Count
The confidence to look ahead

Address Level 8, 1 Chifley Square, Sydney NSW 2000
Postal GPO Box 1453, Sydney NSW 2001
www count.au
ABN 11 126 990 832

T (02) 8218 8778 **E** info@count.au

CUP ASX ANNOUNCEMENT

Count to acquire Diverger

22 September 2023

Count Limited (**ASX: CUP**) (**Count** or **the Company**) today announces it has entered into a binding Scheme Implementation Deed with Diverger Limited (**ASX: DVR**) (**Diverger**) under which Count will acquire 100% of the issued shares in Diverger by way of a board-recommended scheme of arrangement (**Scheme** or **Transaction**). At completion, Count will represent a leading diversified financial services provider with total revenues of $132 million, Funds Under Management and Advice (**FUMA**) of $29 billion, around 550 advisers, 563 accountants and a significantly expanded Services segment.

The Transaction is unanimously recommended by the Board of Directors of Diverger, in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Diverger shareholders. Diverger's major shareholder, HUB24 which currently holds approximately 31.5% of Diverger's ordinary shares, has issued a statement of support for the Transaction, and, in the absence of a superior proposal, intends to vote all of the Diverger shares it holds or controls in favour of the Scheme.

Count Chief Executive Officer Hugh Humphrey said "The transformational acquisition of Diverger continues the disciplined execution of Count's strategic plan and accelerates the realisation of our growth ambitions. This transaction follows the successful acquisition of Affinia and signals an exciting new phase for the Company. Diverger has a strong cultural fit with our Company and the combination is expected to unlock material benefits for all stakeholders as well as positioning us to lead further consolidation."

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Under the Scheme, Diverger shareholders will receive consideration comprising 1.38 Count ordinary shares plus $0.367 in cash per Diverger ordinary share (the **Standard Consideration**). This implies a value of $1.14 per Diverger ordinary share based on the last closing share price of Count as at 21 September 2023 of $0.56. As an alternative, Diverger shareholders will have the option to elect to receive more shares or $1.10 per share in cash for their consideration mix, subject to scale-back, as set out below. The Scheme values Diverger at $45.3 million.

Highlights of the transaction

- Transformational acquisition between two highly complementary businesses, creating a leading integrated financial services provider
- Transaction is expected to deliver a material increase in scale and diversification of Count's revenue and earnings as well as unlock incremental growth opportunities
- Transaction is expected to deliver compelling shareholder value. Transaction will be EPS accretive after completion and 25%+ EPS accretive after realisation of the expected full annual run-rate cost synergies
- Diverger's Board has unanimously recommended that Diverger shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Diverger shareholders
- Diverger's major shareholder, HUB24, has issued a statement of support for the Transaction, and, in the absence of a superior proposal intends to vote all of the Diverger shares it holds or controls in favour of the Scheme
- Diverger shareholders will receive, as Standard Consideration, 1.38 Count ordinary shares plus $0.367 in cash for each Diverger ordinary share
- This offer implies total consideration of $1.14 for each Diverger ordinary share based on the last closing share price of Count as at 21 September 2023 of $0.56, representing a 31.0% premium to Diverger's 3 month VWAP of $0.87
- Transaction is expected to be implemented in 1H CY24

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Strategic rationale

Diverger is a highly complementary business to Count, with a collection of wealth and accounting brands representing around 200 advisers and $12 billion in FUMA. Diverger generated net revenues of $37.6 million and Net Profit After Tax and Amortisation (**NPATA**) of $4.7 million for the financial year ending 30 June 2023.

The combination of these highly complementary businesses will create a leading financial services provider with substantial increases in scale across Count's existing Wealth, Accounting and Services divisions. The new Count Group will represent total pro forma FY23 revenues of $132 million, FUMA of $29 billion with approximately 550 advisers, 563 accountants and a significantly expanded Services segment.

Count has identified approximately $3 million in cost synergies, and a number of new revenue growth opportunities to be delivered through a rigorous integration and benefit realisation program. Upon completion, Count will benefit from a broader and more diversified shareholder base.

The transaction is expected to unlock significant value for shareholders and the combined entity will be better positioned to lead further industry consolidation and inorganic growth opportunities. The transaction is expected to be EPS accretive after completion and 25%+ EPS accretive after realisation of the expected full run-rate cost synergies (excluding revenue synergies and one-off transaction and integration costs).

Count's Offer for Diverger Shares

The Transaction will be affected via a scheme of arrangement with every Diverger ordinary share being acquired for, as Standard Consideration, 1.38 newly issued shares in Count and $0.367 in cash per Diverger share. Based on the last closing share price of Count as at 21 September 2023 of $0.56, this implies consideration of $1.14 for each Diverger share.

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As an alternative to the Standard Consideration, Diverger shareholders will be offered the choice of receiving alternative consideration of either $1.10 per Diverger share in cash or 2.07 Count ordinary shares per Diverger share, with the availability of this alternative consideration subject to a scale-back mechanism that will cap the total amount of cash consideration to be paid to Diverger shareholders at $14.6 million and the number of new Count ordinary shares issued at 54.9 million.

Based on the undisturbed Diverger share price this proposal represents a 27.0% premium to Diverger's one month VWAP of $0.90 and a 31.0% premium to Diverger's three month VWAP of $0.87 as at 21 September 2023.

Count and Diverger shareholders are expected to own approximately 67% and 33% respectively of the combined group on closing, based on the current number of Count shares outstanding.

Financial Benefits

- Pre-tax synergies of approximately $3 million targeted in the first full financial year post completion with one-off transaction and integration costs of approximately $8 million
- Transaction expected to be EPS accretive after completion and deliver 25%+ EPS accretion to Count shareholders after realisation of the expected full run-rate cost synergies
- Offer price implies an EV/EBITA acquisition multiple of 6.6x pre-synergies, 4.6x post-synergies, based on full financial year 2023 results for Diverger.

Governance and Management

Following completion of the Transaction, members of the Executive Leadership Team will continue to report to CEO Hugh Humphrey. The Board of Count will remain unchanged. Key roles in Diverger will transition across to Count, and talented individuals will be secured into new roles or engaged for transitional periods.

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Funding

The cash component of the offer totaling $14.6 million, will be funded by a new debt facility. The new debt facility will also refinance Diverger's existing debt facility and includes undrawn headroom for liquidity management purposes.

The pro forma leverage of the group is expected to be ~1.7x gross debt/ pro forma EBITDA shortly after implementation.

Conditions and Implementation Process

The Scheme is subject to customary conditions and approvals including Court, regulatory and Diverger shareholder approval. The obligations of Count and Diverger regarding the implementation of the Transaction are agreed and set out in the Scheme Implementation Agreement entered into by both parties. The Scheme Implementation Agreement contains customary exclusivity provisions, including no-shop and no-talk restrictions and a notification obligation, as well as a matching right in favour of Count. It also details circumstances under which Diverger may be required to pay Count a break-fee of $500,000 and vice versa.

