 6.1 **General obligations**

- (a) Subject to clause 6.2(b), Midway and Bidder each must:
- (i) use all reasonable endeavours and commit necessary resources (including management and the resources of external advisers); and
  - (ii) procure that its respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable, subject to the terms and conditions of this deed.

- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 6.1(a) to the extent that such failure is due to circumstances and matters outside the party's control or due to Midway taking or omitting to take any action in response to a Competing Proposal as permitted or contemplated by this deed.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to seek to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 6.2 Midway obligations

Midway must, acting at all times in good faith, take all steps reasonably necessary to propose and implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable and on the terms of this deed, and must consult with Bidder on a regular basis about its progress in that regard. Without limiting the foregoing, Midway must do the following:

- (a) **Independent Expert:** as soon as reasonably practicable after the date of this deed, appoint the Independent Expert and provide such assistance and information as is reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **Promotion of Transaction:** provide all reasonable cooperation in the promotion of the Transaction to Midway Shareholders, including, if requested by Bidder:
  - (i) procuring that senior Midway Group employees meet with key Midway Shareholders and communicate with employees and other stakeholders in a manner which is supportive of the Scheme;
  - (ii) providing Bidder with such information and assistance that Bidder reasonably requests to enable it to promote the merits of the Transaction; and
  - (iii) undertaking shareholder engagement and proxy solicitation actions, so as to promote the merits of the Transaction and encourage Scheme Shareholders to vote on the Scheme in accordance with the Recommendation,

subject in each case to:

- (iv) applicable law and ASIC policy
- (v) the Independent Expert not having concluded in the Independent Expert's Report that the Scheme is not in the best interests of Midway Shareholders; and
- (vi) there being no Superior Proposal,

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except where all or a majority of the Midway Directors have withdrawn, adversely revised, adversely modified or adversely qualified their recommendation of the Scheme as permitted under clause 2.3.

(c) **Preparation of Scheme Booklet:**

- (i) prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules; and
- (ii) consult with Bidder as to the content and presentation of the Scheme Booklet, including:
  - (A) providing Bidder with drafts of the Scheme Booklet and the Independent Expert's Report (excluding the valuation section) in a timely manner and within a reasonable time before the advanced draft of the Scheme Booklet for review by ASIC is finalised for the purpose of enabling Bidder to review and comment on those draft documents, provided that any review of the Independent Expert's Report is to be limited to a factual accuracy review;
  - (B) considering and taking all reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet and, in the case of the Independent Expert's Report, promptly providing those comments to the Independent Expert in writing; and
  - (C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised to enable Bidder to review and comment on that draft before the date of its submission;

(d) **Bidder Information:**

- (i) seek approval from Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet, which approval must not be unreasonably withheld or delayed, and Midway must not lodge the Scheme Booklet with ASIC or dispatch the Scheme Booklet to Midway Shareholders until such approval is obtained from (or unreasonably withheld or delayed by) Bidder; and
- (ii) without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme;

- (e) **Class Ruling:** promptly prepare its application for the Class Ruling, referred to in clause 5.2(a) and provide Bidder with a reasonable opportunity to review and provide comments on the draft Class Ruling prior to lodgement with the ATO in accordance with clause 5.2, lodge the application for the Class Ruling, and provide any assistance and information reasonably requested by the ATO to enable the ATO to issue the Class Ruling as soon as practicable;

(f) **Lodgement of Scheme Booklet:**

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- (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and provide a copy of the same draft to Bidder as soon as practicable thereafter, provided that such draft must not be provided to ASIC without Bidder's prior written consent in respect of Bidder Information (such consent not to be unreasonably withheld or delayed); and
- (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder promptly informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (g) **ASIC and ASX review:** keep Bidder promptly informed of any material matters raised by ASIC or the ASX in relation to the Scheme Booklet or the Transaction, and consult with, and use reasonable endeavours to take into consideration in resolving such matters any reasonable comments made by Bidder in relation to such matters raised by ASIC or ASX (provided that, where such matters relate to Bidder Information, Midway must not take any steps to address them without Bidder's prior written consent, which must not be unreasonably withheld or delayed);
- (h) **ASIC no objection statement:** apply to ASIC for:
  - (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
  - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) **First Court Hearing:** apply to the Court for an order under section 411(1) of the Corporations Act directing Midway to convene the Scheme Meeting;
- (j) **Appeal process:** if the Court refuses to make any orders directing Midway to convene the Scheme Meeting or approving the Scheme, Midway must:
  - (i) consult with Bidder in good faith as to whether to appeal the Court's decision; and
  - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that an appeal would have no reasonable prospect of success;
- (k) **Approval and registration of Scheme Booklet:**
  - (i) procure that the Midway Board authorises the registration with ASIC and despatch of the Scheme Booklet to Midway Shareholders (which authorisation may be given subject to the order referred to in clause 6.2(i) being granted); and
  - (ii) subject to receipt from Bidder of the written confirmation referred to in clause 6.3(d) and the order referred to in clause 6.2(i) being granted, request that, in accordance with section 412(6) of the Corporations Act, ASIC register the explanatory statement in relation to the Scheme, as contained in the Scheme Booklet;
- (l) **Scheme Meeting:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Midway

Shareholders and convene and hold the Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;

- (m) **Director's voting:** use its reasonable endeavours to procure that each Midway Director will vote, or cause to be voted, any Director Shares at the time of the Scheme Meeting in favour of the Scheme, in each case subject to:
- (i) no Superior Proposal emerging; and
  - (ii) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Midway Shareholders;
- (n) **Supplementary disclosure:** if, after despatch of the Scheme Booklet, it becomes aware:
- (i) that information included in the Scheme Booklet is or has become false or misleading in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Midway Shareholders under any applicable law, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules,
- it must promptly consult with Bidder as to the need for, and form of, any supplementary disclosure to Midway Shareholders, and make any such disclosure as it considers reasonably necessary as soon as reasonably practicable and having regard to applicable laws, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules;
- (o) **Conditions certificate:** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(i)) included for its benefit have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Bidder by 5.00 pm on the date that is two Business Days before the Second Court Date; and
  - (ii) any certificate provided to it by Bidder pursuant to clause 6.3(f);
- (p) **Second Court Hearing:** subject to the Conditions (other than the Condition in clause 3.1(i)) being satisfied or waived in accordance with clause 3, apply to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (q) **Court Documents:**
- (i) prepare the Court Documents; and
  - (ii) provide drafts of those documents to Bidder within a reasonable period of time (having regard to the scheduled dates for the First Court Hearing and the Second Court Hearing (as applicable)), and consider in good faith any reasonable comments provided by or on behalf of Bidder;
- (r) **Bidder representation at Court Hearings:** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;

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- (s) **Lodgement of Court order:** if the Court approves the Scheme under section 411(4) of the Corporations Act, for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme before 5.00 pm on the Business Day following the day on which such office copy is received;
- (t) **Midway Register:** procure that Midway Register as at the Scheme Record Date is closed to determine the identity of the Scheme Shareholders and their entitlements to Scheme Consideration;
- (u) **Proxy reports:** keep Bidder reasonably informed:
- (i) on the status of proxy forms received for the Scheme Meetings, including over the period commencing 10 Business Days before the Scheme Meetings and ending on the deadline for receipt of proxy forms; and
  - (ii) about such other information as Midway or its Representatives may receive concerning the voting intentions of Midway Shareholders;
- (v) **Instruments of transfer:** subject to the Scheme becoming Effective, on the Implementation Date:
- (i) execute proper instruments of transfer and effect the transfer of Midway Shares to Bidder in accordance with the Scheme; and
  - (ii) register all transfers of Midway Shares held by Scheme Shareholders to Bidder;
- (w) **Quotation of Midway Shares and ASX listing:** apply to ASX to have:
- (i) trading in Midway Shares suspended from the close of trading on the Effective Date; and
  - (ii) Midway removed from the official list of ASX from the close of trading on the Business Day immediately following the Implementation Date,
- and not do anything to cause any of these things to happen before the relevant date specified in this clause 6.2(w) without the prior consent of Bidder;
- (x) **Provision of information to Bidder:**
- (i) provide all reasonably necessary information, and procure that the Midway Registry provides all reasonably necessary information, in each case in a form reasonably requested by Bidder, about the Scheme and Midway Shareholders to Bidder and its Related Bodies Corporate, which Bidder reasonably requests and requires in order to:
    - (A) understand the legal or beneficial ownership of Midway Shares (including the results of directions by Midway to Midway Shareholders under Part 6C.2 of the Corporations Act);
    - (B) canvass views on the Scheme by Midway Shareholders;
    - (C) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration and to otherwise enable Bidder to comply with the terms of this deed, the Scheme and the Deed Poll; or

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- (D) review the proxy appointments and directions received by Midway before the Scheme Meeting (and a summary of such matters),

and Midway must comply with any reasonable request of Bidder for Midway to give directions to Midway Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for any of the foregoing purposes;

- (ii) within 5 Business Days after the date of this deed, provide Bidder with:
  - (A) a copy of the Midway Register as at the date of this deed; and
  - (B) the most recently available information in Midway's possession regarding the beneficial ownership of Midway Shares, including a copy of the most recent beneficial ownership analysis report received by Midway;

- (iii) provide to Bidder fortnightly:
  - (A) a copy of the latest Midway Register; and
  - (B) the most recently available information in Midway's possession regarding the beneficial ownership of Midway Shares, including a copy of the most recent beneficial ownership analysis report received by Midway; and

- (iv) produce and deliver a report (in a form to be agreed by the parties, each acting reasonably) along with reasonable supporting documentation in respect of the calculations therein to Bidder detailing the amount of the:
  - (A) Cash Balance;
  - (B) Net Working Capital (including Working Capital Assets and Working Capital Liabilities); and
  - (C) amounts drawn under the CBA Facilities,

as at the end of:

- (D) the preceding month, by the 5th Business Day following the end of each month from the date of this deed until the Second Court Date (**EOM Report**); and
- (E) a special reporting period ending on the date that is ten calendar days before the date that is 5 calendar days before the Second Court Date (**Second Court Date Report**) provided that Midway is not required to prepare and deliver a Second Court Date Report where an EOM Report relates to a period ending no more than 10 calendar days before the Second Court Date,

and which must include Midway's best estimate of the amounts that each of sub-paragraphs (A), (B) and (C) is reasonably expected to be as at the Implementation Date.

- (y) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with applicable laws; and

- (z) **Implementation:** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) reasonably necessary (within its power) to lawfully give effect to the Scheme.

### 6.3 Bidder obligations

Bidder must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable and on the terms of this deed, and must consult with Midway on a regular basis about its progress in that regard. Without limiting the foregoing, Bidder must do the following:

- (a) **Prepare Bidder Information:**
- (i) as soon as practicable after the date of this deed, prepare the Bidder Information for inclusion in the Scheme Booklet in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules;
  - (ii) provide Midway with drafts of the Bidder Information and consider in good faith any reasonable comments provided by or on behalf of Midway; and
  - (iii) provide Midway with the final form of the Bidder Information for inclusion in the Scheme Booklet;
- (b) **Assistance with Scheme Booklet and Court Documents:** provide any assistance or information reasonably requested by Midway or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Midway Shareholders) or any Court Documents;
- (c) **Independent Expert's Report:** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, provide any assistance or information reasonably requested by Midway or its Representative, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (d) **Confirmation of Bidder Information:** as soon as practicable after the Bidder Information has been finalised, provide confirmation in writing to Midway that:
- (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
  - (ii) the Bidder Information, in that form and context, is not false or misleading in any material respect (whether by omission or otherwise);
- (e) **Update Bidder Information:** until the Scheme Meeting, promptly advise Midway in writing if it becomes aware:
- (i) of information which should have been included in any Bidder Information previously provided to Midway, and promptly provide all such information; or
  - (ii) that any Bidder Information previously provided to Midway is or has become false or misleading in any material respect (whether by omission or otherwise) or otherwise does not comply with applicable laws, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules and promptly provide Midway with all information necessary to ensure the

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Bidder Information complies with applicable laws and is not false or misleading in any material respect (whether by omission or otherwise);

- (f) **Class Ruling:** provide Midway with such assistance and information as may reasonably be requested by Midway for the purposes of obtaining from the ATO a Class Ruling in a form reasonably acceptable to Midway in relation to scrip-for-scrip roll over relief under subdivision 124-M of the Tax Act and the treatment of the Special Dividend;
- (g) **Conditions certificate:** before 8.00 am on the Second Court Date, give to Midway, for provision to the Court at the Second Court Hearing, a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(i)) included for its benefit have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Midway by 5.00 pm on the date that is two Business Days before the Second Court Date;
- (h) **Representation at Court Hearings:** ensure that it is represented by counsel at each Court Hearing for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act approving the Scheme;
- (i) **Deed Poll:** before 5.00 pm on the Business Day before the First Court Date, execute the Deed Poll and procure that RollCo executes the Deed Poll, deliver a fully executed copy of the Deed Poll to Midway and, if the Scheme becomes Effective, fully comply with (and procure that RollCo complies with) the Deed Poll;
- (j) **Share transfer:** if the Scheme becomes Effective, accept a transfer of Midway Shares as contemplated by clause 2.2(a) and the terms of the Scheme and execute instruments of transfer in respect of the Scheme Shares;
- (k) **Scheme Consideration:** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clauses 2.2 and 4 and the terms of the Scheme and in accordance with the Deed Poll;
- (l) **RollCo Shareholders' Deed:** procure that the RollCo Shareholders' Deed is executed by RollCo and its shareholders and that agreement remains in force from the time of its execution until the Implementation Date;
- (m) **Compliance with laws:** subject to the Conditions being satisfied, do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws; and
- (n) **Implementation:** if the Scheme becomes Effective, do all things contemplated of it under the Scheme in accordance with the Deed Poll.

#### 6.4 Scheme Booklet

- (a) If Bidder and Midway are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
  - (i) if the relevant part of the Scheme Booklet is Bidder Information, Midway will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith), unless the information relates to Bidder in the Independent Expert's Report, in which case Bidder will communicate the request for amendment to the Independent Expert (subject to applicable law and ASIC policy); and

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- (ii) in any other case (other than the Independent Expert's Report), Midway (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) Bidder and Midway agree that the Scheme Booklet will contain a responsibility statement in a form to be agreed between the parties (acting reasonably) to the effect that:
  - (i) Midway has prepared and is responsible for Midway Information contained in the Scheme Booklet and none of Bidder or its Related Entities or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of Midway Information; and
  - (ii) Bidder has prepared and is responsible for the Bidder Information contained in the Scheme Booklet and none of Midway or its Related Entities or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Bidder Information; and
  - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Midway, Bidder or their respective directors, officers or employees and Related Entities, assumes any responsibility or liability for the accuracy or completeness of the Independent Expert's Report.

**6.5 Verification**

- (a) Midway must undertake appropriate verification processes in relation to the Midway Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) Bidder must undertake appropriate verification processes in relation to the Bidder Information included in the Scheme Booklet so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).

**6.6 Conduct of Court proceedings**

- (a) Bidder is entitled to separate representation at all Court proceedings affecting the Transaction. Nothing in this deed gives Midway or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.
- (b) If the Court refuses to make any orders directing Midway to convene the Scheme Meeting or approving the Scheme:
  - (i) Midway and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
  - (ii) Midway must appeal the Court's decision unless the parties agree otherwise or an independent senior counsel opines that, in their view, an appeal would have no reasonable prospect of success before the End Date.
- (c) If:
  - (i) the Scheme is not approved by Midway Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test; and

- (ii) Midway or Bidder considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied and provides written notice to this effect to the other party within 5 Business Days after the date of the conclusion of the Scheme Meeting,

then Midway must:

- (iii) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (iv) make such submissions to the Court and file such evidence as counsel engaged by Midway to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

#### 6.7 **RollCo documentation**

The parties must use their best endeavours to work together in good faith from the date of this deed to finalise and agree the form and terms of the following as soon as practicable following the date of this deed:

- (a) RollCo Constitution;
- (b) RollCo Shareholders' Deed; and
- (c) Nominee Deed,

substantially in accordance with those set out in the term sheet attached at Annexure C or otherwise as agreed in writing between Bidder and Midway (together, **RollCo Scrip Consideration Documents**) which contain provisions to apply on and from the Implementation Date.

Bidder and Midway will exchange final form documents initialled for identification once finalised.

## 7. **Conduct of business**

### 7.1 **Conduct of business**

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date (both dates inclusive), Midway must:

- (a) conduct, and cause each Midway Group Member to conduct, the business of Midway Group:
  - (i) in the ordinary course;
  - (ii) in a manner generally consistent with the manner in which such business has been conducted during the period beginning on the date that is 12 months prior to the date of this deed and ending on the date of this deed;
  - (iii) in accordance with all applicable laws; and

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- (iv) in accordance with all regulatory permits, licences and authorisations that are binding on the Midway Group;
- (b) keep Bidder reasonably and promptly (and in any case within 2 Business Days of the relevant occurrence) informed of, and reasonably consider Bidder's views about, material developments in the business of Midway Group;
- (c) promptly (and in any case within 2 Business Days of the relevant occurrence) notify Bidder in writing of any of the following matters of which Midway becomes aware, and such written notification must include a reasonable summary of:
  - (i) events, facts, matters or circumstances which would or would be reasonably be expected to constitute a Material Adverse Change or have a material adverse effect on the financial or operational performance, or the reputation, of Midway or Midway Group or Midway Group's relationship with Government Agencies, financiers or key customers or suppliers;
  - (ii) new products offerings and new procedures or service offerings offered by the Midway Group;
  - (iii) any litigation brought against any Midway Group Member with a claim amount of \$250,000 or more;
  - (iv) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any Midway Group Member and which is reasonably likely to result in a material liability for any Midway Group Member (save that Midway is not obliged to provide any information to the extent that doing so would breach any existing obligations of confidence to which a Midway Group Member is subject or result in the loss of legal privilege); and
  - (v) any contact from any Government Agency regarding any regulatory investigation into, or the conduct of, the affairs of any Midway Group Member, or any employee of any Midway Group Member which is reasonably likely to result in a material liability for any Midway Group Member or have a material adverse effect on the reputation of the Midway Group; and
- (d) make reasonable efforts to:
  - (i) keep available the services of the current officers and employees of Midway Group;
  - (ii) maintain and preserve Midway Group's relationships with partners, financiers, customers, suppliers, Government Agencies, licensors, licensees and others with whom it has material business dealings;
  - (iii) comply in all material respects with all material contracts to which any Midway Group Member is a party;
  - (iv) maintain its business and its assets in the ordinary course and consistent with past practice;
  - (v) maintain and preserve the value of the Midway Group's business and assets, including maintaining (and where necessary, using best endeavours to renew, after reasonable consultation with Bidder) each of

the insurance policies and licences held by the Midway Group as at the date of this deed; and

- (vi) conduct its business materially in accordance with the Budget and its business plan.

## 7.2 **Midway prohibited actions**

Without limiting clause 7.1 but subject to clause 7.3, from the date of this deed up to and including the Implementation Date, Midway must not, and must procure that no other Midway Group Member:

- (a) enters into any lines of business or other activities in which a Midway Group Member is not engaged as at the date of this deed;
- (b) writes down any of its assets by more than \$100,000 per individual asset or more than \$500,000 in aggregate, other than as required by applicable accounting standards or law;
- (c) enters into, materially amends or terminates, or agrees to enter into or materially amend or terminate, any contract (excluding any contract or commitment with respect to Financial Indebtedness as expressly permitted by clause 10) with a person other than another Midway Group Member that could reasonably be expected to generate revenue for Midway Group, or that contemplates expenditure by Midway Group, in excess of \$750,000 in any 12 month period or that would otherwise impact Midway's EBITDA by an amount of \$400,000 or more;
- (d) incurs or commits to, or brings forward the time for incurring or committing to, or grants to another person a right the exercise of which could be reasonably expected to involve or result in any Midway Group Member incurring or committing to, any capital expenditure, Financial Indebtedness or liability (whether actual or contingent), or foregoing any revenue, for one or more related items or amounts of in aggregate more than \$500,000;
- (e) enters into, materially amends or terminates, or agrees to enter into or materially amend or terminate, any contract with a person other than another Midway Group Member that:
  - (i) restrains a Midway Group Member from competing with any person or conducting activities in any market;
  - (ii) that contemplates expenditure by Midway Group, in excess of \$400,000 in any 12 month period except as expressly contemplated by the Budget; or
  - (iii) has a term of more than 1 year;
- (f) enters into a new employment contract with a potential employee of Midway Group, or enters into a new employment contract or materially amends or terminates an existing employment contract with an existing employee of Midway Group (other than for the purposes of replacing an existing agreement or arrangement on a materially consistent basis), where:
  - (i) the total employment costs payable to that potential or existing employee exceed or would exceed \$200,000 per annum (as applicable); or
  - (ii) that employee is a member of Midway's executive leadership team (as applicable);

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- (g) enters into new employment contracts with potential or existing employees of the Midway Group (or varies the annual remuneration payable to such employees (other than any variation to the extent required to comply with applicable awards)) where the total employment costs payable to those potential or existing employees exceeds or would exceed \$750,000 per annum (in aggregate);
- (h) accelerates the rights of any director or employee to compensation or benefits of any kind, or amends in any material respect the terms of any long term incentive plan;
- (i) pays or agrees to pay any of its directors or employees a bonus, termination payment or any other increase in fees or benefits, including a 'golden parachute' (otherwise than in accordance with an existing contract in place at the date of this deed or as disclosed in writing in the Disclosure Materials);
- (j) enters into any enterprise bargaining agreement;
- (k) pays, incurs, or agrees to pay or incur Transaction Costs in excess of 105% of the estimate of the Transaction Costs set out in the Disclosure Letter, ignoring for this purpose, any third party costs and expenses incurred by the Midway Group associated with any Takeovers Panel proceedings in respect to the Midway Group or Midway's engagement with or response to any Competing Proposal;
- (l) makes any loans, advances or capital contributions to, or investments in, any other person;
- (m) enters into or resolves to enter into a transaction with any related party of Midway (other than a related party which is a Midway Group Member) as defined in section 228 of the Corporations Act, except as contemplated under clause 9;
- (n) be in default under an agreement or arrangement which is material in the context of Midway Group;
- (o) settles or offers to settle any legal proceedings, Claim, investigation arbitration or other like proceeding where the settlement amount exceeds \$100,000;
- (p) accepts as a compromise of a matter less than the full compensation due to it, or waives any right or a debt owed to any Midway Group Member, where the financial impact of the compromise or waiver on Midway Group as a whole will, or is reasonably likely to be, in excess of \$100,000 (individually or in aggregate);
- (q) changes any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards;
- (r) obtains or applies for any new regulatory authorisations, licences or permissions;
- (s) takes actions, or omits to take any reasonable actions, which result in, or are reasonably likely to result in, any regulatory authorisations, licences or permissions held by any Midway Group Member being suspended, modified, revoked or not renewed in circumstances where such suspension, modification, revocation or non-renewal would materially impact the ability to carry on the business of the relevant Midway Group Member in the manner in which it is carried on at, or has been carried on in the 12 months prior to, the date of this deed;
- (t) takes or fails to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, a Prescribed Occurrence; or

- (u) authorises, procures, commits or agrees to do any of the foregoing matters.

### 7.3 **Midway permitted activities**

Nothing in clause 7.1 and 7.2 restricts the ability of Midway (or any Midway Group Member) to take any action which:

- (a) is expressly required or expressly permitted by this deed or the Scheme;
- (b) has been consented to in writing by Bidder (such agreement not to be unreasonably withheld, delayed or conditioned);
- (c) Fairly Disclosed in the Disclosure Materials;
- (d) Fairly Disclosed in a document lodged with ASX in the 24 month period prior to the date of this deed and which is publicly available;
- (e) required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (f) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Government Agency, or by generally accepted accounting standards or generally accepted accounting principles or any contractual obligation of any Midway Group Member;
- (g) in connection with the utilisation of the working capital facility of Midway Group's existing CBA Facilities, for the purpose of funding part or all of the Special Dividend or any part of it in accordance with this deed; or
- (h) which is undertaken in response to a Competing Proposal, but only to the extent permitted by clause 11.

### 7.4 **Access**

Between the date of this deed and the Implementation Date (both dates inclusive), Midway must use reasonable endeavours to procure that Bidder is provided with reasonable access to information, documents, records, premises, senior executives, customers, suppliers, agents, partners and third party service providers (including by providing consent to discussions with that third party service provider), of any Midway Group Member, where Bidder requests such access for the purposes of:

- (a) implementation of the Transaction;
- (b) obtaining an understanding, or furthering its understanding, of Midway Group or its business, financial position, prospects or assets in order to allow Bidder to develop, finalise and implement its plans for Midway Group following implementation of the Transaction;
- (c) preparing for carrying on the business of the Midway Group;
- (d) keeping Bidder informed of material developments relating to Midway Group; or
- (e) any other purpose agreed between Bidder and Midway,

provided that:

- (f) compliance with any such request would not, in the reasonable opinion of Midway (acting in good faith), result in undue disruption to Midway Group's business;

- (g) nothing in this clause 7.4 will require Midway to provide, or procure the provision of, information concerning or in connection with:
  - (i) any Midway Director's, the Midway Board's (or any sub-committee of the Midway Board's) and management's (a **Relevant Person**) consideration of the Transaction or any proposal by Bidder at any time in relation to the acquisition of an interest in Midway; or
  - (ii) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal);
- (h) nothing in this clause 7.4 requires Midway to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
  - (i) breach any applicable law, regulatory requirement, authorisation or court order; or
  - (ii) result in a waiver or loss of legal professional privilege.

#### 7.5 **Provision of certain information to Bidder**

Without limiting clause 7.4, (but, for the avoidance of doubt subject always to paragraphs 7.4(g) and 7.4(h)) between the date of this deed and the Implementation Date (both dates inclusive), Midway must promptly provide Bidder with:

- (a) all monthly financial and operating reports provided to the Midway Board;
- (b) regular reports on the financial affairs of the Midway Group in the form which is ordinarily used by Midway, including the Midway Group's monthly management accounts, provided always that Midway is not required to provide information and reports to the extent it comprises or includes information of the kind referred to in clauses 7.4(g) and 7.4(h);
- (c) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency; and
- (d) at the end of each month, confirmation that Midway has not received any notice, advice or correspondence from a counterparty to a Key Material Contract with respect to the termination, non-renewal or material breach of a Key Material Contract (or renewal will only be undertaken with material changes).

#### 7.6 **Implementation and integration planning**

- (a) The parties must work together in good faith from the date of this deed up to and including the Implementation Date to commence planning for the merger and integration of Midway and Bidder Group following the Implementation Date.
- (b) As soon as practicable after the date of this deed, the parties will constitute an implementation committee which may consist equally of members of the management team of each of Midway and Bidder Group and such other persons as Bidder and Midway may agree from time to time (**Transition Committee**).
- (c) The role of the Transition Committee is to act as a forum for the consideration and planning of matters relevant to implementation of the Transaction, including any consents and waivers required as contemplated by clauses 3.1(f), 3.1(g) and 8 and integration of the merged businesses.

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- (d) The Transition Committee will meet fortnightly or otherwise as reasonably required by either party in order to progress the Transaction and matters relevant to integration of the merged businesses.
- (e) At each Transition Committee meeting immediately following Midway senior management reporting to the Midway Board on the financial and operational performance of the business of the Midway Group for the prior month, Midway must provide Bidder with information on the Midway Group's financial and operational performance for the prior month (including any material developments in the Midway Group business), provided that this will not require Midway to prepare any information that has not already been provided to the Midway Board or change the form of presentation of such information or provide information of a kind referred to in clauses 7.4(g) and 7.4(h) above.
- (f) If any provision of this deed requires Bidder's agreement or consent in relation to the ongoing business operations of Midway Group, such agreement or consent will be taken to be given by Bidder if each representative of the Bidder Group on the Transition Committee confirms their support of the matter at a duly convened and minuted meeting of the Transition Committee at which all representatives of the Bidder Group are present (provided the Bidder confirms in writing their agreement to the minutes).
- (g) The parties acknowledge and agree that:
  - (i) nothing in this clause 7.6:
    - (A) requires a party to act at the direction of the other party or imposes any obligation on any party to conduct its business in accordance with any direction or representation made by the other party;
    - (B) in any way, or to any extent, limits Midway's conduct of the business of the Midway Group; or
    - (C) requires any party to act or participate in any forum to the extent that doing so is contrary to law or the requirements of any Government Agency;
  - (ii) the respective businesses of the Bidder Group and Midway Group are to continue to operate independently until the Implementation Date; and
  - (iii) nothing in this deed is intended to constitute or create the relationship of partnership, joint venture or similar.

**7.7 Appointment of directors**

Bidder will:

- (a) nominate in writing persons to be appointed as new directors of Midway and other officers (including company secretaries and public officers) of Midway; and
- (b) obtain consents to act signed by such persons before the Scheme Record Date, and upon receipt of such nominations and consents, Midway undertakes, subject to implementation of the Scheme in accordance with its terms, that it will with effect on and from the Implementation Date:
- (c) take all actions necessary to appoint the persons nominated by Bidder as new directors of Midway and each other Midway Group Member; and

- (d) procure that:
  - (i) all directors and other officers (including company secretaries and public officers) of Midway; and
  - (ii) all directors and other officers (including company secretaries and public officers) of each other Midway Group Member,

(other than directors and other officers (including company secretaries and public officers) appointed pursuant to clause 7.7(a) or existing directors or other officers (including company secretaries and public officers) which Bidder has agreed in writing will continue as a director or other officer) resign and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Midway or any other Midway Group Member (other than in their capacity as an employee of, or consultant to, a Midway Group Member, if applicable), in accordance with the constitution of the relevant Midway Group Member, the Corporations Act and the Listing Rules.

## 7.8 **Deeds of indemnity and insurance**

- (a) Subject to implementation of the Scheme and to clause 7.8(b), Bidder undertakes in favour of Midway and each Midway Indemnified Party (other than an employee that is not a director or officer) that it will:
  - (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Midway and each other Midway Group Member continues to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in their capacity as a director or officer of the company to any person other than a Midway Group Member, or provisions to equivalent effect; and
  - (ii) procure that Midway and each Midway Group Member complies with any deeds of indemnity, access and insurance (or equivalent) made by them in favour of their respective directors and officers who were in office prior to the Scheme becoming Effective;
  - (iii) without limiting clause 7.8(a)(i), ensure that directors' and officers' run-off insurance cover for the directors and officers referred to in that clause is maintained for a period of seven years from the retirement date of each such director and officer; and
  - (iv) not take any action which would prejudice or adversely affect any directors and officers' insurance policy in effect at the date of this deed, including any run-off insurance policy entered into under this clause 7.8.
- (b) The undertakings in clause 7.8(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Midway receives and holds the benefit of clause 7.8(a) on behalf of the directors and officers referred to in that clause.
- (d) The undertakings contained in clause 7.8(a) are given until the earlier of the relevant period specified in clause 7.8(a) or the relevant Midway Group Member ceasing to be part of the Bidder Group.

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## 7.9 D&O insurance

Bidder acknowledges that, notwithstanding any other provision of this deed, Midway may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in 7.8(a)(iii) (**D&O Run-off Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not, by themselves, be a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed, provided that:

- (a) Midway must use reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy from a reputable insurer;
- (b) Midway keep Bidder informed of progress in relation to the D&O Run-off Policy;
- (c) the scope and amount of the cover of the D&O Run-off Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Midway as at the date of this deed; and
- (d) the total cost of the D&O Run-off Policy may not exceed the amount separately agreed between the parties prior to the date of this deed,

and, at least 5 Business Days prior to Midway's entry into any D&O Run-off Policy, Midway must provide a copy of that D&O Run-off Policy to Bidder for review and consider in good faith, for the purposes of amending the terms of that D&O Run-off Policy, any reasonable comments from Bidder on that D&O Run-off Policy.

## 8. Contract arrangements

- (a) As soon as practicable after the date of this deed, Midway and Bidder must use their respective reasonable endeavours to identify:
  - (i) any change of control or similar provisions, unilateral termination rights in contracts (including leases) and licences of the Midway Group which the parties agree, acting reasonably, are material to the business of the Midway Group taken as a whole and which may be triggered by, or exercised in response to, the implementation of the Scheme (**Change of Control Requirements**); and
  - (ii) any expired contracts, leases, licences or Authorisations (**Expired Contracts and Authorisations**) of the Midway Group under which the Midway Group continues to operate or use.
- (b) In respect of each of the matters referred to in clause 8(a), the parties agree as follows:
  - (i) Midway and Bidder will, each acting reasonably, endeavour to agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) to obtain any consents, waivers or agreements required in accordance with the terms of any identified Change of Control Requirements (or renewal of Expired Contracts and Authorisations on substantially similar terms) and on terms agreed with Bidder;

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- (ii) Midway will request that the relevant counterparties provide any consents, waivers or agreements required in accordance with the terms of any identified Change of Control Requirements (such form of request to be agreed by Midway and Bidder, each acting reasonably);
- (iii) Bidder must not contact any counterparties without one or more representatives of Midway present or without Midway's prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
- (iv) Midway must procure that its directors and employees, use all reasonable endeavours to diligently obtain consents, waivers or agreements from counterparties to contracts with Change of Control Requirements, as well as renewal of Expired Contracts and Authorisations, including by providing any information reasonably requested by the relevant counterparties and making its Representatives available to deal with issues arising in relation to the matter provided always that nothing in this clause 8 requires Midway to incur material external expense; and
- (v) Bidder must provide Midway with all reasonable assistance, and take all action reasonably necessary to comply with any requirements of the counterparties that are reasonable to obtain the relevant consent, waiver or agreement (or renewal of the Expired Contracts and Authorisations) including:
  - (A) providing any information as counterparties may reasonably require; and
  - (B) making officers and employees available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant consent or waiver,

provided that nothing in this clause 8 requires Bidder to pay any money or to provide any financial compensation, or any other incentive to or for the benefit of the counterparty, other than as provided for in the relevant material contract; or agree to any material changes to the terms of the material contract, in each case to obtain such consent or waiver; and

- (vi) Midway must give the notification to the counterparty under the Rio Tinto Supply Agreement between Rio Tinto Biofuels Pty Ltd (ABN 69 672 321 514) and Midway dated 14 March 2024 as required under such contract;

in each case, in accordance with (and by the time required by) the relevant contract, lease, licence or Authorisation, or otherwise as soon as practicable after the date of this deed (and in any event before the Second Court Date); and

- (vii) Midway will consult with Bidder in good faith in relation to the matters referred to in clauses 8(b)(i) to 8(b)(vi) (including the form and content of any form of request) and, to the extent practicable and desirable, invite a reasonable number of Bidder Representatives to be involved in discussions in respect of any material Change of Control Requirements, or Expired Contracts and Authorisations.
- (c) In the event that:
    - (i) despite the best efforts of Midway and Bidder, such consents, waivers or agreement cannot be obtained prior to the Implementation Date; or

- (ii) Bidder notifies Midway that it wishes to pursue an alternative contract arrangement in lieu of such consent, waiver, assignment or novation (as applicable),

in the period prior to the Implementation Date, Midway will provide Bidder with reasonable assistance and information required for Bidder to enter into a separate agreement to ensure required coverage of those contractual requirements at the Implementation Date.

- (d) Without limiting the Conditions, a failure to obtain any consents, waivers, agreements or renewals under this clause 8 will not constitute or contribute to a breach of this deed by Midway, provided that Midway has acted in good faith in seeking to obtain the relevant consents, waivers, agreements or renewals under this clause 8.

## 9. **Midway Rights**

- (a) Midway represents and warrants to Bidder that as at the Effective Date, there are 2,635,724 outstanding Midway Rights, comprising:

- (i) 1,788,264 Midway Rights (FY22-FY24);
- (ii) 126,024 Midway Rights (FY25); and
- (iii) 721,436 Midway Options,

and there are no other performance rights or options or other entitlements granted under Midway's short term incentive plan, long term incentive plan or any other employee or officer incentive plan to acquire by way of issue or transfer (or have vesting or forfeiture conditions satisfied in respect of) one or more Midway Shares.

- (b) Subject to the matters set out in the Disclosure Letter in relation to Midway Rights (which Midway must act in accordance with), and to the Scheme becoming Effective, Midway will take such action as is agreed in writing between Bidder and Midway and otherwise as necessary to ensure that, prior to the Scheme Record Date, all Midway Rights will:

- (i) vest in accordance with their terms and be exercised (if applicable);
- (ii) have any applicable restrictions removed (if applicable); and
- (iii) be converted into Midway Shares and/or be cash settled,

and Midway must otherwise ensure that, as at the Scheme Record Date, there are no outstanding Midway Rights.

- (c) Without limiting clauses 7.4, 7.5 or 9(b), Midway agrees to:

- (i) provide Bidder with all reasonably requested information in relation to Midway Rights or holders of Midway Rights;
- (ii) facilitate discussions and negotiations between Bidder and holders of Midway Rights, where reasonably requested by Bidder; and
- (iii) seek any waivers or confirmations from ASX and take such other steps that Bidder considers are reasonably necessary in order to ensure an

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outcome whereby, following implementation of the Transaction, the only issued securities of Midway are the Scheme Shares transferred to Bidder under the Scheme.

- (d) As soon as reasonably practicable after the date of this deed, Midway must apply for, and use reasonable endeavours to obtain, any necessary waiver from Listing Rule 6.23 in connection with any actions to be undertaken under this clause 9 in relation to the Midway Options. If ASX does not grant that waiver before the Scheme becomes Effective, Midway must do all things necessary to ensure that the Midway Options are cancelled, exercised, lapsed or otherwise extinguished in accordance with the terms of the invitation letter addressed to the holder of the Midway Options dated 19 July 2021 as soon as practicable and in any case before the Effective Date.
- (e) For the avoidance of doubt, the parties agree that the taking of any action which is in accordance with this clause 9 will not be a Material Adverse Change or a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed.

10. **Cooperation with financing**

- (a) Subject to clause 10(b), Midway agrees that it must ensure that the CBA Facilities (and any other debt facility (other than the hire purchase facilities in existence at the date of this deed)) is repaid in full (and not redrawn) prior to the Implementation Date (unless otherwise agreed in writing by Bidder) and Midway must cooperate with, and undertake all steps reasonably required or requested by Bidder in connection with any repayment of existing debt of Midway Group as may be required in connection with the Transaction, including:
  - (i) liaising with Bidder in good faith in relation to the using of the existing cash reserves of Midway for this purpose;
  - (ii) issuing prepayment notices in relation to existing Midway Group debt facilities and closing out any hedging positions; and
  - (iii) using all reasonable endeavours to procure deeds of release, discharges of real property mortgages and registrations on the PPSR from secured parties in relation to any security interest granted by a Midway Group Member in favour of that party and procuring the return of any title documents held by a secured party.
- (b) The parties acknowledge and agree that Midway may use and draw down on the working capital facility forming part of the CBA Facilities if, in the period between the Second Court Date and the Implementation Date, the Cash Balance is below \$38,642,303 (or expected to be below \$33,493,449 after allowing for payment by Midway of unpaid Transaction Costs and the payments to be made by Midway as contemplated by clause 9) and the Net Working Capital is higher than the Net Working Capital Peg, then any shortfall in cash that is represented by Net Working Capital in excess of the Net Working Capital Peg can be funded by drawing down the CBA Facility provided that the parties must consult with each other in respect of such amounts, forecasted cash and forecasted New Working Capital and agree on any amounts to be drawn down from the CBA Facility prior to any such draw down being undertaken (each acting reasonably and in good faith).

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For clarity, Midway does not need to repay any Financial Indebtedness incurred in accordance with this clause any earlier than after the Implementation Date.

**11. Exclusivity**

**11.1 Termination of existing discussions**

Midway represents and warrants to Bidder that at the time of entry into this deed:

- (a) it and its Representatives have terminated all negotiations, discussions or other communications with any Third Party in relation to, or which could reasonably be expected to lead to, a Competing Proposal;
- (b) prior to the date of this deed, neither Midway nor any of its Representatives have entered into any arrangements, arrangements or understandings, whether oral or written or by conduct and whether or not conditional, with any party relating to any Competing Proposal which have not lapsed or been terminated;
- (c) any due diligence access granted to any Third Party has been terminated; and
- (d) any Third Party to whom non-public information in relation to Midway Group has been provided or made available has been requested to immediately return or destroy that non-public information in accordance with any agreed terms of confidentiality.

**11.2 No shop**

During the Exclusivity Period, Midway must not, and must ensure that its Representatives do not, directly or indirectly:

- (a) solicit, encourage, initiate, continue or invite any actual, proposed or potential enquiries, discussions, negotiations or proposals;
- (b) commence or permit to be commenced any auction, tender process, due diligence investigation or similar activity;
- (c) enter into any deed, agreement, arrangement or understanding; or
- (d) communicate to any person any intention to do any of the things referred to in clause 11.2(a), 11.2(b) or 11.2(c),

in relation to, or which may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal or which may otherwise lead to the Transaction not being completed.

**11.3 No talk**

- (a) Subject to clause 11.7, during the Exclusivity Period, Midway must not, and must ensure that its Representatives do not, directly or indirectly:
  - (i) negotiate, accept or enter into or offer or agree to negotiate, accept or enter into or facilitate or participate in or continue any negotiations or discussions with any other person;
  - (ii) otherwise cooperate in any way with, or assist, facilitate or participate in; or
  - (iii) communicate to any person any intention to, or attempt to, do any of the things referred to in clause 11.3(a)(i) or 11.3(a)(ii),

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in relation to an actual, proposed or potential Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to an actual, proposed or potential Competing Proposal, or which may otherwise lead to the Transaction not being completed, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by any Midway Group Member or any of its Representatives or the person has publicly announced the Competing Proposal.

- (b) For the avoidance of doubt, nothing in this clause 11.3 prohibits Midway or its Representatives from communicating with another person for the purpose of informing that person that Midway and its Representatives will not enter into any discussions or negotiations in relation to a Competing Proposal.