A copy of the Scheme Implementation Agreement is attached to this announcement.

Timetable

The acquisition is currently expected to close in 1H CY24 following satisfaction of conditions, including Diverger shareholder and other approvals.

Advisers

UBS is acting as financial adviser and Baker McKenzie as legal adviser to Count.

Investor and Analyst Briefing

Count will be holding a briefing for investors and analysts on Monday, 25 September 2023 at 9:30am Australian Eastern Standard Time.

Participants can register for the briefing at the following link:

Count Limited - Investor and Analyst Briefing (25 September 2023)

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This announcement has been authorised for release to the ASX by the Board of Count Limited.

For further information please contact:

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Chief Executive Officer
T 02 8218 8778
E hugh.humphrey@count.au

Ray Kellerman
Chairman
T 02 8218 8778
E ray.kellerman@count.au

www.count.au

Scheme Implementation Agreement

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Diverger Limited (**Diverger**)

Count Limited (**Count**)

—

Level 20 Collins Arch 447 Collins Street
Melbourne Vic 3000 Australia DX 204 Melbourne
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minterellison.com

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Scheme Implementation Agreement

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Details

Date

22 September 2023

Parties

Name	**Diverger Limited**
ACN	111 695 357
Short form name	**Diverger**
Notice details	Level 7, 115 Pitt Street, Sydney NSW 2000 Email: pbrook@diverger.com.au Attention: Peter Brook

Name	**Count Limited**
ACN	126 990 832
Short form name	**Count**
Notice details	Level 8, 1 Chifley Square, Sydney NSW 2000 Email: hugh.humphrey@count.au Attention: Hugh Humphrey

Background

A Diverger and Count have agreed that Count will acquire all of the Diverger Shares by way of a scheme of arrangement between Diverger and Scheme Shareholders under Part 5.1 of the Corporations Act.

B Diverger intends to propose the Scheme and issue the Explanatory Booklet.

C Diverger and Count have agreed to implement the Scheme and to undertake certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement, unless the context otherwise requires, the following words and expressions have meanings as follows:

Accounting Standards means:

(a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and

(b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

Adviser means, in relation to an entity, a financial, corporate, legal, technical 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 Proposed Transaction by the entity.

AFSL means an Australian Financial Services Licence.

Announcement means:

(a) an announcement by Diverger in relation to the Proposed Transaction; and

(b) an announcement by Count in relation to the Proposed Transaction,

in both cases in the form agreed by Diverger and Count (both acting reasonably), prior to signing this agreement.

Anti-Money Laundering Laws means anti-money laundering and anti-terrorist financing statutes, rules and regulations of all jurisdictions applicable to each member of the Diverger Group or the Count Group (as applicable), including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and either Diverger or Count was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market known as the Australian Securities Exchange operated by it.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Authorised Person means, in respect of a person:

(a) a director, officer or senior executive who has been wall crossed in connection with the Proposed Transaction of the person (or of, in the case of Diverger, a member of the Diverger Group, or, in the case of Count, a member of the Count Group);

(b) an Adviser of the person; or

(c) a director, officer or senior executive who has been wall crossed in connection with the Proposed Transaction of an Adviser of the person.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Cash Consideration means the amount of $0.367 for each Scheme Share held by a Scheme Shareholder.

Cash Consideration Cap means $14,595,474 in aggregate, which excludes any payments made to Ineligible Shareholders.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Combined Group means the combination of Diverger and Count following implementation of the Scheme.

Combined Group Information means any information in the Explanatory Booklet or any supplementary disclosure to Diverger Shareholders in respect of the Scheme, regarding the Combined Group.

Conditions means the conditions precedent set out in clause 3.1 and **Condition** means any one of them.

Confidentiality Deed means the document of that name between Diverger and Count dated on or about 23 June 2023.

control has the meaning given to that term in section 50AA of the Corporations Act.

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

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

Count Board means the board of directors of Count.

Count Break Fee has the meaning given to that term in clause 15.3(a).

Count Competing Proposal means any offer, proposal or expression of interest, agreement, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms:

(a) a Third Party (either alone or together with one or more Associates) would directly or indirectly:

(i) acquire or obtain a right to acquire;

(A) a Relevant Interest in or become the holder of;

(B) a legal, beneficial or economic interest in; or

(C) control of,

more than 50% of the Count Shares;

(ii) acquire, obtain a right to acquire, or otherwise obtain a legal, beneficial or economic interest in, or control of, 50% or more by value of the business or property of Count or the Count Group (taken as a whole);

(iii) acquire control of Count; or

(iv) otherwise acquire or merge with Count or amalgamate with, or acquire a significant shareholding or economic interest in Count or a Count Significant Entity,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for Count or other synthetic merger or any other transaction or arrangement but does not include any sale or disposal by the Commonwealth Bank of Australia of any of its Count Shares;

(b) Count will cease to be admitted to the official list of ASX or the Count Shares will cease to be officially quoted on ASX; or

(c) may otherwise compete with, or be inconsistent in any material respect with the consummation of, the Proposed Transaction, and would require Count or Diverger to abandon the Proposed Transaction.

Count Consideration Share means a Count Share to be issued under the terms of the Scheme.

Count Data Room means the online data room containing Count Due Diligence Material, to which access was made available to Diverger.

Count Director means a director of Count.

Count Disclosure Letter means the letter so entitled from Count provided to Diverger prior to the execution of this agreement.

Count Due Diligence Material means the information disclosed by or on behalf of Count and its Authorised Persons (including management presentations and all written responses provided in response to written questions or requests for information) to Diverger or any of their respective Authorised Persons prior to the execution of this agreement:

(a) in the Count Data Room as evidenced conclusively by the USB provided by Count to Diverger on the date that is 1 Business Day before the date of this agreement; or

(b) in the Count Disclosure Letter provided by Count to Diverger on the date that is 1 Business Day before the date of this agreement.

Count EBITA means earnings from ordinary, continuing activities of the Count Group before interest, tax and amortisation calculated in accordance with the accounting policies and practices applied by Count as at the date of this agreement, excluding all costs and expenses incurred by Count associated with the Scheme process and the Scheme, including all fees payable to external advisers of Count.

Count Group means Count and each of its Subsidiaries, excluding:

(a) an entity in which Count has an ownership interest of less than 50%, other than the Count Significant Entities; and

(b) at any time, Diverger and its Subsidiaries to the extent that Diverger and its Subsidiaries are Subsidiaries of Count at that time.

A reference to a **member of the Count Group** or a **Count Group Member** is a reference to Count or any such Subsidiary.

Count Indemnified Party means a director, officer or employee of a member of the Count Group.

Count Information means such information regarding Count that is provided by or on behalf of Count, or any of its Advisers, to Diverger in writing for inclusion in the Explanatory Booklet:

(a) to enable the Count Information that is included in the Explanatory Booklet to be prepared and completed in compliance with all applicable laws; and

(b) otherwise in compliance with Count's obligations under clause 7.2(a).

Count Interim Dividend means an interim dividend declared or paid by Count for the period ending 31 December 2023 in an amount not exceeding the amount per Count Share disclosed in the Count Disclosure Letter.

Count Material Adverse Change means an event or circumstance (which for the avoidance of doubt may occur in relation to a Count Group Member or a Count Significant Entity) that occurs, is announced or becomes known to Diverger or the Count Board (whether or not it becomes public) between the date of this agreement and the Delivery Time which:

(a) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the effect of diminishing the NTA of the Count Group (taken as a whole) by 20% or more, determined after excluding the impact of any event or circumstance to the extent that any loss incurred by the Count Group in connection with that event or circumstance is recovered, or is reasonably expected to be recoverable, under a Count Group Member's (or a Count Group) insurance policy;

(b) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the effect of diminishing the consolidated annual Count EBITA (taken as a whole) on a recurring basis by 20% or more per annum compared to what the consolidated annual Count EBITA (on a recurring basis) could reasonably be expected to have been but for the relevant event or circumstance, determined after:

    (i) taking into account any event or circumstance, which has occurred after the execution of this agreement which has, or could reasonably be expected to have, a positive effect on the consolidated annual Count EBITA (on a recurring basis); and

(ii) excluding the impact of any event or circumstance to the extent that any loss incurred by the Count Group in connection with that event or circumstance is recovered, or is reasonably expected to be recoverable, under a Count Group Member's (or a Count Group) insurance policy;

(c) comprises or involves a reportable situation or an inquiry, investigation or Claim by:

(i) ASIC in relation to any AFSLs held by any member of the Count Group; or

(ii) AUSTRAC in relation to compliance with Anti-Money Laundering Laws by any member of the Count Group,

that is reasonably likely to result in:

(iii) the Count Group (taken as a whole) or any member of the Count Group being unable to carry out its business in any material respect; or

(iv) any material financial impact on any member of the Count Group that is a financial services licensee; or

(d) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the result that present or future third party monetary obligations of a member of the Count Group in respect of moneys borrowed or raised totalling at least $3 million (or, without limitation, its equivalent in any other currency or currencies) becomes capable of being declared due and payable before their stated maturity or expiry (other than as a result of the Proposed Transaction),

in each case, determined in accordance with the Accounting Standards, but does not include any event or circumstance:

(e) required to be done or procured by Count under this agreement or the Scheme;

(f) which Diverger has approved in writing prior to the occurrence of the Count Material Adverse Change;

(g) that was Fairly Disclosed in the Count Due Diligence Material;

(h) that was Fairly Disclosed in documents that were publicly available:

(i) in the 12 months prior to the date of this agreement in respect of public filings of Count with ASX; or

(ii) on the day that is 1 Business Day prior to the date of this agreement in respect of public filings of a member of the Count Group Member in relation to a public register maintained by ASIC, PPSR and IP Australia;

(j) arising from or relating to:

(i) a change in applicable law, regulation, applicable Accounting Standards or the interpretation of Accounting Standards; or

(ii) any acts of war (whether or not declared) major hostilities, including in connection with or resulting or arising from any conflict between or involving Ukraine or Russia, terrorism, cyber-attacks, natural disaster or pandemic (including, but not limited to, the COVID-19 global pandemic or any related epidemic or pandemic arising from a mutation, variation or derivative of the COVID-19 virus);

(k) relating to costs and expenses reasonably incurred by Count associated with the Scheme process, including all fees payable to external advisers of Count; or

(l) relating to any material adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or any change in national or international political, financial or economic conditions which does not have a disproportionate effect on the Count Group as compared to other participants in the industries in which the Count Group operates.

Count Minority Interests means the entities in which Count has a minority ownership interest, as disclosed in the Count Disclosure Letter.

Count Nominee has the meaning given to that term in clause 2.1(f).

Count Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

(a) Count converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);

(b) Count resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities;

(c) Count:

(i) enters into a buy-back agreement; or

(ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;

(d) any member of the Count Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than:

(i) under the valid exercise of a performance right on issue immediately before the date of this agreement;

(ii) an issue or grant of a security (for the avoidance of doubt this includes shares and options) or a performance right under an employment contract or employee incentive scheme in place as at the date of this agreement; or

(iii) to another member of the Count Group;

(e) Count issues, or agrees to issue, securities convertible into shares or debt securities, other than to another member of the Count Group;

(f) other than in relation to the Count Interim Dividend, Count pays or declares, or announces an intention to pay or declare, any distribution (whether by way of any interim, final or special dividend, capital reduction or otherwise and whether in cash or in specie);

(g) any member of the Count Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property which represents more than 50% of the EBITA of the Count Group;

(h) Count making any change to the Count constitution that materially affects the Proposed Transaction;

(i) Count or any of its wholly-owned Subsidiaries creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property or over a material asset of the Count Group other than in the ordinary course of business;

(j) Count Shares ceasing to be listed for quotation on ASX;

(k) an Insolvency Event occurs in relation to Count; or

(l) any member of the Count Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (k) (inclusive) above insofar as it applies to the member of the Count Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a Count Prescribed Occurrence will not include any matter:

(m) required to be done or procured by the Count Group under this agreement or the Scheme;

(n) required by law or by an order of a court or Governmental Agency;

(o) to the extent it is Fairly Disclosed in filings of Count with ASX in the 12 months on or prior to the date of this agreement;

(p) to the extent it is Fairly Disclosed in the Count Due Diligence Material;

(q) to the extent that it relates to transactions between entities within the Count Group; or

(r) the undertaking of which Diverger has previously approved in writing.

Count Register means the register of members of Count.

Count Share means an issued fully paid ordinary share in the capital of Count.

Count Shareholder means a person who is the registered in the Count Register as a holder of one or more Count Shares.

Count Significant Entities means significant Count Minority Interests, as disclosed in the Count Disclosure Letter.

Count Warranties means the representations and warranties of Count set out in clause 10.1.

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll to be executed by Count prior to the First Court Date, in the form set out in Schedule 2 (or any other form agreed in writing between Count and Diverger), provided that where Count nominates a Count Nominee in accordance with clause 2.1(f), the Deed Poll must also be executed by the Count Nominee.

Default Consideration means the Scrip Consideration and the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

Delivery Time in relation to the Second Court Date, two hours before the commencement of the hearing or, if the commencement of the hearing is adjourned, two hours before the commencement of the adjourned hearing of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

Diverger Board means the board of directors of Diverger.

Diverger Break Fee has the meaning given to that term in clause 14.3(a).