#### 11.4 **No due diligence**

Without limiting clause 11.3, but subject to clause 11.7, during the Exclusivity Period, Midway must not, and must ensure that none of its Representatives, directly or indirectly:

- (a) solicit, initiate, initiate, permit, facilitate or encourage any party (other than Bidder or its Representatives) to undertake due diligence on Midway or any Midway Group Member or any of their business or operations;
- (b) make available to any other person (other than Bidder or its Representatives) or permit such person to receive any non-public information relating to Midway or any Midway Group Member;
- (c) make available to any other person, or permit any other person to have access to (in the course of due diligence investigations or otherwise) any premises used, leased, licenced or owned by Midway Group; or
- (d) make available to any other person, or permits any other person to have access to, (in the course of due diligence investigations or otherwise) any officers or employees of Midway Group,

in connection with or with a view to obtaining, or which would reasonably be expected to encourage or lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal;

This clause 11.4 does not prevent Midway from:

- (e) providing information to ASX or Midway's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this deed; or
- (f) responding to a Third Party in respect of an enquiry, expression of interest, offer or proposal by that Third Party to make, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal to merely acknowledge receipt and/or advise that Third Party that Midway is bound by the provisions of this clause 11.4 and is only able to engage in negotiations, discussions or other communications if the fiduciary exception in clause 11.7 applies.

#### 11.5 **Notification obligation**

During the Exclusivity Period, Midway must promptly notify Bidder in writing as soon as reasonably practicable and in any event within 48 hours if it or any of its Representatives:

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- (a) 11.7 determines that the fiduciary exception in clause 11.7 applies to an actual, proposed or potential Competing Proposal;
- (b) are approached, by any person in relation to an actual, proposed or potential Competing Proposal, and that notice must include all material details of the Competing Proposal, including (to the extent known by Midway):
  - (i) the key terms of any Competing Proposal (including, if specified, the price, consideration, conditions, structure, timing, break fee, financing and due diligence requirements, and if it is an initial enquiry, indicative offer or a formal offer) to the extent known to Midway; and
  - (ii) the identity of the proponent(s) of any Competing Proposal;
- (c) receives any approach, inquiry, proposal or request for information relating to Midway or any of its Related Entities or any of their businesses or operations or any request for access to the books or records of Midway or any of its Related Entities, which Midway has reasonable grounds to suspect may relate to an actual, proposed or potential Competing Proposal and must disclose to Bidder the identity of the party making the request and the details referred to in clause 11.5(b) to the extent known by Midway; or
- (d) become aware of any material developments in relation to any actual, proposed or potential Competing Proposal previously notified to Bidder under this clause 11.5.

**11.6 Provision of information**

Without limiting any other part of this clause 11, during the Exclusivity Period, Midway must promptly provide Bidder with:

- (a) in the case of written materials, a copy of; or
- (b) in any other case, a written statement of,

any non-public information relating to a Midway Group Member or any of its businesses or operations made available or received by any person after the date of this deed in connection with or with a view to obtaining, or which would reasonably be expected to encourage or lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not been provided to Bidder and is not privileged information of that person.

**11.7 Fiduciary exception**

Each of clauses 11.3 and 11.4 do not apply to the extent that the relevant clause restricts Midway or the Midway Board (or Midway's Representatives) from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal (which was not solicited, encouraged, initiated or invited by Midway or its Representatives in breach of clause 11.2) provided that the Midway Board determines, acting in good faith:

- (a) after consultation with its financial advisers that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
- (b) after receiving written advice from its external legal advisers that not undertaking the relevant action would, or would be reasonably likely to, be contrary to the fiduciary or statutory duties of Midway Directors.

**11.8 Matching right**

- (a) Without limiting any other part of this clause 11, during the Exclusivity Period, Midway:
- (i) must procure that no Midway Director withdraws, changes, or qualifies his/her recommendation of the Scheme in accordance with clause 2.3(a) and that no Midway Director publicly recommends a Competing Proposal; and
  - (ii) must not enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Midway or both proposes or propose to undertake or give effect to a Competing Proposal (and, for the avoidance of doubt, this does not include Midway entering into a confidentiality agreement on customary terms in relation to any engagement or action permitted by clause 11.7),

unless:

- (iii) the Midway Board has made the determination contemplated by clause 11.7;
  - (iv) Midway has given Bidder written notice (**Matching Right Notice**), stating that it is given for the purposes of this clause 11.8, of the key terms of the Competing Proposal (including the identity of the person(s) who made the Competing Proposal, and the material terms and conditions of the Competing Proposal, including price (or implied value), consideration, conditions precedent, timing, break fee provisions (if any)), in each case to the extent known by Midway; and
  - (v) Bidder does not, within 5 Business Days after Midway gives the Matching Right Notice, make an irrevocable written offer to Midway to increase the Scheme Consideration or otherwise improve the terms of the Transaction (**Bidder Counterproposal**) that the Midway Board determines (acting in good faith, and after consultation with its legal and financial advisers) would produce an outcome for Midway Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal taking into account all terms and conditions and other aspects of the Bidder Counterproposal and the Competing Proposal respectively.
- (b) The parties acknowledge and agree that each successive material modification of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal for the purposes of the requirements under clause this 11.8 and accordingly Midway must comply with clause 11.8(a) in respect of any such new actual, proposed or potential Competing Proposal.

**11.9 Bidder Counterproposal**

If, following receipt of a Matching Right Notice, Bidder makes a Bidder Counterproposal before the expiry of the 5 Business Day period referred to in clause 11.8(a)(v), Midway must procure that the Midway Board promptly considers the Bidder Counterproposal, to determine whether, acting reasonably and in good faith, the Bidder Counterproposal would produce an outcome for Midway Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal (**Matching Counterproposal**). Following that determination, Midway must:

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- (a) procure that the Midway Board promptly, and in any event within 48 hours, notifies Bidder of the determination in writing, stating reasons for that determination; and
- (b) if the determination is that the Bidder Counterproposal is a Matching Counterproposal, then for a period of 3 Business Days after Midway delivers to Bidder the notice referred to in clause 11.9(a):
  - (i) Bidder and Midway must for a period of 3 Business Days after Midway, delivers to Bidder the notice referred to above use their respective best endeavours to promptly agree the transaction documents necessary to implement the Bidder Counterproposal (including, if applicable, amendments to this deed, the Scheme and the contents of the Scheme Booklet) as are reasonably necessary to give effect to the Matching Counterproposal; and
  - (ii) subject to the parties reaching agreement as contemplated by clause 11.9(b)(i), Midway must use all reasonable endeavours to procure that each of the Midway Directors continues to recommend the Scheme (as modified by the Bidder Counterproposal) to Midway Shareholders (subject to the occurrence of one or more of the events referred to in clause 2.3(b)).

#### 11.10 **Statements**

Despite any other provision in this deed, a statement by Midway, the Midway Board, or any Midway Director only to the effect that:

- (a) the Midway Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in clauses 11.8 and 11.9; or
- (b) Midway Shareholders should take no action pending the completion of the matching right process set out in clauses 11.8 and 11.9,

does not by itself:

- (c) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the Midway Directors or an endorsement of a Competing Proposal;
- (d) contravene this deed;
- (e) give rise to an obligation to pay the Break Fee under clause 12.2; or
- (f) give rise to a termination right under clause 15.1(b).

#### 11.11 **Presentations**

Nothing in this clause 11 will prevent Midway from:

- (a) continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business consistent with the 12 months prior to the date of this deed;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;



- (d) providing information to its Representatives or credit agencies in the ordinary and usual course of business; and
- (e) providing information to its auditors, customers or suppliers, in each case acting in that capacity, in the ordinary and usual course of business.

**11.12 Compliance with law**

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 11 or any part of it:
  - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Midway Board;
  - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
  - (iii) was, or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) Midway will not be obliged to comply with that provision of clause 11.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.12.

**12. Break Fee**

**12.1 Background**

This clause 12 has been agreed to in circumstances where:

- (a) each of Bidder and Midway believes it and its shareholders and investors will derive significant benefits from the implementation of the Scheme;
- (b) each of Bidder and Midway have incurred and will further incur, significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (c) each party has requested that provision be made for the payment of a Break Fee by the other, and would not have entered into this deed had such provision not been made;
- (d) Midway and Bidder believe that it is appropriate to agree to pay the Break Fee to secure the other's entry into this deed; and
- (e) each of Bidder and Midway has received legal advice in relation to this deed and the operation of this clause 12.

Bidder and Midway acknowledge and agree that the costs referred to in clause 12.1(b) are of such a nature that they cannot be precisely quantified, but that the Break Fee is a genuine and reasonable pre-estimate of those costs.

**12.2 Payment of Break Fee in favour of Bidder**

Subject to clauses 12.3 and 12.7, Midway must pay Bidder the Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder, if any of the following events occur:

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- (a) at any time before the termination of this deed under clause 15, a Competing Proposal is made or announced by a Third Party, and, within 12 months thereafter:
  - (i) a Competing Proposal is completed, implemented or consummated;
  - (ii) a Third Party acquires Control of, or merges with, Midway; or
  - (iii) a Third Party acquires voting power of (or an economic interest in) 50% or more of Midway Shares or acquires or obtains an economic interest in all or a substantial part of the assets of Midway Group;
- (b) Midway enters into any agreement with a Third Party in respect of a Competing Proposal pursuant to which a Third Party, Midway or both agree to undertake, implement or give effect to a Competing Proposal;
- (c) Bidder has terminated this deed under clause 15.1(a)(ii), 15.1(b), 15.1(d) or 15.2(a) (other than in circumstances where the Independent Expert concludes that the Transaction is not in the best interests of Midway Shareholders, except where the reason for that conclusion is a Competing Proposal);
- (d) at any time prior to the Second Court Date, a Third Party acquires a Relevant Interest in 50% or more of the Midway Shares under a transaction that is or has become wholly unconditional or otherwise acquires (either alone or in aggregate) Control of Midway; or
- (e) prior to the End Date, any Midway Director publicly:
  - (i) withdraws or adversely changes his or her Recommendation or Voting Intention as set out in clause 2.3(a); or
  - (ii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended,

in the case of paragraph (e) provided that Bidder or Midway has terminated this deed in accordance with clause 15.1(b) or 15.1(c) and other than where:

- (iii) the Independent Expert concludes in the Independent Expert's Report (or any update of, revision or amendment or addendum to, that report) that the Scheme is not in the best interests of Midway Shareholders, except where the reason for that conclusion is a Competing Proposal; or
- (iv) Midway is entitled to terminate this deed under clause 15.1(a)(i), 15.1(a)(ii) or 15.2(b), has given the appropriate notice of termination to Bidder and where Midway is terminating for breach, any cure or remedy period has expired without Bidder curing or remedying the breach.

### 12.3 Payment conditions

- (a) Notwithstanding the occurrence of any event described in clause 12.2, the Break Fee will not be payable to Bidder if the Scheme becomes Effective. If the Break Fee has been paid and then the Scheme subsequently becomes Effective, the Break Fee paid to Bidder must be immediately refunded to Midway by Bidder.
- (b) Midway can only ever be liable to pay the Break Fee once.
- (c) For the avoidance of doubt, the Break Fee is not payable by Midway to the Bidder merely because the resolution submitted to the Scheme Meeting in

respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

#### 12.4 **Payment of Break Fee in favour of Midway**

Subject to clauses 12.5 and 12.7, Bidder must pay Midway the Break Fee without set-off or withholding and within 5 Business Days after receipt of a written demand from Midway if Midway terminates this deed in accordance with clauses 15.1(a)(ii) or clause 15.2(b).

#### 12.5 **Payment conditions**

- (a) Notwithstanding the occurrence of any event described in clause 12.4, the Break Fee will not be payable to Midway if the Scheme becomes Effective. If the Break Fee has been paid by Bidder and then the Scheme subsequently becomes Effective, the Break Fee paid to Midway must be immediately refunded to Bidder by Midway; and
- (b) Bidder can only ever be liable to pay the Break Fee once.

#### 12.6 **Nature of payment**

The Break Fee payable by Midway under clause 12.2, or by Bidder under clause 12.4, is an amount to compensate Bidder or Midway (as the case may be) for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed.

#### 12.7 **Compliance with law**

- (a) This clause 12 imposes obligations on a party only to the extent that the performance of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel;
  - (ii) does not breach the fiduciary or statutory duties of any Midway Director or the board of the Bidder (as applicable); and
  - (iii) is not otherwise unlawful or held to be unenforceable by a court.
- (b) If any of clause 12.7(a)(i), 12.7(a)(ii) or 12.7(a)(iii) applies, the Break Fee will be deemed to be reduced by the relevant amount for the purposes of this clause 12 and, if the Break Fee has already been paid, Bidder or Midway (as applicable) must immediately reimburse the other party for that amount.
- (c) The parties must not make, or cause to be made, any application to the Takeovers Panel or a court for, or in relation to, a declaration or determination referred to in clause 12.7(a). For the avoidance of doubt, nothing in this clause 12.7 prohibits a party from making submissions in connection with an application to the Australian Takeovers Panel or to a court in connection with proceedings to which it is a party.

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**12.8 Limitation of liability and specific performance**

- (a) Notwithstanding any other provision of this deed but subject to clause 12.8(b):
- (i) the maximum liability of each party to the other party under or in connection with this deed, including in respect of any breach of this deed (including a representation and warranty), will be the Break Fee, and in no event will the aggregate liability of any party under or in connection with this deed exceed the Break Fee;
  - (ii) where the Break Fee is paid to Bidder in accordance with clause 12.2, neither Bidder nor any of its Related Bodies Corporate may make a claim (of whatsoever nature) against Midway or any other Midway Indemnified Party under or in connection with this deed;
  - (iii) where the Break Fee is paid to Midway in accordance with clause 12.4 neither Midway nor any of its Related Bodies Corporate may make a claim (of whatsoever nature) against Bidder or any other Bidder Indemnified Party under or in connection with this deed;
  - (iv) damages may not be a sufficient remedy for breach of this deed; and
  - (v) specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, or for a breach of the Deed Poll by Bidder or RollCo, or for a breach of the River Commitment Letter by any person, notwithstanding that a party may have the ability to terminate this deed or demand payment of the Break Fee.
- (b) Subject to the Scheme becoming Effective, nothing in this clause 12.8 or otherwise in this deed will limit Bidder's liability, or Midway's ability to take action, under or in connection with a breach of clause 4.1, the Deed Poll or the River Commitment Letter.

**13. Representations and Warranties****13.1 Midway Representations and Warranties**

Midway represents and warrants to Bidder that (in its own right and separately as nominee for, or on behalf of, each of the other Bidder Parties) each Midway Representation and Warranty is true and correct.

**13.2 Bidder Representations and Warranties**

Bidder represents and warrants to Midway that each Bidder Representation and Warranty is true and correct.

**13.3 Timing of warranties**

Each warranty given under clause 13.1 or clause 13.2 is given at the date of this deed, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and as at 8:00am on the Second Court Date unless that representation or warranty is expressed to be given only at a particular time, in which case it is given only at that time.

**13.4 Indemnities**

- (a) Midway indemnifies each Bidder Group Member against all Losses incurred directly or indirectly as a result of any of Midway Representations and Warranties being not true and correct.

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- (b) Bidder indemnifies each Midway Group Member against all Losses incurred directly or indirectly as a result of any of the Bidder Representations and Warranties being not true and correct.

### 13.5 **Survival of Representations and Warranties**

Each Representation and Warranty:

- (a) is severable;
- (b) survives termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

### 13.6 **Qualifications on Midway Representations and Warranties**

The Midway Representations and Warranties are each subject to and are qualified by, and the liability of Midway in respect of any breach of any Midway Representation and Warranty will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with matters that:

- (a) are required or expressly provided for in this deed;
- (b) have been Fairly Disclosed by Midway in any documents lodged with ASX by Midway in the 24 months prior to the date of this deed;
- (c) have been Fairly Disclosed in the Disclosure Materials;
- (d) would have been Fairly Disclosed to Bidder had Bidder conducted searches of public records in respect of each Midway Group Member incorporated in Australia maintained by:
  - (i) ASIC (had the relevant searches been conducted 5 Business Days prior to the date of this document);
  - (ii) the register established under the *Personal Property Securities Act 2009* (Cth) (had the relevant searches been conducted 5 Business Days prior to the date of this document);
  - (iii) the registry of the Victorian titles office, on 11 October 2024 respectively; and
  - (iv) the High Court of Australia, Federal Court of Australia and the Supreme Courts of New South Wales and Victoria on 11 October 2024;
- (e) are required by any applicable law, regulation (including industry specific regulation), generally accepted accounting standards or generally accepted accounting principles, contract or by a Government Agency; or
- (f) are within the actual knowledge of the Bidder Deal Team as at the date of this deed.

## 14. **Releases**

### 14.1 **Release of Midway Indemnified Parties**

- (a) Subject to clause 14.1(b), Bidder releases any and all rights that it may have, and agrees with Midway that it will not make, and that after the Implementation

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Date it will procure that each Midway Group Member does not make, any Claim, against any Midway Indemnified Party (other than the Midway Group) as at the date of this deed in connection with:

- (i) Midway's execution and delivery of this deed;
- (ii) any breach of any covenant, representation or warranty given by Midway under this deed;
- (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information,

except where a Midway Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. To avoid doubt, nothing in this clause 14 limits the rights of Midway to terminate this deed under clause 15.

- (b) The release in clause 14.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Midway receives and holds the benefit of clause 14.1(a) on behalf of Midway Indemnified Parties as trustee for each of them.

#### 14.2 **Release of Bidder Indemnified Parties**

- (a) Subject to clause 14.2(b), Midway releases any and all rights that it may have, and agrees with Bidder that it will not make any Claim, against any Bidder Indemnified Party (other than the Bidder Group) as at the date of this deed in connection with:

- (i) Midway's execution and delivery of this deed
- (ii) any breach of any covenant, representation or warranty given by Bidder under this deed;
- (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information,

except where a Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. To avoid doubt, nothing in this clause 14.2 limits the rights of Midway to terminate this deed under clause 15, the terms of any River Commitment Letter or Midway's right to claim under any River Commitment Letter.

- (b) The release in clause 14.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 14.2(a) on behalf of the Bidder Indemnified Parties.

## 15. **Termination**

### 15.1 **Termination by Bidder or Midway**

- (a) Bidder or Midway may terminate this deed:

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- (i) in accordance with clause 3.4; or
  - (ii) other than in respect of a breach of either a Bidder Representation and Warranty or a Midway Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00 am on the Second Court Date if the other commits a material breach of this deed, and:
    - (A) the breach is material in the context of this deed and the Scheme taken as a whole;
    - (B) it has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and
    - (C) the relevant circumstances are not remedied to the non-defaulting party's reasonable satisfaction and have continued to exist for 20 Business Days from the time such notice is given (or any shorter period ending at 8.00 am on the Second Court Date) (in which case termination under this clause 15.1(a)(ii) will take effect at the expiry of that period); or
  - (iii) if Midway Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice is not given in accordance with clause 6.6(c); or
  - (iv) at any time if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Bidder may terminate this deed, with immediate effect, at any time before 8.00 am on the Second Court Date by notice in writing to Midway if:
- (i) Midway enters into any agreement or arrangement with a Third Party in respect to the implementation of a Competing Proposal (excluding, for the avoidance of doubt, a confidentiality agreement on customary terms) under which that Third Party and Midway agree to undertake or give effect to such Competing Proposal; or
  - (ii) any Midway Director:
    - (A) withdraws or adversely changes his or her Recommendation or Voting Intention as set out in clause 2.3(a);
    - (B) makes any public statement that is inconsistent with the Recommendation or Voting Intention as set out in clause 2.3(a); or
    - (C) recommends, endorses or supports any Competing Proposal,
- in each case in any circumstances (including following the occurrence of one of the events referred to in clause 2.3(b)).
- (c) Midway may terminate this deed, with immediate effect, at any time before 8.00 am on the Second Court Date by notice in writing to Bidder if a majority of Midway Directors publicly:
- (i) fail to recommend the Scheme;
  - (ii) withdraw or adversely change their Recommendation; or
  - (iii) recommend a Competing Proposal,

(but excluding a statement that no action should be taken by Midway Shareholders pending the assessment of a Competing Proposal by the Midway Board or the completion of the matching right process set out in clause 11.8) in accordance with this deed, in each case, provided that one of the events referred to in clause 2.3(b) has occurred.

- (d) Bidder may terminate this deed, with immediate effect, at any time before 8.00 am on the Second Court Date by notice in writing to Midway if a Special Dividend of \$0.3835 in aggregate per Midway Share:
- (i) becomes incapable of being declared or determined and paid in accordance with clause 5.1 or any agreement made between the parties in writing; or
  - (ii) has not been publicly declared or determined to be paid by Midway to Midway Shareholders by the date which is 2 Business Days before that time.

## 15.2 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00 am on the Second Court Date, terminate this deed for a breach of a Midway Representation and Warranty only if:
- (i) Bidder has given written notice to Midway setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (ii) the relevant breach continues to exist for 10 Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(i); and
  - (iii) the loss that would reasonably be expected to follow from the relevant breach of the Midway Representations and Warranties is material in the context of the Scheme taken as a whole.
- (b) Midway may, at any time before 8.00 am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:
- (i) Midway has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (ii) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(i); and
  - (iii) the loss that would reasonably be expected to follow from the relevant breach of the Bidder Representations and Warranties is material in the context of the Scheme taken as a whole.

## 15.3 Effect of termination

If this deed is terminated in accordance with this clause 15, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 15 and clauses 1, 12, 14, 17, 18, 19 and 20 (other than 20.8) and Schedule 1, will survive termination; and

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- (b) each party shall retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

#### 15.4 **Notice of termination**

Where Midway or Bidder has a right to terminate this deed, that right for all purposes will be validly exercised if Midway or Bidder (as the case may be) delivers a notice in writing to the other party stating that it terminates this deed.