Diverger Competing Proposal means any offer, proposal or expression of interest, agreement, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms:

(a) a Third Party (either alone or together with one or more Associates) would directly or indirectly:

(i) acquire or obtain a right to acquire:

(A) a Relevant Interest in or become the holder of;

(B) a legal, beneficial or economic interest in; or

(C) control of,

more than 50% of the Diverger Shares;

(ii) acquire, obtain a right to acquire, or otherwise obtain a legal, beneficial or economic interest in, or control of, 50% or more by value of the business or property of Diverger or any member of the Diverger Group;

(iii) acquire control of Diverger; or

(iv) otherwise acquire or merge with Diverger or amalgamate with, or acquire a significant shareholding or economic interest in Diverger or any member of Diverger Group or 50% or more by value of the total assets or business of any member of Diverger Group,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for Diverger or other synthetic merger or any other transaction or arrangement;

(b) Diverger will cease to be admitted to the official list of ASX or the Diverger Shares will cease to be officially quoted on ASX; or

(c) may otherwise compete with, or be inconsistent in any material respect with the consummation of, the Proposed Transaction, and would require Count or Diverger to abandon the Proposed Transaction.

Diverger Data Room means the online data room containing Diverger Due Diligence Material, to which access was made available to Count.

Diverger Director means a director of Diverger.

Diverger Disclosure Letter means the letter so entitled from Diverger provided to Count prior to the execution of this agreement.

Diverger Due Diligence Material means the information disclosed by or on behalf of Diverger and its Authorised Persons (including management presentations and all written responses provided in response to written questions or requests for information) to Count or any of their respective Authorised Persons prior to the date of this agreement:

(a) in the Diverger Data Room as evidenced conclusively by the USB provided by Diverger to Count on the date that is 1 Business Day before the date of this agreement; or

(b) in the Diverger Disclosure Letter on the date that is 1 Business Day before the date of this agreement.

Diverger EBITA means earnings from ordinary, continuing activities of the Diverger Group before interest, tax and amortisation calculated in accordance with the accounting policies and practices applied by Diverger as at the date of this agreement, excluding all costs and expenses incurred by Diverger associated with the Scheme process and the Scheme, including all fees payable to external advisers of Diverger and any other classes of costs and expenses provided in the Diverger Disclosure Letter.

Diverger Group means Diverger and its Subsidiaries. A reference to a member of the **Diverger Group** or a **Diverger Group Member** is a reference to Diverger or any such Subsidiary.

Diverger Incentive Plan means the Diverger Incentive Plan approved by Diverger Shareholders on 18 November 2021, a copy of which is disclosed in the Diverger Data Room.

Diverger Indemnified Parties means a director, officer or employee of a member of the Diverger Group.

Diverger Information means information to be included by Diverger in the Explanatory Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations, and any other information that is material to the making of a decision by Diverger Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of the Diverger Board and has not previously been disclosed to Diverger Shareholders, other than the Count Information, the Independent Expert's Report and the Investigating Accountant's Report.

Diverger Interim Dividend means an interim dividend declared or paid by Diverger for the period ending 31 December 2023 in an amount not exceeding the amount per Diverger Share disclosed in the Diverger Disclosure Letter.

Diverger Key Person has the meaning given in clause 8.1(b)(viii).

Diverger Material Adverse Change means an event or circumstance that occurs, is announced or becomes known to Count or the Diverger Board (whether or not it becomes public) between the date of this agreement and the Delivery Time which:

(a) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the effect of diminishing the NTA of the Diverger Group (taken as a whole) by 20% or more determined after excluding the impact of any event or circumstance to the extent that any loss incurred by the Diverger Group in connection with that event or circumstance is recovered, or is reasonably expected to be recoverable, under a Diverger Group Member's (or a Diverger Group) insurance policy;

(b) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the effect of diminishing the consolidated annual Diverger EBITA (taken as a whole) on a recurring basis by 20% or more per annum compared to what the consolidated annual Diverger EBITA (on a recurring basis) could reasonably be expected to have been but for the relevant event or circumstance, determined after:

(i) taking into account any event or circumstance, which has occurred after the execution of this agreement which has, or could reasonably be expected to have,

a positive effect on the consolidated annual Diverger EBITA (on a recurring basis); and

(ii) excluding the impact of any event or circumstance to the extent that any loss incurred by the Diverger Group in connection with that event or circumstance is recovered, or is reasonably expected to be recoverable, under a Diverger Group Member's (or a Diverger Group) insurance policy;

(c) comprises or involves a reportable situation or an inquiry, investigation or Claim:

(i) by ASIC in relation to any AFSLs held by any member of the Diverger Group; or

(ii) AUSTRAC in relation to compliance with Anti-Money Laundering Laws by any member of the Diverger Group

that is reasonably likely to result in:

(iii) the Diverger Group (taken as a whole) or any member of the Diverger Group being unable to carry out its business in any material respect; or

(iv) any material financial impact on any member of the Diverger Group that is a financial services licensee; or

(d) has or could reasonably be expected to have, individually or when aggregated with all such events or circumstances, the result that present or future third party monetary obligations of a member of the Diverger Group in respect of moneys borrowed or raised totalling at least $3 million (or, without limitation, its equivalent in any other currency or currencies) becomes capable of being declared due and payable before their stated maturity or expiry (other than as a result of the Proposed Transaction),

in each case, determined in accordance with the Accounting Standards, but does not include any event or circumstance:

(e) required to be done or procured by Diverger under this agreement or the Scheme;

(f) which Count has previously approved in writing prior to the occurrence of the Diverger Material Adverse Change;

(g) that was Fairly Disclosed in the Diverger Due Diligence Material;

(h) that was Fairly Disclosed in documents that were publicly available:

(i) in the 12 months prior to the date of this agreement in respect of public filings of Diverger with ASX; or

(ii) on the day that is 1 Business Day prior to the date of this agreement in respect of public filings of a member of the Count Group Member in relation to a public register maintained by ASIC, PPSR and IP Australia;

(i) arising from or relating to:

(i) a change in applicable law, regulation, applicable Accounting Standards or the interpretation of Accounting Standards; or

(ii) any acts of war (whether or not declared) major hostilities, including in connection with or resulting or arising from any conflict between or involving Ukraine or Russia, terrorism, cyber-attacks, natural disaster or pandemic (including, but not limited to, the COVID-19 global pandemic or any related epidemic or pandemic arising from a mutation, variation or derivative of the COVID-19 virus);

(j) relating to costs and expenses reasonably incurred by Diverger associated with the Scheme process, including all fees payable to external advisers of Diverger; or

(k) relating to any material adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or any change in national or international political, financial or economic conditions which does not have a disproportionate effect on the Diverger Group as compared to other participants in the industries in which the Diverger Group operates.

Diverger Minority Interests means the:

(a) 35% interest in McGregor Wealth Management Pty Ltd;

(b) 10% interest in EWA Finance Pty Ltd,

in each case, owned by a Diverger Group Member.

Diverger Option means an option granted by Diverger to acquire by way of issue one or more Diverger Shares but does not include a Diverger Performance Right.