### 16. **Public announcements**

#### 16.1 **Public announcements on execution**

Immediately after execution of this deed (or as otherwise agreed between Bidder and Midway), Midway must issue a written public announcement in a form agreed in writing by Bidder and Midway.

#### 16.2 **Further public announcements**

- (a) Subject to clause 16.2(c), no material public announcement or public disclosure of, or in relation to, the Transaction or any other transaction the subject of this deed or the Scheme (**Proposed Public Announcement**) may be made by a Midway Group Member or a Bidder Group Member other than in a form approved by each party in writing (such approval not to be unreasonably withheld or delayed).
- (b) A party must provide the other party with a draft copy of any Proposed Public Announcement as soon as reasonably practicable before it is proposed that such Proposed Public Announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the draft Proposed Public Announcement and must take into account all reasonable comments from that party on the draft. For the avoidance of doubt, this clause 16.2 does not apply to any announcement or disclosure in connection with an actual, proposed or potential Competing Proposal.
- (c) Despite any provision of the Confidentiality Agreement, where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction, or any other transaction the subject of this deed or the Scheme, it may do so despite clause 16.2(a) but must use all reasonable endeavours, to the extent practicable and lawful, to minimise the content of the announcement or disclosure and consult with the other party prior to making the relevant announcement or disclosure, other than where such announcement or disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.
- (d) For the avoidance of doubt, this clause 16.2 does not apply to information, communications and notices provided by the Bidder (and its Related Entities) to their investors.

### 17. **Confidentiality**

Except as otherwise expressly specified in this deed, each party acknowledges and agrees that nothing in this deed derogates from or limits the provisions of the Confidentiality Agreement. Accordingly, except as otherwise expressly specified in this

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deed, all information provided under or in connection with this deed is subject to the terms of the Confidentiality Agreement.

**18. Duty, costs and expenses**

**18.1 Stamp duty**

Bidder:

- (a) must pay all Duty in respect of this deed, the performance of this deed and each transaction contemplated by this deed (including the Scheme); and
- (b) indemnifies Midway against any liability arising from or in connection with any failure by it to comply with clause 18.1(a).

**18.2 Costs and expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of the Transaction.

**19. Tax matters**

**19.1 GST**

- (a) Subject to clause 19.1(b), if a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 19.1 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made. The recipient must make payment of the additional amount in respect of GST at the same time as the other consideration is to be first provided for that supply, or if any of the consideration has been already paid or provided, within 5 Business Days of receiving a written demand from the supplier
- (b) Clause 19.1(a) does not apply to any consideration that is expressed in this deed to be inclusive of GST where applicable.
- (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party (or any representative member of a GST group which that party is a member) is entitled to for the loss, cost or expense, and then increased in accordance with clause 19.1.
- (d) A party need not make a payment for a taxable supply made under or in connection with this deed until it receives a tax invoice for the supply to which the payment relates.
- (e) If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this deed, then:
  - (i) a corresponding adjustment of GST payable under this deed must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable; and

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- (ii) the supplier, if obligated to do so under the GST Law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.

## 19.2 Withholding tax

- (a) Midway confirms that at the time of signing this deed and Implementation Date, so far as the Midway is aware, none of the Scheme Shares will comprise indirect Australian real property interests as defined in section 855-25 of the Tax Act (on the basis that the 'principal asset test' referred to in paragraph 855-25(1)(b) of the Tax Act should not be satisfied) and therefore Bidder should not be required by Subdivision 14-D of Schedule 1 to the Tax Act (**Subdivision 14-D**) to pay an amount to the Commissioner of Taxation under section 14-200 in Subdivision 14-D in respect of the acquisition of Scheme Shares from Scheme Shareholders. For the avoidance of doubt, the parties agree that any breach of this clause 19.2(a) (other than a breach which is intentional or reckless) will not give rise to any right to terminate this deed provided that the Midway acts in good faith.
- (b) Notwithstanding clause 19.2(a), if Bidder is required by Subdivision 14-D to pay amounts to the Commissioner of Taxation in respect of the acquisition of Scheme Shares from certain Scheme Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (c) Bidder acknowledges and agrees, that it shall not pay any amounts to the Commissioner of Taxation under clause 19.2(b) with respect to a Scheme Shareholder where it receives an entity declaration from the Scheme Shareholder prior to the Implementation Date, where:
  - (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and covers the Implementation Date (**Entity Declaration**); and
  - (ii) the Bidder does not know that the Entity Declaration is false.
- (d) If the Bidder forms the view that it knows that an Entity Declaration it has received is false, and the Bidder received the Entity Declaration more than 30 days before the Implementation Date, the Bidder agrees that it shall not pay any amounts to the Commissioner of Taxation in respect of that Scheme Shareholder until it has:
  - (i) provided information upon which it relied to form that view to the Scheme Shareholder who has provided that Entity Declaration no less than 20 days before the Implementation Date;
  - (ii) provided the Scheme Shareholder by notice in writing the opportunity to review the information provided to it and respond with their views no less than 10 days before the Implementation Date; and
  - (iii) reviewed any response from the Scheme Shareholder and, after having reconsidered its view, still be of the view that it has knowledge that the Entity Declaration it has received is false.

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- (e) Midway agrees that Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that Bidder reasonably requires in making any such approach. Bidder agrees to provide Midway a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and must incorporate Midway’s reasonable comments on those materials, and more generally to take into account Midway’s comments in relation to the Bidder’s engagement with the Australian Taxation Office, and provide Midway a reasonable opportunity to participate in any discussions and correspondence between Midway and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Scheme.
- (f) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 19.2(d). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation.

20. **General**

20.1 **Notices**

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
  - (i) in writing, in English and sent by a person duly authorised by the sender;
  - (ii) marked for the attention of the relevant person named below; and
  - (iii) hand delivered or sent by email to the recipient's address for Notices set out below, as varied by any Notice given by the recipient to the sender:

Midway:

Post: 10 The Esplanade, North Shore Victoria, 3214

Email: [gordon.davis@iinet.net.au](mailto:gordon.davis@iinet.net.au)

Attention: Gordon Davis

with a copy (for informational purposes only) to Lee Mitchell, Nicholson Ryan Lawyers by email at [leem@nrlawyers.com.au](mailto:leem@nrlawyers.com.au)

Bidder:

Post: Level 18, 644 Chapel St, South Yarra, Victoria 3141

Email: [jludski@rivercapital.com.au](mailto:jludski@rivercapital.com.au)

Attention: Josh Ludski

with a copy (for information purposes only) to Neil Pathak, Ashurst by email at [neil.pathak@ashurst.com](mailto:neil.pathak@ashurst.com) and [ben.landau@ashurst.com](mailto:ben.landau@ashurst.com)

- (b) A Notice given in accordance with clause 20.1(a) is taken to be received:

- (i) if hand delivered, on delivery; or
- (ii) if sent by email, immediately unless the sender receives a message indicating that the email has not been received by the intended recipient,

but, if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day.

## 20.2 **Governing law and jurisdiction**

- (a) This deed is governed by the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and courts competent to hear appeals from those courts.

## 20.3 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this deed.

## 20.4 **No merger**

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

## 20.5 **Waivers, consents and approvals**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent or approval of a party is required under this deed, such consent or approval may be given or withheld in that party's absolute discretion.

## 20.6 **Variation**

This deed may only be varied by a document signed by or on behalf of each of the parties.

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**20.7 Assignment**

- (a) A party may not assign, novate, declare a trust over or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other party or as expressly contemplated in this deed.
- (b) A breach of clause 20.7(a) by either party shall be deemed to be a material breach of this deed by that party for the purposes of clause 15.1(a)(ii) without affecting the construction of any other part of this deed.

**20.8 Further action**

Each party will do all things and execute all further documents necessary to give full effect to this deed.

**20.9 Entire agreement**

This deed, the Disclosure Letter and the Confidentiality Agreement supersede all previous agreements, understandings, negotiations or deeds in respect of its subject matter and embodies the entire agreement between the parties.

**20.10 Severability**

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction. Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed shall have full force and effect in that (and any other) jurisdiction.
- (b) This clause 20.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

**20.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. Subject to applicable law, a counterpart may be signed electronically and may be in hard copy or electronic form.

**20.12 Midway Indemnified Parties and Bidder Indemnified Parties**

The parties acknowledge and agree that:

- (a) in the case of Midway Indemnified Parties, Midway enters into this deed for itself and as trustee for each of the other Midway Indemnified Parties, each of whom may also rely on and enforce any clause of this deed that is expressed to confer a right or benefit on a Midway Indemnified Party; and
- (b) in the case of Bidder Indemnified Parties, Bidder enters into this deed for itself and as trustee for each of the other Bidder Indemnified Parties, each of whom may also rely on and enforce any clause of this deed that is expressed to confer a right or benefit on a Bidder Indemnified Party.

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# Schedule 1

## Dictionary

### 1. Dictionary

**Adviser** means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

**Aggregate Cash Consideration** means the aggregate of the Cash Consideration payable to Scheme Shareholders under the Scheme (taking into account all Valid Elections and the terms of the Scheme).

**Aggregate RollCo Elected Shares** means the total number of RollCo Shares that would be issued in exchange for Scheme Shares the subject of all Valid Elections for Scrip Consideration, including deemed Valid Elections, but for the Scaleback Arrangements.

**Aggregate Scrip Consideration** means the aggregate number of RollCo Shares to be provided to Scheme Shareholders under the Scheme (taking into account all Valid Elections and the terms of the Scheme).

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

**All Cash Consideration** means the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

**All Scrip Consideration** means the Scrip Consideration for each Scheme Share held by a Scheme Shareholder.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

**ASX** means ASX Limited (ACN 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

**ATO** means the Australian Taxation Office.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waive, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without the action being taken.

**Available RollCo Shares** means the number of RollCo Shares which represents 49.99% of the total issued capital of RollCo as at the Implementation Date (assuming all Scrip Consideration has been issued in accordance with the terms of the Scheme, and as if all other RollCo Shares that have been agreed to be issued in connection with the Scheme have been issued on the Implementation Date).

**Bidder Counterproposal** has the meaning given in clause 11.8(a)(v).

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**Bidder Deal Team** means Josh Ludski and Christy Hou.

**Bidder Group** means Bidder, RollCo and each of their respective Related Entities, and **Bidder Group Member** means any one of them.

**Bidder Indemnified Party** means Bidder Group Members and their respective directors, officers and employees.

**Bidder Information** means information regarding the Bidder Group provided by Bidder to Midway in writing for inclusion in the Scheme Booklet, which must include information in relation to:

- (a) Bidder and RollCo (including the risk factors to be disclosed in the Scheme Booklet regarding Bidder and RollCo) and all other material information in respect of the RollCo Shares which shall comprise the Aggregate Scrip Consideration;
- (b) the funding of the Cash Consideration; and
- (c) Bidder's intentions in relation to Midway Group and its business (including Midway Group's employees and assets), and includes any information contained in the Scheme Booklet that is solely based on any information so provided by Bidder.

**Bidder Representations and Warranties** means the representations and warranties set out in Schedule 4.

**Break Fee** means:

- (a) where this deed is terminated by Bidder under clause 15.1(d), \$519,650 (excluding any GST); and
- (b) in all other circumstances, \$1,556,589 (excluding any GST).

**Budget** means the budget for the Midway Group for the 2025 financial year as disclosed in the Disclosure Materials at data room reference number 01.02.02.

**Business Day** has the meaning given in the Listing Rules.

**Cash Balance** means the aggregate of all cash and cash equivalents, comprising cash at bank and short term deposits (in each case held by a financial institution in the name of, and on behalf of, a Midway Group Member).

**Cash Consideration** means an amount of \$1.19 for each Scheme Share, as adjusted in accordance with clause 5.3 (if applicable).

**CBA** means Commonwealth Bank of Australia (ABN 48 123 123 124).

**CBA Facility Agreement** means the Facility Agreement between, among others, CBA and Midway dated 17 October 2023, as amended on 1 December 2023.

**CBA Facilities** means the facilities provided by CBA pursuant to the CBA Facility Agreement.

**Change of Control Requirements** has the meaning in clause 8(a).

**Claim** means any allegation, cause of action, claim or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.



**Class Ruling** means a binding public ruling issued by the Commissioner of Taxation pursuant to Division 358 of Schedule 1 to the *Tax Administration Act 1953* (Cth) and as described in the class ruling CR 2001/1.

**Competing Proposal** means any expression of interest or intent, proposal, offer from a Third Party in respect of any actual, proposed or potential transaction, agreement or arrangement which if entered into or completed substantially in accordance with its terms:

- (a) would mean or result in a Third Party (either alone or together with one or more other parties) directly or indirectly:
  - (i) acquiring Control of, or merging with, Midway or any Midway Group Member which holds all or a substantial part of a material part of Midway Group;
  - (ii) acquiring or having a right to acquire a legal, beneficial or economic interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or a Relevant Interest or Voting Power in 15% or more of the Midway Shares; or
  - (iii) acquiring, becoming the holder of or having a right to acquire or an economic interest in all or a substantial part of the business, or any of the material assets, of Midway Group (where a material asset of Midway Group will include rights in respect of assets representing 10% or more of the value of Midway Group's total assets),

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction or distribution, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement; or

- (b) would otherwise result in the Scheme not being able to be implemented or the implementation of the Transaction being materially adversely affected.

**Condition** means a condition precedent set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement between Midway and River Capital Pty Limited (ACN 073 531 469) dated on or about 6 August 2024.

**Consultation Notice** has the meaning given in clause 3.4(a).

**Control** means, in relation to a corporation:

- (a) the ability to control, directly or indirectly, the composition of the board of directors of the corporation;
- (b) the ability to exercise or control the exercise of the rights to vote in relation to more than 50% of the voting shares or other form of voting equity in the corporation;
- (c) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the corporation; or

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- (d) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the corporation.

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

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

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

**Court Documents** means the documents which Midway determines (acting reasonably) are required for the purposes of a Court Hearing, which may include originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearing** means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

**Deed Poll** means the deed poll, in the form of Annexure B, to be entered into by Bidder and RollCo pursuant to clause 6.3(i), under which (among other things) Bidder and RollCo covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of the Scheme.

**Dictionary** has the meaning given in clause 1.1(a).

**Director Shares** means any Midway Share:

- (a) held or controlled by a Midway Director; or
- (b) listed as an indirect interest in the latest Appendix 3X or Appendix 3Y lodged by Midway with ASX in respect of each Midway Director.

**Disclosure Letter** means the letter identified as such from Midway to Bidder on or before the date of this deed and countersigned by Bidder.

**Disclosure Materials** means:

- (a) the documents and information (including, for the avoidance of doubt, information and responses to questions or requests for information from Bidder and its Representatives provided by Midway or its Representatives via the "Q&A" function) contained in the online electronic data room entitled "Project Centre" administered by Ansarada to which Bidder and its Representatives were given access prior to the date of this deed which could be accessed at [https://dataroom.ansarada.com/\\_mvc/ccadz9lxevia%7C164442/8096897/spa/documents](https://dataroom.ansarada.com/_mvc/ccadz9lxevia%7C164442/8096897/spa/documents), an electronic copy of which has been provided to Bidder by Midway or its Representatives on or before the date of this deed; and
- (b) the Disclosure Letter.

**D&O Run-off Policy** has the meaning given in clause 7.9(a)

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them.

**EBITDA** means earnings of the Midway Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by Midway as at the date of this deed.

**Effective** means the coming into effect, under 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 on which the Scheme becomes Effective.

**Election** means an election by a Midway Shareholder (other than an Ineligible Shareholder) to receive:

- (a) All Cash Consideration;
- (b) All Scrip Consideration; or
- (c) Mixed Consideration,

in accordance with clause 4.2.

**Election Form** means the form of election under which a Midway Shareholder is offered the opportunity to make an Election.

**Election Time** means 7.00 pm on the date which is 5 Business Days prior to the date of the Scheme Meeting, or such other date agreed in writing between Bidder and Midway.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, pledge, lien, encumbrance, pledge, title retention, trust arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means:

- (a) the date that is six months after the date of this deed; and
- (b) such other date and time agreed between Bidder and Midway in writing.

**EOM Report** has the meaning given in clause 6.2(x)(iv)(D).

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

- (a) the termination of this deed under clause 15; and
- (b) the End Date.

**Expired Contracts and Authorisations** has the meaning in clause 8(a).

**Fairly Disclosed** means, in relation to a matter, such matter being disclosed in sufficient detail to enable a reasonable person experienced in M&A transactions to identify the nature and scope of the relevant matter.

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

- (a) interest or non-interest bearing loan or other financing liability or obligation, including an overdraft or any other liability in the nature of borrowed money (whether secured or unsecured);
- (b) advance, loan, bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;

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- (d) receivables sold or discounted;
- (e) guarantee or letter of credit;
- (f) swap, option, hedge, forward, futures or similar transaction;
- (g) finance or capital lease;
- (h) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

**First Court Date** means the day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Midway to convene the Scheme Meeting is first heard, with such hearing being the **First Court Hearing**.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, financial or other regulator or supervisory authority, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian.

**GST** means goods and services tax, or similar value added tax levied or imposed in Australia under the GST Law.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Exclusive Consideration** has the meaning given in clause 19.1(a).

**GST Law** has the meaning given in the GST Act and any other law or regulation relating to GST.

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

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other day as Bidder and Midway agree in writing.

**Independent Expert** means the independent expert to be appointed by Midway to prepare the Independent Expert's Report in accordance with clause 6.2(a) and ASIC Regulatory Guide 111 *Content of expert reports*.

**Independent Expert's Report** means the report to be prepared and issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet.

**Ineligible Shareholder** means a Scheme Shareholder whose address as shown in the Midway Register (as at the Scheme Record Date) is in a place outside Australia, unless Bidder and Midway agree in writing that it is lawful and not unduly onerous or impracticable to issue RollCo Shares to that Scheme Shareholder on the Implementation Date if the Scheme Shareholder so elects under the Scheme.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:

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- (a) an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver and manager be appointed, and the order is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) is, or states that it is, unable to pay all its debts as and when they become due and payable within the meaning of the Corporations Act;
- (i) a deregistration notice is issued under sections 601AA or 601AB of the Corporations Act;
- (j) a writ of execution is levied against it or a material part of its property; or
- (k) anything occurs under the law of any jurisdiction outside Australia which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Key Material Contract** means each contract to which a Midway Group Company is party as agreed in writing between Bidder and Midway.

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

**Loss** includes losses, liabilities, damages, costs, charges, expenses, fines, penalties, taxes and duties.

**Matching Counterproposal** has the meaning given in clause 11.9.

**Matching Right Notice** has the meaning given in clause 11.8(a).

**Material Adverse Change** means a matter, event, change, condition, circumstance or thing (including a one-off or non-recurring event which includes for the avoidance of doubt, the loss or likely loss of a Key Material Contract) that occurs, is announced or becomes known to Bidder after the date of this deed (**Specified Event**) where that matter, event, change, condition, circumstance or thing has, has had, or is reasonably likely to have, either individually, or when aggregated with any other Specified Events, the effect of:

- (a) diminishing the consolidated EBITDA of Midway Group taken as a whole for any financial year by \$2,500,000 or more against what it would reasonably be expected to have been but for that Specified Event; or

- (b) diminishing the consolidated net assets of Midway Group, taken as a whole (calculated in accordance with the accounting policies and practices applied by Midway as at the date of this deed) by \$11 million or more against what it would reasonably be expected to have been but for that Specified Event,

in each case, other than those matters, events, changes, conditions, circumstances or things:

- (c) expressly required or expressly permitted by this deed or the Scheme including, for the avoidance of doubt, payment of the Special Dividend in accordance with this deed, or is otherwise approved, consented to or requested by Bidder in writing;
- (d) Fairly Disclosed:
  - (i) in the Disclosure Materials; or
  - (ii) in a document lodged with ASX in the 24 month period prior to the date of this deed and which is publicly available;
- (e) relating to costs and expenses incurred by Midway associated with the Scheme process or the Transaction which do not exceed 5% of the estimate of the Transaction Costs set out in the Disclosure Letter (excluding for this purpose, any third party costs and expenses incurred by the Midway Group associated with any Takeovers Panel proceedings in respect to the Midway Group or Midway's engagement with or response to any Competing Proposal);
- (f) arising from:
  - (i) general economic, political or business conditions, including changes or disruptions to, or fluctuations in, domestic or international financial markets or exchange rates (to the extent that the effect of the change, disruption, or fluctuation is not materially disproportionate to Midway relative to other participants in the same industry in which Midway operates);
  - (ii) acts of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, or natural disaster; or
  - (iii) changes to accounting standards or policies or the interpretation of them, applicable laws or policies of a Government Agency in Australia (to the extent that the effect of the change is not materially disproportionate to Midway relative to other participants in the same industry),

provided that, for the purposes of paragraph (d) the potential loss of a Key Material Contract may not be considered to be Fairly Disclosed for the purposes of paragraph (d).

For the purposes of determining whether a Material Adverse Change has occurred, the parties must take into account any insurance, contribution or indemnification proceeds received by a Midway Group Member.

**Maximum Cash Consideration** means a cash amount equal to the Cash Consideration multiplied by the total number of Scheme Shares.

**Maximum Scrip Threshold** means 49.99% of the total issued share capital of RollCo as at the Implementation Date.

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**Midway Board** means the board of directors of Midway.

**Midway Deal Team** means Anthony McKenna, Michael Mackenzie, Hamish Little, Adin Jull and Stephen Roffey.

**Midway Director** means a director of Midway.

**Midway Group** means Midway and each of its Related Entities and **Midway Group Member** means any one of them.

**Midway Indemnified Party** means Midway Group Members and their respective directors officers and employees.

**Midway Information** means all the information in the Scheme Booklet other than the Bidder Information and Independent Expert's Report.

**Midway Register** means the register of members of Midway maintained by or on behalf of Midway in accordance with section 168(1) of the Corporations Act.

**Midway Registry** means Computershare Investor Services Pty Ltd or any replacement share registry services provider to Midway.

**Midway Representations and Warranties** means the representations and warranties set out in Schedule 3.

**Midway Right** means a performance right or option or other entitlement granted under Midway's short term incentive plan, long term incentive plan or any other employee or officer incentive plan to acquire by way of issue or transfer (or have vesting or forfeiture conditions satisfied in respect of) one or more Midway Shares subject to the terms of that plan.

**Midway Rights (FY22-24)** means the 1,788,264 Midway Rights granted under Midway's long term incentive plan in respect of the performance period commencing on 1 July 2022 and ending on 30 June 2024, as detailed in the Disclosure Materials.

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

**Midway Shareholder** means a holder of one or more Midway Shares, as shown in the Midway Register.

**Minimum Scrip Threshold** means such number of RollCo Shares as is equal to 5%, or such lesser percentage as notified by Bidder to Midway in writing at least 2 Business Days prior to the date of the Scheme Meeting, of the total issued share capital of RollCo as at the Implementation Date.

**Midway Option Consideration** means, in respect of each Midway Option, a cash amount equal to the Cash Consideration less \$0.9339 (being the exercise price of each Midway Option).

**Midway Options** means the 721,436 vested Midway Rights with an exercise price of \$0.9339 each that will lapse or expire as to 50% on 30 June 2025 and the balance on 30 June 2026, as detailed in the Disclosure Materials.

**Mixed Consideration** means, in respect of a Scheme Shareholder who has made a Valid Election to receive Mixed Consideration one of the following as per their Valid Election:

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- (a) Mixed Consideration Option 1: in respect of 25% of their Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 75% of their Scheme Shares, the Scrip Consideration for each Scheme Share;
- (b) Mixed Consideration Option 2: in respect of 50% of their Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 50% of their Scheme Shares, the Scrip Consideration for each Scheme Share; and
- (c) Mixed Consideration Option 3: in respect of 75% of their Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 25% of their Scheme Shares, the Scrip Consideration for each Scheme Share,

in each case, held by that Scheme Shareholder on the Scheme Record Date and subject to the terms of the Scheme and the Scaleback Arrangements.

**Net Working Capital** means, at any time, an amount equal to Working Capital Assets less Working Capital Liabilities of the consolidated Midway Group calculated on a consistent basis with Midway's audited financial statements for the period ended 30 June 2024, including any Midway Group consolidated adjustments, but excluding any balances attributable to any of Bio Growth Partners Pty Ltd, Midway Logistics Pty Ltd, RMP Pty Ltd, PMP Pte Ltd and PMP Pty Ltd.

**Net Working Capital Peg** means \$21,690,289.

**Nominee** has the meaning given to it in the RollCo Shareholders' Deed.

**Nominee Deed** has the meaning given to it in the RollCo Shareholders' Deed.

**Notice** has the meaning given in clause 20.1.

**Permitted Encumbrance** means:

- (a) any Encumbrance arising in favour of a Government Agency by operation of law in the ordinary course of business;
- (b) any Encumbrance arising in connection with any retention of title arrangement arising in the ordinary course of business and, to the extent existing at the date of this deed, has been disclosed in the Disclosure Materials;
- (c) any Encumbrance for money payable for work performed by suppliers, mechanics, workmen, repairmen or similar service providers or employees, or other like lien, in each case, arising in the ordinary course of business; or
- (d) any rights of set-off or withholding under a commercial contract entered into by a Midway Group Member in the ordinary course of business.

**Potential Termination Event** has the meaning given in clause 3.4(a).

**Proposed Public Announcement** has the meaning given in clause 16.2.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPSR** means the register maintained for the purposes of the *Personal Property Securities Act 2009* (Cth).

**Prescribed Occurrence** means the occurrence of any of the events listed in Schedule 5.

**Recommendation** has the meaning given to it in clause 2.3(a).

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**Regulatory Approval** means the:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Related Entity** means, in relation to a party:

- (a) a related body corporate of a party (within the meaning given in section 50 of the Corporations Act); and
- (b) any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party; the term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Report** means an EOM Report or a Second Court Date Report, as applicable.

**Representation and Warranty** means a Midway Representation and Warranty or a Bidder Representation and Warranty (as applicable).

**Representative** means, in respect of a party, an employee, agent, officer, director, adviser or financier of or to that party (or a Related Entity of that party), and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

**RG 60** means Regulatory Guide 60 issued by ASIC.

**River Commitment Letter** means the binding, executed commitment letter or letters from funds or entities managed by River Capital Pty Ltd and addressed to BidCo, and RollCo.

**RollCo** means RCM RollCo Ltd.

**RollCo Constitution** means the constitution of RollCo in the form agreed in writing by the parties.

**RollCo Scrip Consideration Documents** has the meaning given in clause 6.7.

**RollCo Share** means a fully paid Class B Share (having the same voting and economic rights as other fully paid ordinary shares in RollCo on the terms set out in the RollCo Constitution and the RollCo Shareholders' Deed) to be provided to Scheme Shareholders who make an Election to receive Scrip Consideration under and subject to the terms of the Scheme.

**RollCo Shareholders' Deed** means the shareholders' deed in relation to RollCo to be entered into by the shareholders of RollCo amongst others, in the form agreed in writing by the parties.

**Scaleback Arrangements** means the scaleback arrangements set out in clause 4.6.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Midway and the Scheme Shareholders, in the form of Annexure A, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Bidder.

**Scheme Booklet** means the explanatory statement in respect of the Scheme to be prepared by Midway pursuant to section 412 of the Corporations Act and in accordance with clause 6.2(c), and to be despatched to Midway Shareholders in accordance with clause 6.2(l), which shall contain the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

**Scheme Consideration** means, in respect of each Scheme Share, the consideration payable to Scheme Shareholders under the Scheme, being:

- (a) All Cash Consideration;
- (b) All Scrip Consideration; or
- (c) Mixed Consideration,

depending on the Valid Elections made and subject to the Scaleback Arrangements and the terms of the Scheme.

**Scheme Meeting** means the meeting of Midway Shareholders ordered by the Court to be convened at the First Court Hearing or any adjournment thereof.

**Scheme Record Date** means 7.00 pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

**Scheme Share** means a Midway Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Shareholder** means a Midway Shareholder as at the Scheme Record Date.

**Scrip Consideration** means 1 RollCo Share for each Scheme Share in respect of which a Valid Election is made in accordance with the Scheme, subject to the Scaleback Arrangements and the terms of the Scheme.

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

**Second Court Date Report** has the meaning given in clause 6.2(x)(iv)(E).

**Share Splitting** means the splitting by a holder of Midway Shares into two or more parcels of Midway Shares whether or not it results in any change in beneficial ownership of the Midway Shares.

**Special Dividend** means a dividend of Midway as described in clause 5.

**Specified Event** has the meaning given to it in clause 3.1(c).

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**Superior Proposal** means a bona fide Competing Proposal in writing which the Midway Board, acting in good faith and in order to satisfy what the Midway Board considers to be its fiduciary and statutory duties, and after taking written advice from its external legal advisers, determines:

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal, including the consideration (and the value, nature, liquidity and attractiveness of any scrip based consideration), conditions, the identity, reputation and financial condition of the person making the Competing Proposal, and all relevant legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant Competing Proposal being completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Midway Shareholders than the Scheme or than any proposal subsequently notified to Midway by Bidder after the date of this deed (as the case may be).

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Tax** means:

- (a) any tax, levy, charge, impost, Duty, fee, deduction or withholding of any name, kind or description imposed by Australia, or any of its States or Territories, including income tax, goods and services tax, Superannuation Guarantee Charge and any payment or contribution made to avoid the imposition of the Superannuation Guarantee Charge, payroll tax, workers' compensation premium or levy withholding tax, land tax;
- (b) any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above; and
- (c) any amount that a person is required to pay to another person on account of that other person's liability in respect of any of the above.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth), the *Income Tax Assessment 1936* (Cth) and/or the *Taxation Administration Act 1953* (Cth) (as the case may be).

**Terminating Party** has the meaning given in clause 3.4(b).

**Termination Notice** has the meaning given in clause 3.4(b).

**Third Party** means a person other than Bidder and its Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Schedule 6.

**Transaction** means the acquisition of Midway by Bidder by means of the Scheme.

**Transaction Costs** means investment banking, financial adviser, legal, accounting, share registry, Independent Expert and other fees and costs payable to advisers and/or third-party service providers, incurred by any Midway Group Member in respect of, or as a result of, the Transaction and in each case exclusive of GST.

**Transition Committee** has the meaning given in clause 7.6(b).

**Valid Election** has the meaning given in clause 4.2(b).

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**Voting Intention** has the meaning given in clause 2.3(a).

**Working Capital Assets** means the aggregate of each Midway general ledger account line relating to Inventory ('Stock on Hand' GL account 4130000), Accounts Receivable ('Trade Debtors' (GL account 4040000), 'Provision Bad Debts' (GL account 4040600), 'Income - Accrued' (GL account 4095000), 'GST Collected' (GL account 7078000) and 'GST Paid' (GL account 7079000)) and Prepayments ('Prepayments' GL account 4100000).

**Working Capital Liabilities** means the aggregate of each general ledger account line relating to Trade Creditors ('Trade Creditors' (GL account 7040000), 'Other Creditors & Accruals' (GL account 7080000), 'Unearned Income' (GL account 7042500), 'PAYG - Employee' (GL account 7079600), 'Less Terms Not Yet Due' (GL account 7110002) and 'Insurance Loan' (GL account 7110001)), but excluding any amounts relating to dividends payable.

## 2. Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words "include", "including", "such as", "to avoid doubt" and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;

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- (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
- (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
- (x) a monetary amount is in Australian dollars;
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) A reference to time in this deed is a reference to time in Melbourne, Victoria, save that where the reference to time is in respect of the giving or receiving of Notice, such reference shall be the time in the place where the party receiving the Notice is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

### 3. **Best or reasonable endeavours**

Any provision of this deed which requires a party to use best endeavours, all reasonable endeavours, reasonable endeavours or similar to procure that something is performed or occurs or does not occur, does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:
- (b) any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
  - (i) expenses or costs, including costs of advisers, to procure the relevant thing (except, in each case, in circumstances that are commercially onerous or unreasonable in the context of this deed); or
- (c) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best, all reasonable endeavours or similar where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

### 4. **Midway knowledge, belief or awareness**

- (a) If a representation or warranty is given so far as Midway is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Midway is limited to and deemed only to comprise the facts, matters and circumstances of which the Midway Deal Team is actually aware as at the date of this deed, each member of the Midway Deal Team having made reasonable enquiries of their direct reports.
- (b) None of those persons referred to in clause 4(a) of this Schedule 1 will bear any personal liability in respect of the Midway Representations and Warranties or

otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

5. **Bidder knowledge, belief or awareness**

- (a) If a representation or warranty is given so far as Bidder is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Bidder is limited to and deemed only to comprise the facts, matters and circumstances of which the Bidder Deal Team is actually aware as at the date of this deed, each member of the Bidder Deal Team having made reasonable enquiries of their direct reports.
- (b) None of those persons referred to in clause 5(a) of this Schedule 1 will bear any personal liability in respect of the Bidder Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

6. **Tax-effecting**

- (a) For the purposes of calculating the Cash Balances under clauses 10(b) and for item 15 of Schedule 5:
  - (i) the amount of any Transaction Costs to be paid by Midway; and
  - (ii) payments to be made by Midway as contemplated by clause 9,are to be partially tax-effectuated, so as to reflect a cash cost to Midway of 85% of the total of such amounts.

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## Schedule 2

### Capital Structure

Security	Total number on issue
Midway Shares	87,336,222
Midway Rights	2,635,724 outstanding Midway Rights, comprising: <ul style="list-style-type: none"> <li>• 1,788,264 Midway Rights (FY22-FY24);</li> <li>• 126,024 Midway Rights (FY25); and</li> <li>• 721,436 Midway Options.</li> </ul>

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## Schedule 3

### Midway Representations and Warranties

1. **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation.
2. **Power:** it has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme.
3. **Corporate action:** it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme.
4. **Authorisation:** it has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced.
5. **Binding:** this deed is its valid and binding obligation enforceable in accordance with its terms.
6. **Solvency:** an Insolvency Event has not occurred in relation to it and will not occur prior to implementation of the Scheme.
7. **Performance:** the execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate or breach any provision of:
  - (a) any writ, order or injunction, judgement, law, rule, regulation, decree or treaty to which Midway is a party or by which it is bound; or
  - (b) Midway's constitution.
8. **Capital structure:** its capital structure is as set out in Schedule 2 and:
  - (a) it has not issued or agreed to issue any other Midway Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Midway Shares (other than Midway Rights set out in Schedule 2); and
  - (b) it is not under any obligation to issue, and no person has any right to require or call for the issue of, any Midway Shares or other securities, rights or instruments issuable by Midway (whether such obligation or right is conditional or otherwise), other than Midway Rights set out in Schedule 2.
9. **Midway Information:** Midway Information included in the Scheme Booklet despatched to Midway Shareholders, and any supplementary disclosure made to Midway Shareholders pursuant to clause 6.2(n) (excluding information provided by or on behalf of Bidder or the Independent Expert), will not be false or misleading in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules.
10. **Provision of information to Independent Expert:** all information provided by or on behalf of Midway to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.

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11. **Disclosure Materials:** the Disclosure Materials have been compiled and made available to Bidder and its Representatives in good faith for the purposes of a due diligence process and:
- (a) so far as Midway is aware (having made all reasonable enquiries), does not contain information which is false or misleading, deceptive or incomplete in any material respect; and
  - (b) does not omit any information which, if disclosed, a reasonable and sophisticated buyer would reasonably consider to be material to its decision whether or not to enter into this deed and complete the Transaction.
12. **No forward looking statements:** for the purposes of paragraph 11, Midway does not make any representation or warranty as to the accuracy of a forecast, prediction or projection, or forward looking statement, to the extent it is in respect of the future financial position or prospects of the Midway Group at the date of this deed (**Midway Group Forecast**) or that any Midway Group Forecast will be achieved.
13. **Publicly available information:** no documents or announcements which Midway or any of its related bodies corporate has lodged or filed with, or otherwise given to, any Government Agency or the ASX (or which has been so lodged, filed or given on its behalf or on behalf of any of its related bodies corporate), and which is publicly available or otherwise in the public domain, is misleading or deceptive in any respect (whether by omission or otherwise).
14. **Continuous disclosure:** it has complied with its continuous disclosure obligations under Listing Rule 3.1 and, following release of the agreed announcement under clause 16.1, there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A.
15. **Key Material Contracts:** The Disclosure Materials contain true and complete copies of all Key Material Contracts.
16. **Third party rights:** Midway is not aware of any facts or circumstances (except as fully disclosed in the Disclosure Materials) to suggest that the entry into this deed and the implementation of the Scheme will cause third party to:
- (a) terminate a contract which is material to the business of Midway Group or vary the performance of any material obligation of Midway under the contract; or
  - (b) exercise a right to acquire, or require the disposal of, any material assets of any Midway Group Member.
17. **Accounts:** Midway's audited financial statements for the full year ended 30 June 2022, the full year ended 30 June 2023 and the full year 30 June 2024 show a true and fair view of the financial position and the assets and liabilities of Midway Group as at that date and the financial performance and operation of Midway Group for the financial period ending on that date and are not misleading or deceptive in any respect.
18. **Liabilities:** No Midway Group Member has incurred any contingent or other off-balance sheet liabilities or obligations required under the Australian Accounting Standards to be reflected on balance sheet or the notes thereto which are not reflected in Midway's financial statements for the full year ended 30 June 2024.
19. **Compliance with laws:** each Midway Group Member has complied in all material respects with all applicable laws and regulations, including (without limitation):
- (a) environmental laws and regulations;

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- (b) privacy and data protection laws and regulations;
- (c) tax laws and regulations;
- (d) employment and occupational health and safety laws and regulations; and
- (e) laws and regulations relating to anti-money laundering, anti-bribery and anti-corruption (including the Australian laws implemented pursuant to the OECD Anti-Bribery Convention),

in each case in each applicable jurisdiction that Midway Group operates where non-compliance would have a material adverse effect on the Midway Group, and Midway is not aware of, and has not received notice of, any actual or alleged material breach of any such laws or regulations by any Midway Group Member.

20. **Material authorisations:** each Midway Group Member holds all material licences, authorisations and permits necessary for it to conduct its business as presently conducted and is not in material breach of, or material default under, any such licences, authorisations or permits, other than where the failure to comply with such laws and regulations or to hold such licences, authorisations and permits, or where the relevant breach or default, could not be reasonably expected to have a material adverse effect on the financial or operational performance or reputation of Midway Group.
21. **No defaults:** no Midway Group Member is in material default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event or give another party a termination right or right to accelerate any right or obligation under any such document where such default would, or would be reasonably likely to, have an adverse effect on the Midway Group as a whole that is material.
22. **No litigation:** other than the matters disclosed in the Disclosure Materials, no litigation, prosecution, arbitration, mediation, or other proceedings relating to Midway Group has been on foot in the three years prior to the date of this deed, is current, is pending or threatened or might reasonably be expected to arise as a result of current circumstances.
23. **No investigations:** no Midway Group Member has received notice from a Government Agency that it is, or can reasonably expect to become, subject to any investigation, enquiry or regulatory enforcement proceedings or penalty.
24. **Insolvency:** no Midway Group Member is insolvent or otherwise unable to pay their debts as and when they fall due.
25. **No Encumbrances:** there is no Encumbrance (other than a Permitted Encumbrance) over all or any of the assets or revenues of Midway Group, other than as disclosed in the Disclosure Materials or which can be identified in a publicly available document which would be disclosed by a search of the PPSR in relation to a Midway Group Member (had the search been conducted 5 Business Days prior to the date of this deed).
26. **Insurance:** in respect of the insurances effected in respect of Midway Group:
- (a) the insurances are as disclosed in the Due Diligence Materials; and
  - (b) the Midway Group has not carried out any business activities in respect of which it does not have current insurance coverage which could reasonably be expected to have an adverse effect on the Midway Group that is material.

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27. **Tax compliance:** each Midway Group Member has:
- (a) paid all taxes (including any tax withheld from payments to other persons and any amounts that would avoid the imposition of any tax) that have fallen due, and will pay all such taxes that fall due up to the Implementation Date; and
  - (b) lodged all tax returns that have fallen due and will lodge all tax returns that fall due up to the Implementation Date, and has prepared and kept all records necessary under any tax law.
28. **Tax audits and reviews:** no Midway Group Member is aware of any current or impending review, audit, challenge or other dispute or query in relation to a tax matter.
29. **Extra-territorial connection:** no Midway Group Member is required to pay tax or lodge any tax return in any jurisdiction other than the one in which the entity is incorporated or established or in which it carries on a trade or business.
30. **No other Regulatory Approvals or notifications:** so far as Midway is aware, no Regulatory Approval is required to be obtained by Midway from, or made to, any Government Agency in order for the Scheme to be implemented.
31. **Transaction Costs:** as at the date of this deed, Midway has provided an accurate summary of all Transaction Costs (or reasonable estimates of them) and in the absence of a Competing Proposal and the basis on which they are incurred, including the aggregate fees payable in all retainers and mandates with its financial adviser, and fee estimates for other Advisers, in relation to the Scheme where such retainer or mandate is current.

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## Schedule 4

### Bidder Representations and Warranties

1. **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation.
2. **Power:** it has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll.
3. **Corporate action:** it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll.
4. **Binding:** this deed is its valid and binding obligation enforceable in accordance with its terms.
5. **Performance:** the execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate or breach any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree binding on it; or
  - (b) its constituent documents.
6. **Bidder Information:** the Bidder Information, has been prepared and provided to Midway in accordance with clause 6.3 for inclusion in the Scheme Booklet in good faith and any other information provided by it pursuant to clause 6.3(e), will not be false or misleading in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules.
7. **Insolvency Event:** an Insolvency Event has not occurred in relation to it or another Bidder Group Member and will not occur prior to implementation of the Scheme.
8. **Information provided to Independent Expert:** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.
9. **No Relevant Interest:** other than as disclosed to Midway in writing before the date of this deed, as at the date of this deed:
  - (a) no Bidder Group Member nor any of their Associates have any Relevant Interest in any Midway Shares, and no Bidder Group Member nor any of their Associates have a right to acquire any Midway Shares; and
  - (b) no Bidder Group Member nor any of their Associates have entered into any agreement, arrangement or understanding that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of Midway Shares or any assets of any Midway Group Member (including cash-settled derivative contract, contracts for difference or other derivative contracts).
10. **No dealings with Midway Shareholders:** other than as disclosed to Midway in writing before the date of this deed, neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any Midway Shareholder under which:

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- (a) that Midway Shareholder (or an Associate of that Midway Shareholder) would be entitled to receive any collateral benefit in relation to the Scheme, or any consideration for their Midway Shares that is different from the Scheme Consideration; or
- (b) the Midway Shareholder agrees to vote in favour of the Scheme (or against any Competing Proposal).