Diverger Optionholder means the person who is recorded in the register maintained by Diverger under section 168(1) of the Corporations Act as the holder of one or more Diverger Options.

Diverger Performance Right means a right granted under the Diverger Incentive Plan to acquire a Diverger Share subject to the terms of such plan but does not include a Diverger Option.

Diverger Performance Rights Holder means a person who holds one or more Diverger Performance Rights.

Diverger Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

(a) Diverger converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);

(b) any member of the Diverger Group resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities;

(c) any member of the Diverger Group:

  (i) enters into a buy-back agreement; or

  (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;

(d) any member of the Diverger Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than:

  (i) under the valid exercise of an option or performance right on issue immediately before the date of this agreement;

  (ii) an issue or grant of a security (for the avoidance of doubt this includes shares and options) or a performance right under an employment contract or employee incentive scheme in place as at the date of this agreement and has been Fairly Disclosed in the Diverger Due Diligence Material; or

  (iii) to another member of the Diverger Group;

(e) any member of the Diverger Group issues, or agrees to issue, securities convertible into shares or debt securities, other than to another member of the Diverger Group;

(f) other than in relation to the Diverger Interim Dividend, any member of the Diverger Group pays or declares, or announces an intention to pay or declare, any distribution (whether by way of any interim, final or special dividend, capital reduction or otherwise and whether in cash or in specie);

(g) any member of the Diverger Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;

(h) Diverger making any change to the Diverger constitution that materially affects the Proposed Transaction;

(i) Diverger or any of its wholly-owned Subsidiaries creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property or over a material asset of the Diverger Group other than in the ordinary course of business;

(j) Diverger Shares ceasing to be officially quoted on ASX;

(k) an Insolvency Event occurs in relation to any member of the Diverger Group; or

(l) any member of the Diverger Group, directly or indirectly, authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (k) (inclusive) above insofar as it applies to the member of the Diverger Group the subject of such direct or indirect authorisation, commitment, agreement or announcement,

provided that a Diverger Prescribed Occurrence will not include any matter:

(m) required to be done or procured by the Diverger Group under this agreement or the Scheme;

(n) required by law or by an order of a court or Governmental Agency;

(o) to the extent it is Fairly Disclosed in filings of Diverger with ASX in the 12 months prior to the date of this agreement;

(p) to the extent it is Fairly Disclosed in the Diverger Due Diligence Material;

(q) to the extent that it relates to transactions between entities within the Diverger Group; or

(r) the undertaking of which Count has previously approved in writing.

Diverger Share means an issued fully paid ordinary share in the capital of Diverger.

Diverger Shareholder means a person who is registered in the register of members maintained by Diverger under section 168(1) of the Corporations Act as a holder of one or more Diverger Shares.

Diverger Superior Proposal means a bona fide Diverger Competing Proposal which in the determination of the Diverger Board acting in good faith in order to satisfy what the Diverger Board considers to be its fiduciary or statutory duties (after having taken advice from their legal and financial advisers):

(a) is reasonably likely to be completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Diverger Competing Proposal; and

(b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Diverger Shareholders as a whole than the Proposed Transaction, taking into account all of the terms and conditions of the Diverger Competing Proposal, including consideration, conditionality, funding, certainty and timing.

Diverger Warranties means the representations and warranties of Diverger set out in clause 10.4.

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

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

Election means an election by a Diverger Shareholder, to receive (subject to scale back) either:

(i) in relation to 100% of their Scheme Shares, Scheme Consideration in the form of the Maximum Scrip Consideration (such Election, **Maximum Scrip Election**); or

(ii) in relation to 100% of their Scheme Shares, Scheme Consideration in the form of the Maximum Cash Consideration (such Election, **Maximum Cash Election**).

Election Date means 5.00pm on the date that is seven clear days before the Proxy Cut-Off Date.

Election Form means a form issued by Diverger for the purposes of a Diverger Shareholder making an Election.

End Date means:

(a) 30 April 2024; or

(b) such other date and time agreed in writing between Count and Diverger (each party acting reasonably).

Exclusivity Period means the period commencing on the date of this agreement and ending on the earliest of:

(a) the End Date;

(b) the Effective Date of the Scheme; and

(c) the date this agreement is terminated in accordance with its terms.

Explanatory Booklet means the explanatory booklet to be prepared by Diverger in respect of the Proposed Transaction in accordance with the terms of this agreement and to be dispatched to Diverger Shareholders.

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) borrowing from any bank or other financial institution;

(b) recourse or non-recourse liabilities or other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with Accounting Standards, have not otherwise been recognised on the balance sheet as a liability;

(c) bill, bond, debenture, note or similar instrument;

(d) acceptance, endorsement or discounting arrangement;

(e) guarantee;

(f) finance or capital lease;

(g) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;

(h) redeemable share or security;

(i) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;

(j) agreement for the deferral of a purchase price of other payment in relation to the provision of services other than in the ordinary course of business of a party; or

(k) obligation to deliver goods or provide services paid for in advance by any financier.

financial services licensee means a holder of an AFSL.

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.

Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the Diverger register of members (as at the Record Date) is located:

(a) outside of Australia and its external territories or New Zealand; or

(b) in any other jurisdiction in respect of which Count reasonably believes that it is prohibited or unduly onerous or impractical to implement this Scheme and to issue Count Consideration Shares to a Scheme Shareholder with a registered address in such jurisdiction.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange or financial market.

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 Diverger Shareholders present and voting, either in person or by proxy.

Implementation Date means, with respect to the Scheme, the fifth Business Day following the Record Date for the Scheme, or such other Business Day following the Record Date as the parties agree in writing.

Independent Expert means an expert, independent of the parties, engaged by Diverger in good faith to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert commissioned by Diverger for inclusion in the Explanatory Booklet, which includes a statement or opinion from the Independent Expert on whether the Scheme is in the best interest of Diverger Shareholders, and includes any update of that report by the Independent Expert.

Ineligible Shareholder means either a Foreign Scheme Shareholder or a Small Shareholder.

Ineligible Shares means the total number of Scheme Shares held by Ineligible Shareholders.

Insolvency Event means in relation to a person:

(a) **insolvency official**: the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;

(b) **arrangements**: the entry by the person into a compromise or arrangement with its creditors generally;

(c) **winding up**: the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;

(d) **suspends payments**: the person suspends or threatens to suspend payment of its debts as and when they become due;

(e) **ceasing business**: the person ceases or threatens to cease to carry on business;

(f) **insolvency**: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;

(g) **deregistration**: the person being deregistered as a company or otherwise dissolved;

(h) **deed of company arrangement**: the person executing a deed of company arrangement;

(i) **person as trustee or partner**: the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:

  (i) a breach of trust or obligation as partner by the person;

  (ii) the person acting outside the scope of its powers as trustee or partner;

  (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability; and

  (iv) the assets of the trust or partnership being insufficient to discharge the liability; or

(j) **analogous events**: anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person will be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Interest Rate means the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Investigating Accountant means the accountant appointed by Diverger in accordance with clause 7.1(e).