11. **River Commitment Letter:** the River Commitment Letter:

- (a) is a true and complete copy executed by all parties thereto;
- (b) constitutes legally binding obligations of the parties to it and are enforceable in accordance with their terms;
- (c) other than as permitted under this deed:
  - (i) has not been amended and Bidder has not agreed to amend such letter; or
  - (ii) has not been terminated or rescinded without Midway's consent, and no event has occurred which with notice, lapse of time or both, would result in a default under the River Commitment Letter;
  - (iii) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay any other amount payable under the River Commitment Letter (when aggregated with the amounts available under the River Commitment Letter and other commitments and cash resources otherwise available to Bidder to pay the Scheme Consideration);
- (d) is enforceable in accordance with its terms and Bidder is not in default thereunder; and
- (e) provides a funding commitment of an amount sufficient (when aggregated with the amounts available under the River Commitment Letter and cash resources otherwise available to Bidder) to satisfy all of Bidder's payment obligations under this deed, the Deed Poll and the Scheme, as and when those payment obligations become due, including paying the Cash Consideration on the Implementation Date and any expenses of Bidder in connection with the consummation of the transactions contemplated hereby, and for any proposed repayment or refinancing of any outstanding indebtedness of Midway Group in connection with the transactions contemplated hereby.
- (f) subject to the Scheme becoming Effective, will, if requested by Midway, be enforced by Bidder in accordance with the terms of the River Commitment Letter.

12. **No default under River Commitment Letter:** Bidder is not in default under the River Commitment Letter and no event has occurred which with notice, lapse of time or both, would result in a default under such letter which will, or is reasonably likely to, prejudice Bidder's ability to pay the Aggregate Cash Consideration in accordance with this deed and the Deed Poll.

13. **Reasonable basis:** at all times between the date of this deed and 8.00 am on the Second Court Date, Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy

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Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

14. **Availability of funding on Second Court Date:** by 8.00 am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court, the Scheme becoming Effective, and other conditions that can only be satisfied or performed after the Second Court Date and are within the control of Bidder) sufficient cash amounts (whether from cash resources available to Bidder or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Cash Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
15. **Availability of funding on Implementation Date:** on the Implementation Date, Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
16. **RollCo Shares:** each RollCo Share will be duly authorised and validly issued, fully paid, free from all Encumbrances and any other third party rights (other than as set out in the RollCo Constitution, RollCo Shareholders' Deed or Nominee Deed), and will rank equally with all those RollCo Shares then on issue.
17. **Tax:**
  - (a) RollCo is the ultimate holding company (as defined in section 124-780 of the Tax Act) of a wholly-owned group (as defined in section 975-500 of the Tax Act) of which Bidder is a member including as at the Implementation Date;
  - (b) RollCo will not make a choice under subsection 124-795(4) of the Tax Act before the Implementation Date;
  - (c) no member of the wholly-owned group (as defined in section 975-500 of the Tax Act) of which RollCo is the ultimate holding company (as defined in section 124-780 of the Tax Act) will:
    - (i) issue equity to (other than the RollCo Shares, being the replacement interest for the purposes of section 124-780 of the Tax Act); or
    - (ii) raise new debt from,

an entity that is not a member of the wholly-owned group in relation to the issue of the RollCo Shares to the relevant Scheme Shareholders under the Scheme; and
  - (d) RollCo is, or will be, the head company of an income tax consolidated group such that Midway will join RollCo's income tax consolidated group on implementation of the Scheme; and
18. **RollCo structure:** unless otherwise agreed in writing with Midway, as at the Implementation Date:
  - (a) the direct and indirect ownership of RollCo and details of the securities on issue in RollCo will be consistent with the position notified in writing by Bidder to Midway prior to the date of this deed;

- (b) No RollCo Share will be issued other than as Scrip Consideration or as agreed to be issued in connection with the Scheme and contemplated by this deed;
- (c) Other than the one (1) ordinary share issued upon incorporation of RollCo, no ordinary share in the capital of RollCo will be issued prior to the Implementation Date at an issue price that is less than the Cash Consideration; and
- (d) RollCo will not have issued or agreed to issue any other securities, options, performance rights or instruments which are still outstanding (or become outstanding), and which may convert into RollCo Shares, other than:
  - (i) as agreed to be issued in connection with the Scheme and contemplated by this deed; or
  - (ii) an issue of Class A Shares in RollCo to provide funding for the purposes of the Scheme, the payment of transaction costs or to repay debts of any Midway Group Member in place prior to the Implementation Date, or to fund the working capital of any Midway Group Member.

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## Schedule 5

### Prescribed Occurrences

1. Midway converting all or any of its shares into a larger or smaller number of shares;
2. Midway resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
3. Midway:
  - (a) entering into a buy-back agreement in respect of its shares; or
  - (b) resolving to approve the terms of a buy-back agreement in respect of its shares under the Corporations Act;
4. a Midway Group Member issuing shares or Midway Rights, or granting an option over its shares, or agreeing to make such an issue or grant such an option other than:
  - (a) to a Midway Group Member;
  - (b) the issue of shares upon exercise, conversion or vesting of a Midway Right in accordance with its terms; or
  - (c) in connection with the treatment of the Midway Rights as contemplated by clause 9;
5. Midway varying, changing or amending the terms of any Midway Rights (or agreeing to do any of the foregoing), other than as contemplated by clause 9;
6. a Midway Group Member issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights);
7. a Midway Group Member making any change to its constitution;
8. any Midway Group Member paying, agreeing to pay, declaring or distributing any distribution, dividend, bonus, special payment or other share of its profits or assets to holders of Midway Shares, other than:
  - (a) to another Midway Group Member; and
  - (b) the Special Dividend;
9. a Midway Group Member disposing, or agreeing to dispose, of the whole, or a material part, of the business or property of Midway Group;
10. an Insolvency Event occurs in relation to a Midway Group Member;
11. a Midway Group Member creating, granting or agreeing to create or grant an Encumbrance over the whole, or a substantial part, of Midway Group's business or property or over a material asset of Midway Group other than in the ordinary course of business;
12. a Midway Group Member disposing, or agreeing to dispose, of shares held in any other Midway Group Member;
13. a Midway Group Member acquires, disposes of, agrees to acquire or agrees to dispose of, any securities, business, asset, entity or undertaking in a single or series of related

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transactions, the value of which exceeds \$500,000, to any person other than another Midway Group Member;

14. a Midway Group Member does anything that would result in a change to the membership of the Midway tax consolidated group, being the consolidated group of which Midway is the head company. 'Consolidated group' and 'head company' have the meaning given to them in the Tax Act;
15. the Cash Balance of Midway Group, on a consolidated basis is less than (or it is reasonably expected that the Cash Balance of Midway Group, on a consolidated basis, at the Implementation Date will be less than):
  - (a) \$38,642,303 (or less than \$33,493,449 after allowing for payment by Midway of unpaid Transaction Costs and the payments to be made by Midway as contemplated by clause 9) and the Net Working Capital is less than the Net Working Capital Peg; or
  - (b) \$38,642,303 (or less than \$33,493,449 after allowing for payment by Midway of unpaid Transaction Costs and the payments to be made by Midway in accordance with clause 9) and the amount of the Cash Balance shortfall is not represented by Net Working Capital in excess of the Net Working Capital Peg;
16. a Midway Group Member incurs, or agrees to incur, Financial Indebtedness in excess of \$100,000 (individually or other than in the ordinary course of business in aggregate) other than any payment required by law or as expressly permitted under and in accordance with clause 10 this deed; or
17. any Midway Group Member authorises, procures or commits or agrees to do any of the foregoing matters,

but does not include any matter, act, fact or thing:

18. expressly required or expressly permitted by this deed or the Scheme;
19. consented to in writing by Bidder;
20. Fairly Disclosed in the Disclosure Materials;
21. required by law or by an order of a court or Government Agency; or
22. Fairly Disclosed in a document lodged with ASX by Midway, in the 24 month period prior the date of this deed and which is publicly available.

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## Schedule 6

### Timetable

Event	Date
Release of ASX announcement by Midway	14 November 2024
Draft Scheme Booklet provided to ASIC	Early December 2024
First Court Hearing	To the extent practicable, 18 December 2024*
Issue/despatch of Scheme Booklet	Prior to 24 December 2024
Election Time	One week prior to the Scheme Meeting
Scheme Meeting	Late January/early February 2025
Second Court Hearing	Early February 2025
Effective Date	No later than the day after the Second Court Hearing
Special Dividend record date	7.00 pm on the third Business Day after the Effective Date
Special Dividend payment date	Implementation Date
Scheme Record Date	7.00 pm on the fifth Business Day after the Effective Date
Implementation Date	fifth Business Day after the Scheme Record Date

\* The parties agree that whilst they will each use all reasonable endeavours to obtain a First Court Date in December 2024, this may not be possible due to the unavailability of the Court or other unintended delays. If it is not practicable for the First Court Date to be held in December 2024, each of the subsequent dates in this Timetable will be extended by one month or as otherwise agreed in writing between Bidder and Midway.

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**EXECUTED** as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED by MIDWAY LIMITED:**

DocuSigned by:  
  
8741C2217F484F8...

Signature of director

Gordon Davis

Name

DocuSigned by:  
  
EAE446BA2338444...

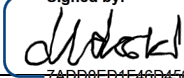
Signature of director/secretary

Robert Bennett

Name

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**EXECUTED** by **RCM BIDCO PTY LTD**, by its sole director (and the company does not have a company secretary):

Signed by:  


7ADB8ED1F46D456...  
\_\_\_\_\_  
Signature of sole director

Joshua Adam Ludski  
\_\_\_\_\_

Name

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## Annexure A

### Scheme

Refer to attachment.

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**Ashurst**

# Scheme of Arrangement

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Midway Limited

Scheme Shareholders

2024

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**THIS SCHEME OF ARRANGEMENT** is made on

2024

**BETWEEN:**

- (1) **Midway Limited ACN 005 616 044** of 10 The Esplanade, North Shore, Victoria 3214 (**Midway**); and
- (2) Each person who holds one or more Scheme Shares on the Scheme Record Date (**Scheme Shareholders**).

**THE PARTIES AGREE AS FOLLOWS:**

1. **Defined terms and interpretation**

1.1 **Definitions in the Dictionary**

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 **Interpretation**

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2. **Preliminary matters**

2.1 **Midway**

- (a) Midway is a public company limited by shares, incorporated in Australia and registered in Victoria.
- (b) Midway is admitted to the official list of ASX and Midway Shares are officially quoted on ASX.
- (c) As at the date of the Implementation Deed:
  - (i) 87,336,222 Midway Shares were on issue and officially quoted on ASX; and
  - (ii) Midway had on issue 2,635,724 Midway Rights, comprising:
    - (A) 1,914,288 performance rights; and
    - (B) 721,436 options, all of which have been disclosed to the Bidder in writing and Midway and the Bidder have agreed in the Implementation Deed the manner in which Midway Rights will be dealt with.

2.2 **Bidder and RollCo**

- (a) Bidder is a proprietary company limited by shares, incorporated in Australia and registered in Victoria.

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- (b) RollCo is an unlisted public company limited by shares, incorporated in Australia and registered in Victoria.

**2.3 Implementation Deed**

On 12 2024, Bidder and Midway entered into the Implementation Deed pursuant to which, amongst other things, Midway has agreed to propose this Scheme to the Scheme Shareholders, and each of Midway and Bidder have agreed to take certain steps to give effect to this Scheme.

**2.4 Deed Poll**

Bidder and RollCo have entered into the Deed Poll for the purposes of covenanting in favour of Scheme Shareholders to perform all actions attributed to it under this Scheme including the obligation to provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with the terms of this Scheme.

**3. Conditions**

**3.1 Conditions to this Scheme**

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8:00 am on the Second Court Date, each of 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(i) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8:00 am on the Second Court Date, neither the Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally or subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Bidder and Midway in writing;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme, and that are agreed to by Bidder in writing, have been satisfied or waived; and
- (e) the coming into effect of the Scheme Order, in accordance with section 411(10) of the Corporations Act, on or before the End Date.

**3.2 Certificates**

- (a) Bidder and Midway must provide to the Court on the Second Court Date certificates signed by Bidder and Midway respectively (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8:00 am on the Second Court Date.
- (b) The certificates referred to in clause 3.2(a) constitutes conclusive evidence that such conditions were satisfied, waived or taken to be waived.

**4. This Scheme**

- (a) Subject to clause 3.1, this Scheme takes effect for all purposes on and from the Effective Date.

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- (b) Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:
- (i) the Effective Date has not occurred on or before the End Date; or
  - (ii) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless Bidder and Midway otherwise agree in writing (and, if required, as approved by the Court).

## 5. Implementation of this Scheme

### 5.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 3.1(a) to 3.1(d) are satisfied or waived, Midway must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme as soon as possible after, and in any event by 5:00 pm on the Business Day on which the Court approves this Scheme (or such later date as is agreed by Bidder and Midway in writing).

### 5.2 Consequences of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) Bidder and RollCo must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with their respective obligations under the terms of this Scheme and the Deed Poll;
- (b) all the Scheme Shares, together with all of the rights and entitlements attaching to them on the Implementation Date, will be transferred to Bidder; and
- (c) Midway will enter the name of Bidder in the Midway Register in respect of all the Scheme Shares.

### 5.3 Transfer of Scheme Shares

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

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by this Scheme, all of the Scheme Shares, together with all rights and entitlements attaching to them on the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Midway or its officers as attorney and agent for Scheme Shareholders under clause 10) by:
  - (i) Midway delivering to Bidder a duly completed Scheme Transfer (and one or more Scheme Transfers can be a master transfer of all or part of all of the Scheme Shares), executed on behalf of the Scheme Shareholders by Midway as their attorney and agent; and
  - (ii) Bidder duly executing such Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Midway for registration; and
- (b) as soon as reasonably practicable following receipt of the Scheme Transfer in accordance with clause 5.3(a)(ii) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Midway must enter, or procure the entry of, the name of Bidder in the Midway Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

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## 6. **Scheme Consideration**

### 6.1 **Scheme Consideration**

- (a) The Scheme Consideration to be provided by Bidder to each Scheme Shareholder in respect of the transfer of each Scheme Share in accordance with the Scheme is one of the following:
  - (i) the All Cash Consideration;
  - (ii) the All Scrip Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold); or
  - (iii) the Mixed Consideration (subject to the Scaleback Arrangements and the Minimum Scrip Threshold).
- (b) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder, subject to the terms of this Scheme.

### 6.2 **Entitlement to Scheme Consideration**

- (a) Subject to the Scheme becoming Effective, in consideration for the transfer to the Bidder of each Scheme Share held by a Scheme Shareholder, Bidder undertakes and warrants to Midway (in Midway's own right and separately as trustee for each of the Scheme Shareholders) that on the Implementation Date the Bidder must provide, or procure the provision to, the Scheme Consideration to each Scheme Shareholder for each Scheme Share held by it on the terms of clause 7.
- (b) The obligation of the Bidder to provide or procure the provision of the Scheme Consideration to Scheme Shareholders will be satisfied in accordance with clauses 7.1 and/or 7.2.

### 6.3 **Bidder undertakings in relation to Scheme Consideration**

Subject to the terms of this Scheme, Bidder undertakes and warrants to Midway (in its own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Shareholder under the terms of this Scheme, on the Implementation Date, Bidder will:

- (a) accept that transfer; and
- (b) provide to each Scheme Shareholder (or procure the provision to each Scheme Shareholder of) the Scheme Consideration for each Scheme Share in accordance with and subject to the terms and conditions of this Scheme (including any application of the Scaleback Mechanism, any Election made by that Scheme Shareholder as contemplated by clause 6.4, the payment of the Aggregate Cash Consideration and the issue of RollCo Shares pursuant to the terms of this Scheme),

in each case, in accordance with the terms of this Scheme and the Deed Poll.

### 6.4 **Election mechanism**

- (a) Unless the applicable terms of this Scheme expressly provide otherwise, the Scheme Consideration will be All Cash Consideration.
- (b) Each Midway Shareholder (other than an Ineligible Shareholder) will be entitled to make an Election. All Elections take effect in accordance with this Scheme to the extent any Midway Shareholder (other than an Ineligible Shareholder) who

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makes an Election qualifies as a Scheme Shareholder with respect to receipt of the Mixed Consideration.

- (c) Midway must ensure that the Scheme Booklet is accompanied by an Election Form.
- (d) The Election Form must include the following terms and conditions:
  - (i) for an Election to be valid (**Valid Election**):
    - (A) the Scheme Shareholder must not be an Ineligible Shareholder;
    - (B) the Scheme Shareholder must complete and sign the Election Form in accordance with the instructions in the Scheme Booklet and the terms and conditions set out in the Election Form; and
    - (C) the Election Form must be received by the Midway Registry by the Election Time at the address specified by Midway in the Scheme Booklet and on the Election Form,

provided that the Bidder may, with the agreement of Midway in writing, settle as it thinks fit any difficulty, matter or interpretation or dispute which may arise in connection with interpreting the validity of any Election, and any such decision will be conclusive and binding on Bidder, Midway and the relevant Scheme Shareholder, with Bidder having no obligation to communicate with any Scheme Shareholder prior to making this determination;

- (ii) Ineligible Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
- (iii) if a Midway Shareholder does not make a Valid Election on or before the Election Time, that Midway Shareholder will receive the Cash Consideration in respect of the Scheme Shares held by that Midway Shareholder;
- (iv) an Election will be deemed to apply in respect of the greater of the Midway Shareholder's entire registered holding of Scheme Shares at the Election Time and at the Scheme Record Date, provided that if the amount so calculated would otherwise exceed its entire registered holding at the Scheme Record Date, the amount will be taken to be its entire registered holding at the Scheme Record Date;
- (v) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time agree to become members of RollCo from the Implementation Date and become bound by the RollCo Constitution, the Nominee Deed and the RollCo Shareholders' Deed from the Implementation Date, pursuant to the Scheme;
- (vi) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time agree that any Scrip Consideration to which it is entitled pursuant to the terms of the Scheme will be issued to that Scheme Shareholder (either directly or indirectly through the Nominee to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), in accordance with the terms of the Nominee Deed and the RollCo Shareholders' Deed; and

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- (vii) Midway Shareholders (other than Ineligible Shareholders) who make a Valid Election on or before the Election Time must provide, before the Election Time, the information and documents described in the Election Form as being required by Bidder or Midway; and
- (viii) the Scaleback Arrangements and the Minimum Scrip Threshold apply to the issue of the Scrip Consideration,

and must otherwise be in a form agreed by the parties in writing (after negotiating in good faith).

- (e) In the manner considered appropriate by Bidder and Midway (acting reasonably), a Midway Shareholder who holds one or more parcels of Midway Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Midway Shares (subject to providing to Bidder and Midway substantiating information they reasonably require). If a Midway Shareholder does so, it will be treated as a separate Midway Shareholder for each such parcel in respect of which a separate Election is made (and for any balance of its holding), provided that if, at the Election Date, it holds fewer Midway Shares than it held at the time it made the Election the Election Form is made available to Midway Shareholders with the Scheme Booklet sent to each of them then, unless it has at the time of any sale of Midway Shares notified Midway whether the Midway Shares sold relate to, any such separate Election (and if so, which separate Election the Midway Shares sold relate to), it will be treated as not having made a Valid Election in respect of any of its Midway Shares or otherwise be treated in any other manner that Bidder and Midway agree is fair and appropriate.
- (f) Midway must procure that, to the extent reasonably practicable, Midway Shareholders who acquire Midway Shares after the date of the dispatch of the Scheme Booklet and Election Form receive an Election Form on request to the Midway.
- (g) In order to facilitate the provision of the Scheme Consideration, Midway must provide, or procure the provision of, to Bidder:
  - (i) weekly written updates of the Elections that have been received in the period up to the Election Time (and to the extent practicable, acting reasonably, daily updates in the week prior to Election Time); and
  - (ii) written details of the final Elections made by each Midway Shareholder as soon as reasonably practicable following the Election Time and in any event no later than 3 Business Days after the Election Time, including the name and address of each Midway Shareholder who has made an Election on or before the Election Time and the number of RollCo Shares that RollCo must issue to that Midway Shareholder to meet its obligations under the Scheme in accordance with that Midway Shareholder's Election and subject to the Scaleback Arrangements.