Investigating Accountant's Report means the report prepared by the Investigating Accountant for inclusion in the Explanatory Booklet.

Liquidated Damages Amount means the sum of $1,250,000.

Listing Rules means the official listing rules of ASX.

Material Public Announcement has the meaning given in clause 6.1(a).

Maximum Cash Consideration means the amount of $1.10 for each Scheme Share held by a Scheme Shareholder, subject to the Cash Consideration Cap.

Maximum Cash Election has the meaning given in the definition of Election.

Maximum Scrip Consideration means 2.07 Count Consideration Shares for each Scheme Share, subject to the Scrip Consideration Cap.

Maximum Scrip Election has the meaning given in the definition of Election.

No Election Shares means the total number of Scheme Shares which are not held by Ineligible Shareholders and in respect of which either:

(a) no valid Election is made on or before the Election Date; or

(b) a valid Election is made on or before the Election Date but are subsequently transferred or sold after the Election Date to the effect that under this Scheme they are treated as not being subject to a valid Election.

NTA in relation to a party means A – I – L in relation to the party, where **A**, **I** and **L** have the meanings respectively given in the definition of **net tangible asset backing** in Listing Rule 19.12.

Option Cancellation Consideration has the meaning set out in clause 5.1(a).

Option Cancellation Deed has the meaning set out in clause 5.1(a).

Proposed Transaction means:

(a) the proposed acquisition by Count, in accordance with the terms and conditions of this agreement, of all of the Scheme Shares under the Scheme; and

(b) all associated transactions and steps contemplated by this agreement.

Proxy Cut-Off Date means the last day on or before which proxies must be lodged for the Scheme Meeting.

Recommendation has the meaning given in clause 6.1(a)(i).

Record Date means, in respect of the Scheme, 7.00pm on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Related Body Corporate means, in relation to a person being a body corporate, a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Interest has the meaning given in the Corporations Act.

reportable situation has the meaning given in section 912D of the Corporations Act and applicable Corporations Regulations.

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

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Diverger and Scheme Shareholders in respect of all Scheme Shares, in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

(a) agreed to in writing by Diverger and Count, and approved by the Court; or

(b) made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by each party.

Scheme Consideration means the consideration to be provided to Scheme Shareholders under the terms of the Scheme (subject to clauses 4.5 and 4.6), being:

(a) if the Scheme Shareholder is not an Ineligible Shareholder and holds No Election Shares, the Default Consideration in respect of those No Election Shares;

(b) if the Scheme Shareholder is not an Ineligible Shareholder and has made a valid Election on or before the Election Date, then:

(i) if the Scheme Shareholder has made a Maximum Scrip Election, subject to paragraph (c), the Maximum Scrip Consideration for each Scheme Share held by the Scheme Shareholder; or

(ii) if the Scheme Shareholder has made a Maximum Cash Election, subject to paragraph (d), the Maximum Cash Consideration for each Scheme Share held by the Scheme Shareholder;

(c) if the aggregate number of Count Consideration Shares to be issued under the Default Consideration and the Maximum Scrip Consideration exceeds the Scrip Consideration Cap, then the number of Scheme Shares subject to the Maximum Scrip Election will be adjusted such that the Scheme Shareholders electing to receive the Maximum Scrip Consideration will instead be deemed to have elected to receive:

(i) the Maximum Scrip Election in respect of the Scrip Scale Back Percentage of their Scheme Shares; and

(ii) the Default Consideration in respect of the remainder of their Scheme Shares,

with "**Scrip Scale Back Percentage**" being the lower of 100% and A% where A% is calculated as follows, expressed as a percentage:

$$A\% = (1 - \frac{Scrip\ Movement\ Number}{Number\ of\ Scheme\ Shares\ subject\ to\ the\ Maximum\ Scrip\ Election})$$

where:

(i) "**Total Scrip Number including Elections**" = (1.38 * Number of Scheme Shares subject to the Default Consideration with No Election) + (2.07 * Number of Scheme Shares subject to the Maximum Scrip Election)

(ii) "**Excess Scrip Elections**" = Total Scrip Number including Elections – Scrip Consideration Cap

(iii) "**Scrip Movement Number**" = Excess Scrip Elections / (2.07 - 1.38)

(d) if the aggregate amount of cash to be paid under the Default Consideration and the Maximum Cash Consideration exceeds the Cash Consideration Cap, then the number of Scheme Shares subject to the Maximum Cash Election will be adjusted such that the Scheme Shareholders electing to receive the Maximum Scrip Consideration will instead be deemed to have elected to receive:

(i) the Maximum Cash Election in respect of the Cash Scale Back Percentage of their Scheme Shares; and

(ii) the Default Consideration in respect of the remainder of their Scheme Shares,

with "**Cash Scale Back Percentage**" being the lower of 100% and B% where B% is calculated as follows, expressed as a percentage:

$$B\% = (1 - \frac{Cash\ Movement\ Number}{Number\ of\ Scheme\ Shares\ subject\ to\ the\ Maximum\ Cash\ Election})$$

where:

(i) "**Total Cash Number including Elections**" = (0.367 * Number of Scheme Shares subject to the Default Consideration with No Election) + (1.10 * Number of Scheme Shares subject to the Maximum Cash Election)

(ii) "**Excess Cash Elections**" = Total Cash Number including Elections – Cash Consideration Cap

(iii) "**Cash Movement Number**" = Excess Cash Elections / (1.10 - 0.367)

(e) if the Scheme Shareholder is a Foreign Scheme Shareholder or a Small Shareholder, the Maximum Cash Consideration for each Scheme Share held by the Scheme Shareholder, irrespective of the Cash Consideration Cap.

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

Scheme Share means a Diverger Share on issue as at the Record Date.

Scheme Shareholder means a person who holds one or more Scheme Shares.

Scrip Consideration means the number of Count Consideration Shares for every Scheme Share specified in the Scrip Consideration Ratio.

Scrip Consideration Cap means 54,882,163 Count Shares in aggregate.

Scrip Consideration Ratio means 1.38 Count Consideration Shares per Scheme Share.

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 scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

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

Small Shareholder means a Scheme Shareholder (not being a Foreign Scheme Shareholder) who, based on their holding of Scheme Shares on the Record Date, would, on implementation of the Scheme, be entitled to receive less than a marketable parcel of Count Consideration Shares (assessed by reference to the last traded price of Count Shares on ASX on the trading day prior to the Record Date) as Scheme Consideration, whether or not the Scheme Shareholder has made an Election.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Takeovers Panel means the Takeovers Panel continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Third Party means a person other than Count, Diverger or any of their respective Subsidiaries or Associates.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1, with such modifications as may be agreed in writing by the parties.

Voting Intention has the meaning given in clause 6.1(a)(ii).

1.2 Interpretation

In this agreement, except where the context otherwise requires:

(a) the singular includes the plural, and the converse also applies;

(b) gender includes other genders;

(c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;

(e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(f) a reference to **A$**, **$A**, **dollar** or **$** is to Australian currency;

(g) a reference to time is to Sydney, Australia time;

(h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

(i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

(k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;

(m) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;

(n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;

(o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

(p) a reference to **Fairly Disclosed** means, in relation to a matter, disclosed to any of Count, Diverger (as applicable) to a sufficient extent and in sufficient detail, and in a timing and manner, so as to enable a reasonable recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify the nature, scope and potential or likely impact of the relevant matter, event, circumstance or information.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Consents or approvals

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless provided otherwise.

1.6 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable endeavours

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

(a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or

(b) to commence any legal action or proceeding against any person,

except where that provision specifies otherwise.

2. Agreement to propose Scheme

2.1 Proposal of Scheme

(a) Diverger agrees to propose and implement the Scheme on and subject to the terms and conditions of this agreement, and subject to clause 2.2(a), in accordance with the Timetable.

(b) Count agrees to assist Diverger in proposing and implementing the Scheme on and subject to the terms and conditions of this agreement, and subject to clause 2.2(a), in accordance with the Timetable.

(c) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.1(a) or clause 2.1(b) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Governmental Agency or the Court).

(d) 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.

(e) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

(f) Count may nominate any wholly-owned Subsidiary of Count (**Count Nominee**) to acquire the Scheme Shares by giving written notice to Diverger on or before the date that is five Business Days before the First Court Date.

(g) If Count nominates the Count Nominee to acquire the Scheme Shares under the Scheme, then:

(i) Count must procure that the Count Nominee also executes and delivers to Diverger the Deed Poll; and

(ii) any such nomination will not relieve Count of its obligations under this agreement, including the obligation to provide the Scheme Consideration in accordance with the terms of the Scheme.

2.2 Timetable

(a) Subject to clause 2.2(b), the parties must use their respective reasonable endeavours to:

(i) comply with their respective obligations under clause 2.1; and

(ii) take all necessary steps and exercise all rights necessary to implement the Scheme,

in accordance with the Timetable.

(b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach by a party of clause 2.2(a) to the extent that the party has used their reasonable endeavours to meet the timeframe or deadline set out in the Timetable or to the extent that this is due to matters outside of the party's control.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme will not be binding, until and unless

each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

(a) (**No Diverger Prescribed Occurrence**) no Diverger Prescribed Occurrence occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;

(b) (**No Count Prescribed Occurrence**) no Count Prescribed Occurrence occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;

(c) (**No Diverger Material Adverse Change**) no Diverger Material Adverse Change occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;

(d) (**No Count Material Adverse Change**) no Count Material Adverse Change occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;

(e) (**No change of Diverger Board recommendation**) between (and including) the date of this agreement and the date of the Scheme Meeting, none of the Diverger Directors changing, qualifying or withdrawing their unanimous recommendation to Diverger Shareholders to vote in favour of the Scheme (other than as permitted under clause 6.2), which recommendation may be expressed to be given:

(i) in the absence of a Diverger Superior Proposal; and

(ii) subject to the Independent Expert opining (and continuing to opine) that the Scheme is in the best interest of Diverger Shareholders;

(f) (**Diverger Warranties**) the Diverger Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date, except where expressed to be operative at another time;

(g) (**Count Warranties**) the Count Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date, except where expressed to be operative at another time;

(h) (**Diverger Shareholder approval**) the Scheme is approved by Diverger Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act (except to the extent the Court orders otherwise under section 411(4)(a)(ii)(A) of the Corporations Act);

(i) (**Diverger Options and Performance Rights**) at the Delivery Time on the Second Court Date:

(i) Diverger has complied with its obligations under clauses 5.1 and 5.2; and

(ii) ASX has issued or provided a waiver of the applicable requirements of Listing Rule 6.23 to enable any action required to be taken by Diverger under clause 5.1 that requires the approval of Diverger Shareholders under that Listing Rule to be taken by Diverger without the approval of Diverger Shareholders under that Listing Rule and ASX has not adversely amended (in a material respect), withdrawn or revoked that waiver before the Delivery Time on the Second Court Date;

(j) (**Court approval**) the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally and without modifications or with modifications or conditions consented to by Diverger and Count in writing (such consent not to be unreasonably withheld);

(k) (**Restraining orders**) no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court of competent jurisdiction in Australia or by an Australian Governmental Agency of competent jurisdiction remains in effect as at the Delivery Time on the Second Court Date that delays, prohibits, materially restricts, makes illegal or restrains the Scheme; and

(l) (**Independent Expert**) the Independent Expert concluding in the Independent Expert's Report that in its opinion the Scheme is in the best interest of Diverger Shareholders before the time when the Explanatory Booklet is registered by ASIC and the Independent Expert maintaining that opinion (including by not withdrawing, qualifying or changing that opinion) at all times up to the Delivery Time on the Second Court Date.

3.2 Benefit and waiver of conditions precedent

(a) The Condition in clauses 3.1(k) (Restraining orders) is for the benefit of each party and any breach or non-fulfilment of it may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.

(b) The Conditions in clauses 3.1(a) (No Diverger Prescribed Occurrences), 3.1(c) (No Diverger Material Adverse Change), 3.1(e) (No change of Diverger Board recommendation), 3.1(f) (Diverger Warranties) and 3.1(i) (Diverger Options and Performance Rights) are for the sole benefit of Count and any breach or non-fulfilment of them may only be waived by Count giving its written consent.

(c) The Conditions in clauses 3.1(b) (No Count Prescribed Occurrences), 3.1(d) (No Count Material Adverse Change), 3.1(g) (Count Warranties) and 3.1(l) (Independent Expert) are for the sole benefit of Diverger and any breach or non-fulfilment of them may only be waived by Diverger giving its written consent.

(d) The Conditions in clauses 3.1(h) (Diverger Shareholder approval) and 3.1(j) (Court approval) cannot be waived.

(e) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time on the Second Court Date.

(f) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

(g) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:

(i) a waiver of breach or non-fulfilment of any other Condition resulting from the same events or circumstances; or

(ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event or circumstance.

3.3 Reasonable endeavours

(a) Diverger must use its reasonable endeavours to ensure that the Conditions in clauses 3.1(a) (No Diverger Prescribed Occurrences), 3.1(c) (No Diverger Material Adverse Change), 3.1(e) (No change of Diverger Board recommendation), 3.1(f) (Diverger Warranties), 3.1(h) (Diverger Shareholder approval), 3.1(i) (Diverger Options and Performance Rights), and 3.1(l) (Independent Expert) are satisfied as soon as reasonably practicable after the date of this agreement and continue to be satisfied at all times until the last time they are to be satisfied.