## 6.5 **Minimum Scrip Threshold not reached**

If the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold:

- (a) Bidder will not:
  - (i) comply with any Elections made on or before the Election Time; or

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- (ii) procure that RollCo issue any Scrip Consideration to any Scheme Shareholders;
- (b) each Scheme Shareholder who gives an election on or before the Election Time will be entitled to receive the All Cash Consideration for the Scheme Shares they hold; and
- (c) Bidder must, instead of complying with clause 7.2, by no later than 5:00 pm on the Business Day before the Implementation Date, deposit or procure the deposit, into the Trust Account, an amount in immediately available funds equal to the Maximum Cash Consideration to be held by or on behalf of Midway on trust for those Scheme Shareholders and will, by doing so, satisfy its obligations under clause 7.2.
- (d) In the event that:
  - (i) either:
    - (A) a Scheme Shareholder does not have a Registered Address; or
    - (B) Midway as trustee for the Scheme Shareholder believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address, and no account has been notified in accordance with clause 7.1(b)(i) or 7.1(b)(ii) or a deposit into such account is rejected or refunded; or
  - (ii) a cheque issued under clause 7 has been cancelled in accordance with 7.4(b),

Midway as the trustee for the Scheme Shareholder may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Midway (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

- (e) Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), Midway must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of the Bidder. An amount credited to the Separate Account or Trust Account (as applicable) under this clause is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Midway must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (f) To the extent that there is a surplus in the amount held by Midway as the trustee for the Scheme Shareholders in the Trust Account (including any accrued interest), that surplus must be paid by Midway as the trustee for the Scheme Shareholders to the Bidder following the satisfaction of Midway's obligations as the trustee for the Scheme Shareholders under this clause 6.5.

## 6.6 All Cash Consideration

- (a) If a Midway Shareholder:
  - (i) is an Ineligible Shareholder; or

(ii) does not make a Valid Election,

that Midway Shareholder will receive the All Cash Consideration for the Scheme Shares held by them.

(b) All Midway Shareholders will receive the All Cash Consideration for the Scheme Shares held by them if clause 6.5 applies.

#### 6.7 **Ineligible Shareholders**

Without limiting clause 6.6, Bidder has no obligation to provide, and will not provide, under this Scheme any Scrip Consideration to any Ineligible Shareholders, regardless of any Election made by those persons, but must pay the All Cash Consideration to each Ineligible Shareholder for the Scheme Shares they hold in accordance with the Scheme.

#### 6.8 **Scrip Consideration**

If a Midway Shareholder makes a Valid Election and clause 6.5 does not apply:

- (a) the Midway Shareholder will be entitled to receive the Scheme Consideration relevant to their Election (subject to the Scaleback Arrangements and the terms of this Scheme); and
- (b) the Scrip Consideration in respect of which the Midway Shareholder is entitled to will be issued directly to that Scheme Shareholder (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration) or the Nominee to hold as bare trustee for that Scheme Shareholder (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration) in accordance with the terms of the Nominee Deed and the RollCo Shareholders' Deed.

#### 6.9 **Status of Scrip Consideration**

Subject to this Scheme becoming Effective, RollCo and Bidder must:

- (a) issue (or procure the issue of) the Scrip Consideration required to be issued under this Scheme on terms such that each share forming part of the Scrip Consideration will rank equally in all respects with each existing share (if any) of the same class and will have the rights set out in the RollCo Constitution and the RollCo Shareholders' Deed; and
- (b) ensure that each such share is duly and validly issued in accordance with all applicable laws, the RollCo Constitution and the RollCo Shareholders' Deed, fully paid and free from any mortgage, charge, lien, encumbrance, pledge or other security interest (including any 'security interest' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)).

#### 6.10 **Scaleback Arrangements**

- (a) If the Aggregate RollCo Elected Shares are less than or equal to the Available RollCo Shares, each Scheme Shareholder (or Nominee on that Scheme Shareholder's behalf) who is entitled to be issued RollCo Shares will receive as Scrip Consideration the number of RollCo Shares the subject of their Valid Elections to receive All Scrip Consideration or Mixed Consideration in full, subject to the other conditions in this Scheme.
- (b) If the Aggregate RollCo Elected Shares exceed the Available RollCo Shares, each Scheme Shareholder (or Nominee on that Scheme Shareholder's behalf) who is entitled to be issued RollCo Shares will receive the number of RollCo Shares as Scrip Consideration calculated in accordance with the formula below

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(**Scaleback Shares**), and that Scheme Shareholder will receive the Cash Consideration and not the Scrip Consideration in respect of the remaining number of Scheme Shares they hold that would otherwise have received Scrip Consideration but for the calculation below:

$$\text{Scaleback Shares} = A \times \left(\frac{B}{C}\right)$$

where:

**A** is the number of RollCo Shares that would have been received in exchange for the Scheme Shares the subject of the Scheme Shareholder's Valid Election to receive All Scrip Consideration or Mixed Consideration;

**B** is the Available RollCo Shares; and

**C** is the Aggregate RollCo Elected Shares.

#### 6.11 **Fractional entitlements**

Where the calculation of Scheme Consideration (including in calculating the Scaleback Shares) to be provided to a Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent or a fraction of a RollCo Share:

- (a) where that entitlement is to half a cent or more or half a RollCo Share or more, the number of cents or number of RollCo Shares (as the case may be), will be rounded up to the nearest whole number;
- (b) where that entitlement is to less than half a cent or less than half a RollCo Share, the number of cents or number of RollCo Shares (as the case may be), will be rounded down to the nearest whole number.

#### 6.12 **Splitting**

If Bidder and Midway are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, before the Election Time, been party to Share Splitting or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding as contemplated by clause 6.11, Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered address of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice will, for the purposes of the Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice will, for the purposes of the Scheme, be taken to hold no Scheme Shares.

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## 7. Provision of Scheme Consideration

### 7.1 Provision of Aggregate Cash Consideration

- (a) The obligation of Bidder to provide, or procure the provision of, the Aggregate Cash Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder by:
- (i) depositing, or procuring the deposit, into the Trust Account, an amount in immediately available funds equal to the Aggregate Cash Consideration by no later than 5:00 pm on the day that is two Business Days before the Implementation Date to be held by or on behalf of Midway on trust for those Scheme Shareholders, provided that any interest earned on the amount deposited (less bank fees and other charges) by Bidder will be for the account of Bidder; and
  - (ii) providing Midway with written confirmation that payment has been made in accordance with clause 7.1(a)(i).
- (b) Subject to clause 7.1(c), on the Implementation Date, and subject to the receipt of the Aggregate Cash Consideration in accordance with clause 7.1(a), Midway must pay, or procure the payment, to each Scheme Shareholder from the Trust Account an amount equal to the Cash Consideration due to that Scheme Shareholder in respect of each relevant Scheme Share registered in the name of that Scheme Shareholder as at the Scheme Record Date by doing any of the following below (in Midway's absolute discretion):
- (i) paying, or procuring the payment of, the relevant amount by electronic transfer to a bank account nominated by the Scheme Shareholder, where the Scheme Shareholder has made an election prior to the Scheme Record Date in accordance with the requirements of Midway Registry to receive dividend payments from Midway into that bank account;
  - (ii) paying, or procuring the payment of, the relevant amount by electronic transfer to a bank account nominated by the Scheme Shareholder by an appropriate authority received from the Scheme Shareholder to Midway; or
  - (iii) dispatching, or procuring the dispatch, to each Scheme Shareholder by prepaid ordinary post to the address of the Scheme Shareholder recorded in Midway Register as at the Scheme Record Date of a pre-printed cheque for the amount of the Cash Consideration due to that Scheme Shareholder in accordance with the Scheme.
- (c) The Cash Consideration payable to each Scheme Shareholder with a registered address in New Zealand will be paid to a bank account nominated by that Scheme Shareholder. If a Scheme Shareholder with a registered address in New Zealand has not nominated a bank account for the receipt of payments, Midway may hold payment of the Cash Consideration owed to that Scheme Shareholder until a valid bank account has been nominated by an appropriate authority from the Scheme Shareholder to Midway.
- (d) If Bidder is required by section 260-5 or Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth), or section 255 of the *Income Tax Assessment Act 1936* (Cth), to pay to the Commissioner of Taxation (**Commissioner**) an amount in respect of the acquisition of Scheme Shares (**Withholding Amount**), Bidder is permitted to deduct the Withholding Amount from the Scheme Consideration otherwise payable in respect of those Scheme

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Shares and remit such amounts to the Commissioner. The aggregate sum payable shall not be increased to reflect the deduction of the Withholding Amount and the net sum payable to those Scheme Shareholders to whom the Withholding Amount relates to shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.

- (e) Bidder acknowledges and agrees, that it shall not pay any amounts to the Commissioner of Taxation under clause 7.1(d) with respect to a Scheme Shareholder where it receives an entity declaration from the Scheme Shareholder prior to the Implementation Date, where:
- (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and covers the Implementation Date (**Entity Declaration**); and
  - (ii) the Bidder does not know that the Entity Declaration is false.
- (f) If the Bidder forms the view that it knows that an Entity Declaration it has received is false, and the Bidder received the Entity Declaration more than 30 days before the Implementation Date, the Bidder agrees that it shall not pay any amounts to the Commissioner of Taxation in respect of that Scheme Shareholder until it has:
- (i) provided information upon which it relied to form that view to the Scheme Shareholder who has provided that Entity Declaration no less than 20 days before the Implementation Date;
  - (ii) provided the Scheme Shareholder by notice in writing the opportunity to review the information provided to it and respond with their views no less than 10 days before the Implementation Date; and
  - (iii) reviewed any response from the Scheme Shareholder and, after having reconsidered its view, still be of the view that it has knowledge that the Entity Declaration it has received is false.
- (g) The Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that Bidder reasonably requires in making any such approach. Bidder agrees:
- (i) to provide Midway a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and must incorporate Midway's reasonable comments on those materials, and more generally to take into account Midway's comments in relation to the Bidder's engagement with the Australian Taxation Office, and provide Midway a reasonable opportunity to participate in any discussions and correspondence between Midway and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Scheme; and
  - (ii) not to contact any Scheme Participant in connection with the application of Subdivision 14-D to the Scheme without Midway's prior consent.
- (h) Midway, BidCo and RollCo agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 7.1(g). Midway, BidCo and RollCo agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation.

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- (i) If:
- (i) either:
- (A) a Scheme Shareholder does not have a Registered Address; or
- (B) Midway as the trustee for the Scheme Shareholders reasonably believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,
- and no account has been notified in accordance with clause 7.1(b)(i) or a deposit into such an account is rejected or refunded; or
- (ii) a cheque issued under this clause 7.1 has been cancelled in accordance with clause 7.4,

Midway as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Midway (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), Midway must hold on trust the amount for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Midway must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

## 7.2 Provision of Scrip Consideration

- (a) Subject to clauses 6.4, 6.10(a), 6.11(b) and 7.2(b) and the Scaleback Arrangements, before 12:00 pm (or such other time as Bidder and Midway may agree in writing) the obligation of Bidder to provide, or procure the provision of, the Scrip Consideration to applicable Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder procuring that, on the Implementation Date, RollCo:
- (i) issues and allots the Scrip Consideration to each Scheme Shareholder who has made a Valid Election, or is otherwise deemed to have validly elected, to receive Scrip Consideration (by way of that Scheme Shareholder's Valid Election to receive Mixed Consideration or All Scrip Consideration) in accordance with the Scheme in respect of that Scheme Shareholder's Scheme Shares; and
- (ii) enters the name and address of each Scheme Shareholder to whom Scrip Consideration is issued in accordance with clause 7.2(a)(i) into the RollCo Register in respect of the Scrip Consideration to which it is entitled under the Scheme (either directly or through the Nominee to hold as bare trustee for the relevant Scheme Shareholders as contemplated by clause 7.2(b), the Nominee Deed and the RollCo Shareholders' Deed); and

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- (iii) gives written notice to Midway that it has performed its obligations under this clause 7.2(a).
- (b) Notwithstanding any other provision of this Scheme, the Scrip Consideration in respect of which a Scheme Shareholder is entitled under clause 7.2(a) may, in Bidder's absolute discretion, be issued directly to:
  - (i) that Scheme Shareholder (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration); or
  - (ii) the Nominee to hold as bare trustee for that Scheme Shareholder (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration) in accordance with the terms of the Nominee Deed and the RollCo Shareholders' Deed.
- (c) Within 5 Business Days after the Implementation Date, RollCo must send, or procure the sending of, a certificate or other holding statement in accordance with the RollCo Constitution to each Scheme Shareholder or (if applicable) the Nominee entitled to receive Scrip Consideration under this Scheme, reflecting the issue of such Scrip Consideration, to their Registered Address or as otherwise validly directed by the relevant Scheme Shareholder or the Nominee (as applicable).

### 7.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in cash in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Midway, the holder whose name appears first in Midway Register as at the Scheme Record Date or the joint holders;
- (b) any Scrip Consideration to be issued under this Scheme must be issued to and registered in the names of the joint holders or, if Scrip Consideration is issued to the Nominee to hold as bare trustee for the joint holders (as contemplated by clause 7.2), the joint holders will have joint beneficial ownership of that Scrip Consideration; and
- (c) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Midway (or, in the case of clause 7.2(c), the Bidder), the holder whose name appears first in Midway Register as at the Scheme Record Date or to the joint holders.

### 7.4 Unclaimed monies

- (a) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in sections 3 and 12 of the *Unclaimed Money Act 2008* (Vic)).
- (b) Midway may cancel a cheque issued under clause 7.1 if the cheque:
  - (i) is returned to Midway; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (c) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Midway (or Midway Registry)

(which request may not be made until the date which is 20 Business Days after the Implementation Date), Midway must reissue a cheque that was previously cancelled under this clause 7.4.

**7.5 Remaining monies (if any) in Trust Account**

To the extent that following satisfaction of Midway's obligations under the other provisions of this clause 7 and provided the Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Implementation Deed, that surplus (less any bank fees and related charges) must be paid by Midway (or the Midway Registry on Midway's behalf) to Bidder.

**7.6 Amounts to be withheld or retained**

- (a) If written notice is given to Midway (or the Midway Registry) or the Bidder of an order or direction made by a court or Government Agency that:
  - (i) 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 Midway in accordance with clause 7, then Midway shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents Midway from providing consideration to any particular Scheme Shareholder in accordance with clause 7, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Midway shall be entitled to (as applicable):
    - (A) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration; and
    - (B) direct RollCo not to issue, or to issue to a trustee or nominee, any Scrip Consideration that Scheme Shareholder would otherwise be entitled to under clause 7.2,

in accordance with this clause 7 as permitted by that (or another) court or direction or otherwise by law.

- (b) To the extent that amounts or shares are so deducted or withheld in accordance with clause 7.6(a), such deducted or withheld amounts or shares will be treated for all purposes under this Scheme as having been paid or issued to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts or shares are actually remitted or issued as required in accordance with this clause 7 if such remittance or issuance becomes permitted by court or direction or otherwise by law.

**8. Dealings in Midway Shares**

**8.1 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Midway Shares or other alterations to the Midway Register will only be recognised if:

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- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Midway Register as the holder of the relevant Midway Shares on or before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Midway Register is kept,

and for the purpose of establishing the persons who are Scheme Shareholders, Midway will not accept for registration nor recognise for any other purpose (other than a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title) any transfer or transmission application in respect of Midway Shares received after such times, or received prior to such times but not in registrable or actionable form (as appropriate).

## 8.2 Midway Register

- (a) Midway will, until the Scheme Consideration has been provided and the name and address of the Bidder has been entered in the Midway Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Midway Register in accordance with the provisions of this clause 8.2. The Midway Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration.
- (b) Midway must register, or cause to be registered, valid registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 8.1(b) by no later than the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 8.2(b) requires Midway to register a transfer that would result in a Midway Shareholder holding a parcel of Midway Shares that is less than a Marketable Parcel).
- (c) As from the Scheme Record Date, each entry in the Midway Register (other than entries in the Midway Register in respect of Bidder and subsequent transferees) will cease to have effect, except as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Midway Shares.
- (d) As soon as possible after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Midway will ensure that details of the names, registered addresses and holdings of Midway Shares for each Scheme Shareholder as shown in the Midway Register as at the Scheme Record Date are available to Bidder.

## 8.3 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Bidder) will cease to have effect as documents of title in respect of those Scheme Shares. Each entry which is current as at 7:00 pm on the Midway Register as at the Scheme Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## 8.4 No disposals after Scheme Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date (other than to Bidder in accordance with this Scheme and any subsequent transfers by Bidder

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to its successors in title), and any attempt to do so will have no effect and Midway shall be entitled to disregard any such disposal, purported disposal or agreement.

#### 8.5 **Information made available to Bidder**

As soon as practicable after the Scheme Record Date and in any event at least three Business Days before the Implementation Date, Midway will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Midway Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

#### 9. **Quotation of Midway Shares**

- (a) Subject to the Scheme becoming Effective, Midway must apply to ASX to suspend trading of Midway Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) Midway will apply:
  - (i) for termination of the official quotation of Midway Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX,

in each case, with effect on and from the close of trading on the trading day immediately following the Implementation Date (or such later date as may be requested by Bidder and permitted by the ASX).
- (c) Midway must ensure that such termination of official quotation and removal from the official list of ASX does not occur before the Implementation Date.

#### 10. **General Scheme provisions**

##### 10.1 **Appointment of agent and attorney**

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Midway as its agent and attorney for the purposes of:
  - (i) doing all things and executing and delivering all deeds, instruments, transfers or other documents as may be necessary or desirable to give effect to the terms of this Scheme and the transactions contemplated by it, including, without limitation, the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfer) and binding any Scheme Shareholder who receives Scrip Consideration to the RollCo Constitution, RollCo Shareholders' Deed and/or Nominee Deed;
  - (ii) enforcing the Deed Poll against Bidder and RollCo,

and Midway accepts such appointment.
- (b) Midway, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 10.1 to all or any of its directors and officers (jointly, severally, or jointly and severally) and may execute documents on behalf of each Scheme Shareholder pursuant to which a sub-delegate or sub-attorney may also be appointed under those documents (including the RollCo Shareholders' Deed and Nominee Deed).

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**10.2 Enforcement of Deed Poll**

Midway undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder and RollCo (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

**10.3 Scheme Shareholders' agreements**

Under this Scheme, each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of Bidder, destroy any share certificates relating to their Scheme Shares;
- (d) to the extent they are to receive Scrip Consideration to which they are entitled, agrees to become a shareholder of RollCo, to have their name entered into the RollCo Register, to be bound by the RollCo Constitution and to be bound by the RollCo Shareholders' Deed;
- (e) to the extent they are to receive Scrip Consideration to which they are entitled and that Scrip Consideration is issued to the Nominee to hold on as bare trustee for the Scheme Shareholder (as contemplated by clause 7.2), agrees to be bound by the Nominee Deed;
- (f) without limiting clause 10.1, authorises Midway to do and execute, and consents to Midway doing and executing, all acts, matters, things and documents on the part of each Scheme Shareholder necessary for, or incidental to, the implementation of the Scheme and the transactions contemplated by it, including executing and delivering deeds, instruments, transfers or other documents, as agent and attorney of each Scheme Shareholder, including:
  - (i) a Scheme Transfer in relation to its Scheme Shares as contemplated by clause 10.1; and
  - (ii) any deed or document required by Midway, Bidder or RollCo for the purposes of documenting any agreement or arrangement for the purposes of clauses 10.3(d) and 10.3(e);
- (g) irrevocably acknowledges that this Scheme binds Midway and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Midway;
- (h) agrees, if they hold their Scheme Shares in a CHESS Holding (as defined in the ASX Settlement Rules), to the conversion of their Scheme Shares to an Issuer Sponsored Holding (as defined in the ASX Settlement Rules) and irrevocably authorises Midway to do anything necessary or desirable (whether required by the ASX Settlement Rules or otherwise) to effect or facilitate such conversion; and
- (i) irrevocably consents to Midway and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme,

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

#### 10.4 **Warranty by Scheme Shareholders**

- (a) Each Scheme Shareholder is deemed to have warranted to Midway and Bidder on the Implementation Date, and to the extent enforceable, to have appointed and authorised Midway as that Scheme Shareholder's agent and attorney to warrant to Bidder, that:
- (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares (together with all rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme; and
  - (iii) it has no existing right to be issued any Midway Shares or any other Midway equity securities, options exercisable into Midway Shares, Midway convertible notes or any other Midway securities.
- (b) Midway undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

#### 10.5 **Title to Scheme Shares**

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Midway of Bidder in the Midway Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

#### 10.6 **Appointment of Bidder as sole proxy**

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder, and until Bidder is registered in Midway Register as the holder of all Scheme Shares, each Scheme Shareholder:

- (a) without the need for any further act by that Midway Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its attorney and agent for the purpose of appointing any director or officer of Bidder as that Midway Shareholder's proxy and, where appropriate, its corporate representative to):
- (i) attend shareholders' meetings of Midway;

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- (ii) exercise the votes attaching to Midway Shares registered in the name of the Midway Shareholder; and
  - (iii) sign any Midway Shareholders' resolution;
- (b) must not attend or vote at any meetings of Midway Shareholders or sign any Midway Shareholders' resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 10.6(a));
  - (c) must take all other actions in the capacity of Midway Shareholder as Bidder reasonably directs; and
  - (d) acknowledges and agrees that in exercising the powers conferred in clause 10.6(a), Bidder and any person nominated by Bidder under clause 10.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

#### 10.7 **Binding effect of this Scheme**

This Scheme binds Midway and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Midway.

#### 10.8 **Notices**

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

#### 10.9 **Inconsistencies**

This Scheme binds Midway and all Midway Shareholders, and to the extent of any inconsistency, overrides the Midway constitution.

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

Each Scheme Shareholder agrees that none of Midway, Bidder or RollCo's respective directors, officers, secretaries or employees will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll and the transactions contemplated by the Scheme.

#### 10.11 **Further assurance**

Each Scheme Shareholder and Midway will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.

#### 10.12 **Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Midway may, by its counsel or solicitors, and with the prior consent of Bidder:

- (a) consent on behalf of all persons concerned, including each Midway Shareholder, to those alterations or conditions; and

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

**10.13 Consent**

Each of the Scheme Shareholders consents to Midway doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Midway or otherwise.

**10.14 Duty**

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the Deed Poll and any instrument executed under or any transaction evidenced by the Deed Poll (including, the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme); and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 10.14(a).

**10.15 Governing law**

- (a) This Scheme is governed by the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and courts competent to hear appeals from those courts. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process have been brought in an inconvenient forum.

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# Schedule 1

## Dictionary

### 1. Dictionary

Unless the context requires otherwise, in this Scheme:

**Aggregate Cash Consideration** means the aggregate of the Cash Consideration payable to Scheme Shareholders under this Scheme (taking into account all Valid Elections and the terms of the Scheme).

**Aggregate RollCo Elected Shares** means the total number of RollCo Shares that would be issued in exchange for Scheme Shares the subject of all Valid Elections for Mixed Consideration, including deemed Valid Elections, but for the Scaleback Arrangements.

**Aggregate Scrip Consideration** means the aggregate number of RollCo Shares to be provided to Scheme Shareholders under the Scheme (taking into account all Valid Elections and the terms of the Scheme).

**All Cash Consideration** means the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

**All Scrip Consideration** means the Scrip Consideration for each Scheme Share held by a Scheme Shareholder.

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

**ASX** means ASX Limited (ACN 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

**Available RollCo Shares** means the number of RollCo Shares which represents 49.99% of the total issued capital of RollCo as at the Implementation Date (assuming all Scrip Consideration has been issued in accordance with the terms of this Scheme, and as if all other RollCo Shares that have been agreed to be issued in connection with the Scheme and contemplated by the Implementation Deed have been issued on the Implementation Date).

**Bidder** means RCM BidCo Pty Ltd ACN 682 228 280.

**Business Day** has the meaning given in the Listing Rules.

**Cash Consideration** means an amount of \$1.19 for each Scheme Share, as adjusted in accordance with clause 5.3 of the Implementation Deed (if applicable).

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

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

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

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**Deed Poll** means the deed poll, substantially in the form of Annexure B of the Implementation Deed, under which Bidder and RollCo covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

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

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

**Election** means an election by a Midway Shareholder (other than an Ineligible Shareholder) to receive for the Scheme Shares held by that Midway Shareholder:

- (a) All Cash Consideration;
- (b) All Scrip Consideration; or
- (c) Mixed Consideration.

**Election Form** means the form of election under which a Midway Shareholder is offered the opportunity to make an Election.

**Election Time** means 7.00 pm on the date which is 5 Business Days prior to the date of the Scheme Meeting, or such other date agreed in writing between Bidder and Midway.

**End Date** means:

- (a) the date that is six months after the date of this deed; and
- (b) such other date and time agreed in writing between Bidder and Midway.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Midway to convene the Scheme Meeting is heard, with such hearing being the **First Court Hearing**.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, financial or other regulator or supervisory authority, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian.

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other day as Bidder and Midway agree in writing.

**Implementation Deed** means the scheme implementation deed dated 15 November 2024 between Bidder and Midway.

**Ineligible Shareholder** means a Scheme Shareholder whose address as shown in the Midway Register (as at the Scheme Record Date) is in a place outside Australia, unless Bidder and Midway agree in writing that it is lawful and not unduly onerous or impracticable to issue RollCo Shares to that Scheme Shareholder on the Implementation Date if the Scheme Shareholder so elects under the Scheme.

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

**Marketable Parcel** has the meaning given to that term in the Listing Rules.

**Maximum Cash Consideration** means a cash amount equal to the Cash Consideration multiplied by the total number of Scheme Shares.

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**Midway** means Midway Limited ACN 005 616 044.

**Midway Register** means the register of members of Midway maintained by or on behalf of Midway in accordance with section 168(1) of the Corporations Act.

**Midway Registry** means Computershare Investor Services Pty Ltd or any replacement share registry services provider to Midway.

**Midway Right** means a performance right or option or other entitlement granted under Midway's short term incentive plan, long term incentive plan or any other employee or officer incentive plan to acquire by way of issue or transfer (or have vesting or forfeiture conditions satisfied in respect of) one or more Midway Shares subject to the terms of that plan.

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

**Midway Shareholder** means a holder of one or more Midway Shares, as shown in the Midway Register.

**Minimum Scrip Threshold** means such number of RollCo Shares as is equal to 5%, or such lesser percentage as notified by Bidder to Midway in writing at least 2 Business Days prior to the date of the Scheme Meeting, of the total issued share capital of RollCo as at the Implementation Date.

**Mixed Consideration** means, in respect of a Scheme Shareholder who has made a Valid Election to receive Mixed Consideration one of the following as per their Valid Election:

- (a) Mixed Consideration Option 1: in respect of 25% of the Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 75% of the Scheme Shares, the Scrip Consideration for each Scheme Share held by that Scheme Shareholder and who has made a Valid Election for Mixed Consideration Option 1;
- (b) Mixed Consideration Option 2: in respect of 50% of the Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 50% of the Scheme Shares, the Scrip Consideration for each Scheme Share held by that Scheme Shareholder and who has made a Valid Election for Mixed Consideration Option 2; and
- (c) Mixed Consideration Option 3: in respect of 75% of the Scheme Shares, the Cash Consideration for each Scheme Share, and in respect of the other 25% of the Scheme Shares, the Scrip Consideration for each Scheme Share held by that Scheme Shareholder and who has made a Valid Election for Mixed Consideration Option 3,

subject in each case to the terms of this Scheme and the Scaleback Arrangements.

**Nominee** has the meaning given in the RollCo Shareholders' Deed.

**Nominee Deed** has the meaning given in the RollCo Shareholders' Deed.

**Registered Address** means, in relation to a Midway Shareholder, the address of the Scheme Shareholder as recorded in the Midway Register.

**RollCo** means RCM RollCo Ltd ACN 682 218 579.

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**RollCo Constitution** means the constitution of RollCo in the form agreed in writing by the parties.

**RollCo Register** means the register of RollCo.

**RollCo Share** means a fully paid Class B Share (having the same voting and economic rights as other fully paid ordinary shares in RollCo on the terms set out in the RollCo Constitution and the RollCo Shareholders' Deed) to be provided to Scheme Shareholders who make an Election to receive Scrip Consideration under and subject to the terms of this Scheme.

**RollCo Shareholders' Deed** means the shareholders' deed in relation to RollCo to be entered into by the shareholders of RollCo amongst others, on substantially the terms set out the Implementation Deed and otherwise in the form agreed in writing by the parties.

**Scaleback Arrangements** means the scaleback arrangements set out in clause 6.10.

**Scaleback Shares** has the meaning given in clause 6.10(b).

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Midway and the Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Bidder.

**Scheme Booklet** means the scheme booklet published by Midway in respect of this Scheme pursuant to section 412 of the Corporations Act and dated [•].

**Scheme Consideration** means, in respect of each Scheme Share, the consideration payable to Scheme Shareholders under the Scheme, being either:

- (a) All Cash Consideration;
- (b) All Scrip Consideration; or
- (c) Mixed Consideration,

depending on the Valid Elections made and subject to the Scaleback Arrangements and the terms of the Scheme.

**Scheme Meeting** means the meeting of Midway Shareholders ordered by the Court to be convened at the First Court Hearing or any adjournment or postponement thereof.

**Scheme Order** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

**Scheme Record Date** means 7.00 pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

**Scheme Share** means a Midway Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Shareholder** means a Midway Shareholder as at the Scheme Record Date.

**Scheme Transfer** means, in relation to each Scheme Shareholder, a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

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**Scrip Consideration** means a RollCo Share for each Scheme Share in respect of which a Valid Election is made in accordance with the Scheme, subject to the Scaleback Arrangements and the terms of the Scheme.

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

**Share Splitting** means the splitting or subdivision by a holder of Midway Shares into two or more parcels of Midway Shares whether or not it results in any change in beneficial ownership of the Midway Shares.

**Trust Account** means an Australian dollar denominated trust account operated by or on behalf of Midway as trustee for the benefit of the Scheme Shareholders.

**Valid Election** has the meaning given to it in clause 6.4(d)(i).

## 2. Interpretation

Unless the context requires otherwise, in this Scheme:

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words "include", "including", "such as", "to avoid doubt" and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;

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- (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
- (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
- (x) a monetary amount is in Australian dollars;
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) A reference to time in this deed is a reference to time in Melbourne, Victoria, save that where the reference to time is in respect of the giving or receiving of notice, such reference shall be the time in the place where the party receiving the notice is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

## Annexure B

### Deed Poll

Refer to attachment.

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**Ashurst**

# Deed Poll

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RCM BidCo Pty Ltd

RCM RollCo Ltd

IN FAVOUR OF  
Scheme Shareholders

2024

## Contents

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**THIS DEED POLL** is made on

2024

**BY:**

- (1) **RCM BidCo Pty Ltd ACN 682 228 280** of Level 18, 644 Chapel Street, South Yarra, Victoria, 3141 (**Bidder**); and
- (2) **RCM RollCo Ltd ACN 682 218 579** of Level 18, 644 Chapel Street, South Yarra, Victoria, 3141 (**RollCo**).

**IN FAVOUR OF:**

- (3) Each person registered as a holder of Midway Shares as at the Scheme Record Date (**Scheme Shareholders**).

**RECITALS:**

- (A) Bidder and Midway have entered into the Implementation Deed.
- (B) In the Implementation Deed, Bidder agreed to make this deed poll and procure that RollCo make this deed poll.
- (C) Bidder and RollCo are executing this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform the actions and obligations attributed to them under the Implementation Deed and the Scheme.

**THIS DEED POLL PROVIDES AS FOLLOWS:**

1. **Defined terms and interpretation**

1.1 **Defined terms**

- (a) The meanings of the terms used in this deed poll are set out below:

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

**Implementation Deed** means the scheme implementation deed dated [•] between Midway and Bidder relating to the implementation of the Scheme.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Midway and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder, the form of which is set out in Annexure B to the Implementation Deed (or such other form as agreed in writing by Bidder and Midway), subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Midway.

- (b) Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

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**1.2 Interpretation**

Clause 2 of Schedule 1 of the Implementation Deed applies to the interpretation of this deed poll, except those references to 'this deed' are to be read as references to 'this deed poll'.

**1.3 Nature of deed poll**

Bidder and RollCo acknowledge that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme each Scheme Shareholder irrevocably appoints Midway and all of its directors, secretaries and officers (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and RollCo.

**2. Conditions**

**2.1 Conditions**

This deed poll and the obligations of Bidder and RollCo under this deed poll are subject to the Scheme becoming Effective.

**2.2 Termination**

The obligations of Bidder and RollCo under this deed poll to the 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 Effective Date; or
- (b) the Scheme is not Effective on or before the End Date,

unless Midway and Bidder otherwise agree in writing.

**2.3 Consequences of termination**

If this deed poll terminates under clause 2.2:

- (a) Bidder and RollCo are released from their obligations to further perform this deed poll except those obligations contained in clause 6.1; and
- (b) in addition and without prejudice to any other rights, powers or remedies available to the Scheme Shareholders, each Scheme Shareholder retains the rights and remedies they have against Bidder and RollCo in respect of any breach of this deed poll which occurred before it was terminated.

**3. Scheme obligations**

**3.1 Undertaking to provide Scheme Consideration and perform other actions**

Subject to clause 2, Bidder and RollCo undertakes in favour of each Scheme Shareholder to:

- (a) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (b) undertake or procure the undertaking of all other actions, and give each acknowledgement, representation and warranty (if any) attributed to it under the Scheme,

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in each case, subject to and in accordance with the terms of the Scheme.

### 3.2 **Status of RollCo Shares**

Bidder and RollCo undertake in favour of each Scheme Shareholder that the RollCo Shares which are issued to Scheme Shareholders in accordance with the Scheme will:

- (a) rank equally in all respects with each existing share (if any) of the same class and will have the rights set out in the RollCo Constitution and the RollCo Shareholders' Deed;
- (b) be duly and validly issued in accordance with the RollCo Constitution and the RollCo Shareholders' Deed; and
- (c) be issued fully paid and free from any mortgage, charge, lien, encumbrance, pledge or other security interest (including any 'security interest' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)).

### 4. **Warranties**

Each of Bidder and RollCo 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 full capacity, corporate power and lawful authority to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

### 5. **Continuing obligations**

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder and RollCo have fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

### 6. **General**

#### 6.1 **Duty**

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and

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- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

**6.2 Governing law and jurisdiction**

- (a) This deed poll is governed by the laws in force in Victoria.
- (b) Bidder and RollCo irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this deed poll. Bidder and RollCo irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**6.3 Notices**

- (a) Any notice or other communication to Bidder and RollCo in connection with this deed poll must be:
  - (i) in writing, in English and sent by a person duly authorised by the sender;
  - (ii) marked for the attention of the relevant person named below; and
  - (iii) hand delivered or sent by pre-paid post or email to the recipient's address set out below:

**Bidder and RollCo**

Attention: Josh Ludski  
 Address: Level 18, 644 Chapel St, South Yarra, Victoria 3141  
 Email: [jludski@rivercapital.com.au](mailto:jludski@rivercapital.com.au)

with a copy (for information purposes only) to:

Attention: Neil Pathak / Ben Landau  
 Address: Level 16, 80 Collins Street, Melbourne, Victoria 3000  
 Email: [neil.pathak@ashurst.com](mailto:neil.pathak@ashurst.com) and [ben.landau@ashurst.com](mailto:ben.landau@ashurst.com)

- (b) Any notice or other communication given in accordance with clause 6.3(a) is taken to be received:
  - (i) if hand delivered, on delivery; or
  - (ii) if sent by pre-paid post, on the 2nd Business Day after the date of posting (or on the 7th Business Day after the date of posting if posted to or from a place outside Australia); and
  - (iii) if sent by email, immediately unless the sender receives a message indicating that the email has not been received by the intended recipient,

but, if the delivery, receipt or transmission is not on a Business Day or is after 5:00 pm on a Business Day, the Notice is taken to be received at 9:00 am on the next Business Day.

**6.4 Waiver**

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.



- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

#### 6.5 **Variation**

A provision of this deed poll or any right created under it may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by Midway in writing; or
- (b) if on or after the First Court Date, the variation is agreed to by Midway in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Bidder and RollCo must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

#### 6.6 **Cumulative rights**

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

#### 6.7 **Assignment**

- (a) The rights created by this deed poll are personal to each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder or RollCo.
- (b) Any purported dealing in contravention of clause 6.7(a) is invalid.

#### 6.8 **Joint and several obligations**

Bidder and RollCo are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

#### 6.9 **Further action**

Bidder and RollCo must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

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**EXECUTED** as a deed poll.

**EXECUTED** by **RCM BIDCO PTY LTD**, by its sole director (and the company does not have a company secretary):

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

\_\_\_\_\_  
Name

**EXECUTED** by **RCM ROLLCO LIMITED**:

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

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Name

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## Annexure C

### RollCo Shareholders' Deed Term Sheet

Refer to attachment.

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# Project Centre

## RollCo Shareholders' Deed Term Sheet

No.	Item	Detail
1.	<b>Structure</b>	<p>Solely for the purposes of identification:</p> <ul style="list-style-type: none"> <li>the Investor will hold Class A shares in RollCo; and</li> <li>the Rolling Shareholders will hold Class B shares in RollCo, the registered title of which will be held by a nominee in accordance with customary arrangements and governed by a Nominee Deed.</li> </ul> <p>Class A shares and Class B shares will have identical economic and voting rights.<sup>1</sup></p>
2.	<b>Board Composition</b>	<p>The Company will have a minimum of 5 Directors and a maximum of 9 Directors (or such other maximum number as the Board determines). It is envisaged that the Company will initially have 5 directors.</p> <p>Each Shareholder will have a right to appoint one Director for each 20% of the shares held by it, and at least 3 Directors if total shareholding exceeds 50%. For example, a Shareholder owning 50% may appoint up to 3 directors and a Shareholder owning 25% may appoint 1 director.</p> <p>For Rolling Shareholders not having the right to appoint a Director in their own right, they may collectively appoint 1 director (provided their collective ownership exceeds 10%).</p> <p>Any Director appointed by a Rolling Shareholder(s) being a <b>Nominated Director</b>. Any Nominated Director is expected to be suitably experienced and qualified and able to add value to the Board. The identity of any Nominated Director is subject to the approval of the Investor, which must not be unreasonably withheld or delayed.</p> <p>The Investor will have the right to appoint the other Directors, which may include independent directors.</p> <p>Directors may be eligible for director fees, which will be determined by the Board from the time to time.</p>
3.	<b>Board Decisions</b>	<p>Each Director will have one vote at meetings of the Board.</p> <p>All Board matters to be decided by simple majority vote.</p>
4.	<b>Reserved Matters</b>	<p>The following matters will require approval of Shareholders holding at least 75% of RollCo's shares:</p> <ol style="list-style-type: none"> <li>approving a non pro-rata issue of equity securities (as described in 'New issues' below);</li> </ol>

<sup>1</sup> The Class A and Class B distinction is for identification purposes only.

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		<p>2. a selective capital reduction or share buy-back, other than in limited circumstances including in connection with an MEP (as defined below); and</p> <p>3. any action which discriminates against or selectively and adversely affects Rolling Shareholders disproportionately relative to the Investor (including any amendment to the constitution or variation of the rights attaching to securities).</p>
5.	<b>Related party transactions</b>	All related party transactions to be on arms' length terms. Provided this is the case, no Director will be restricted from voting on a related party transaction involving their appointing Shareholder.
6.	<b>Dividend policy</b>	The Board will, subject to the restrictions in the group's financing arrangements, determine the dividend policy from time to time having regard to (among other things) the group's business plan and funding requirements.
7.	<b>New issues</b>	<p>New shares in the Company will be offered first to Shareholders pro-rata to their holdings, save for certain customary exceptions including:</p> <ul style="list-style-type: none"> <li>• issue of Class B shares to Rolling Shareholders in connection with their election for scrip consideration under the scheme</li> <li>• emergency funding (see below)</li> <li>• where issued to an employee, consultant, director or contractor as part of an investment or equity incentive plan approved by the Board (<b>MEP</b>)</li> <li>• when issued to third parties as part of M&amp;A</li> <li>• as part of a reorganisation which does not dilute any shareholder</li> <li>• on an IPO</li> <li>• where it has been approved as a Reserved Matter</li> </ul> <p>If there is a shortfall following a pro-rata offer, shortfall shares will be issued to the shareholder(s) who elect to take up the shortfall.</p>
8.	<b>Emergency funding</b>	<p>The Investor will be entitled to satisfy the Group's funding requirements in specified emergency scenarios relating to actual or pending insolvency or breach of banking covenants.</p> <p>In such a case, each non-funding shareholder will have an opportunity to participate for its pro-rata share of the emergency funding.</p>
9.	<b>Dealings with shares</b>	<p>Rolling Shareholders may not dispose of or encumber securities in the Company without the Investor's prior written consent, except transfers to certain closely related permitted transferees or pursuant to the tag-along, drag-along or 'minimum holdings' arrangements described below.</p> <p>No disposal is permitted to occur if following such disposal, RollCo would have more than 50 members, other than in connection with an IPO.</p>
10.	<b>Tag-along</b>	If the Investor wishes to sell 60% or more of its Class A shares to a third party, the Investor will procure that the Rolling Shareholders

		may tag-along on that transaction by way of a proportionate sale of their shares on the same terms.
11.	<b>Drag-along</b>	If the Investor proposes to sell more than 80% of its Class A shares to a third party, the Investor may require the Rolling Shareholders to sell their shares to the third party on a proportionate basis on the same terms.
12.	<b>Exit facilitation</b>	Shareholders are subject to customary facilitation provisions to assist the Investor to effect an exit (which includes executing documents, exercising rights and providing assistance required by the Investor or RollCo).
13.	<b>Information rights</b>	Shareholders will have the right to received audited financial reports in accordance with the requirements for public companies under the Corporations Act.  RollCo may request information about beneficial owners and controllers from Class B Shareholders.
14.	<b>Restraints</b>	Rolling Shareholders will be subject to customary non-compete, non-solicit and non-interference restrictions. These will apply while shareholders in RollCo and for a period of up to 36 months after ceasing to be a shareholder with a typical waterfall provision.
15.	<b>Minimum holdings</b>	After the period of 12 months following Completion, the Board may require that a Rolling Shareholder who holds \$10,000 or less by value of Class B shares may be required to dispose of their shares at fair market value via buy-back, cancellation or transfer to the Investor.
16.	<b>Amendment</b>	The RollCo Shareholders' Deed may be amended by the Investor, save where any amendment would impact the rights or obligations of the Rolling Shareholders (in which case the approval of holders of at least 75% of Shares is required).
17.	<b>Confidentiality</b>	Customary confidentiality provisions.
18.	<b>Governing law</b>	The governing law will be New South Wales, Australia.

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