(b) Count must use its reasonable endeavours to ensure that the Conditions in clauses 3.1(b) (No Count Prescribed Occurrences), 3.1(d) (No Count Material Adverse Change) and 3.1(g) (Count Warranties) are satisfied as soon as reasonably practicable after the date of this agreement and continue to be satisfied at all times until the last time they are to be satisfied.

(c) Diverger and Count will use their respective reasonable endeavours to procure that the Condition in clauses 3.1(k) (Restraining orders) is satisfied as soon as reasonably practicable after the date of this agreement are continues to be satisfied at all times until the last time they are to be satisfied.

(d) Without limiting clauses 3.4 and 3.5, each of Diverger and Count must consult and co-operate, to the extent reasonably practicable, with the other party in relation to the satisfaction of the Conditions.

(e) In respect of the Condition in clause 3.1(k) (Restraining orders):

(i) Diverger and Count must each use their best endeavours to challenge or otherwise seek to release or overturn the applicable law, rule, regulation, restraining order, injunction or final decision, order or decree prior to the Delivery Time; and

(ii) if any restraining order contemplated in the Condition in clause 3.1(k) (Restraining orders) is in effect at 5.00pm on the Business Day prior to the Second Court Date, Diverger and Count must 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(k) (Restraining orders).

(f) In respect of the Conditions in clauses 3.1(a) (No Diverger Prescribed Occurrence) and clause 3.1(c) (No Diverger Material Adverse Change), if:

(i) a Diverger Prescribed Occurrence occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(a) (No Diverger Prescribed Occurrence) will not be taken to have been breached or not satisfied; or

(ii) a Diverger Material Adverse Change occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(c) (No Diverger Material Adverse Change) will not be taken to have been breached or not satisfied,

unless:

(iii) Count has given written notice to Diverger in accordance with clause 3.4, and such notice also sets out the relevant circumstances of the breach; and

(iv) Diverger has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given.

(g) In respect of the Conditions in clauses 3.1(b) (No Count Prescribed Occurrence) and clause 3.1(d) (No Count Material Adverse Change), if:

(i) a Count Prescribed Occurrence occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(b) (No Count Prescribed Occurrence) will not be taken to have been breached or not satisfied; or

(ii) a Count Material Adverse Change occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(d) (No Count Material Adverse Change) will not be taken to have been breached or not satisfied,

unless:

(iii) Diverger has given written notice to Count in accordance with clause 3.4, and such notice also sets out the relevant circumstances of the breach; and

(iv) Count has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given

3.4 Notifications

Each of Count and Diverger must:

(a) keep the other promptly and reasonably informed of the material steps it has taken and of its progress towards satisfaction of the Conditions;

(b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied, in which case that party must comply with any reasonable request for evidence of such satisfaction made by the other party; and

(c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

At or before the hearing on the Second Court Date:

(a) Diverger will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a) (No Diverger Prescribed Occurrences), 3.1(c) (No Diverger Material Adverse Change), 3.1(e) (No change of Diverger Board recommendation), 3.1(f) (Diverger Warranties), 3.1(h) (Diverger Shareholder approval), 3.1(i) (Diverger Options and Performance Rights), 3.1(k) (Restraining orders) and 3.1(l) (Independent Expert) have been satisfied or waived in accordance with the terms of this agreement;

(b) Count will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(b) (No Count Prescribed Occurrences), 3.1(d) (No Count Material Adverse Change) and 3.1(g) (Count Warranties) have been satisfied or waived in accordance with the terms of this agreement;

(c) Diverger will provide a certificate to Count confirming whether or not Diverger has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach; and

(d) Count will provide a certificate to Diverger confirming whether or not Count has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach.

3.6 Scheme voted down

If the Scheme is not approved by Diverger Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Count 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, then Diverger must:

(a) 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

(b) make such submissions to the Court and file such evidence as Counsel engaged by Diverger to represent it in Court proceedings related to the Scheme, in consultation with Count, 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.

3.7 Conditions not capable of being fulfilled

(a) If:

(i) any Condition is not satisfied or (where capable of waiver) waived before the earlier of the End Date and the time and the date specified in this agreement for its satisfaction (or an event occurs which would or is likely to prevent a Condition being satisfied before the earlier of the End Date and the time and the date specified in this agreement);

(ii) a circumstance occurs with the result that a Condition is not capable of being satisfied and, if the Condition is able to be waived by a party under clause 3.2, the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance (or any shorter period ending at the Delivery Time on the Second Court Date); or

(iii) the Scheme does not become Effective by 5:00pm (Sydney time) on the End Date,

and neither of the following has occurred:

(iv) the Independent Expert opines to the effect that the Scheme is not in the best interest of Diverger Shareholders; or

(v) a Diverger Superior Proposal has been publicly announced,

then Diverger and Count must consult in good faith with a view to determining whether:

(vi) the Scheme may proceed by way of alternative means or methods;

(vii) to extend the relevant time or date for satisfaction of the Condition;

(viii) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties in writing; or

(ix) to extend the End Date.

(b) Subject to clause 3.7(c), if Diverger and Count are unable to reach agreement under clause 3.7(a) within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:

(i) in relation to the Conditions in clauses 3.1(h) (Diverger Shareholder approval) and 3.1(k) (Restraining orders), either Count or Diverger may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone;

(ii) in relation to the Conditions in clauses 3.1(a) (No Diverger Prescribed Occurrences), 3.1(c) (No Diverger Material Adverse Change), 3.1(e) (No change of Diverger Board recommendation), 3.1(f) (Diverger Warranties) and 3.1(i) (Diverger Options and Performance Rights), Count may terminate this agreement by giving Diverger notice without any liability to any other party by reason of that termination alone; and

(iii) in relation to the Conditions in clauses 3.1(b) (No Count Prescribed Occurrences), 3.1(d) (No Count Material Adverse Change), 3.1(g) (Count Warranties) and 3.1(l) (Independent Expert), Diverger may terminate this agreement by giving Count notice without any liability to any other party by reason of that termination alone.

(c) A party will not be entitled to terminate this agreement under clause 3.7(b) if the relevant Condition has not been satisfied as a result of:

(i) a breach of this agreement by that party; or

(ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.8 Interpretation

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

4. Transaction Steps

4.1 Scheme

(a) Diverger must, as soon as reasonably practicable after the date of this agreement and, subject to clause 2.2(a), in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration and, subject to such receipt, all of the Scheme Shares will be transferred to Count.

(b) Diverger 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 Count.

4.2 Scheme Consideration

Count covenants in favour of Diverger (in Diverger's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Count of the Scheme Shares under the terms of the Scheme, on the Implementation Date, Count will:

(a) accept that transfer; and

(b) provide each Scheme Shareholder the Scheme Consideration,

in accordance with the terms of the Scheme.

4.3 Allotment and issue of Count Consideration Shares

(a) Subject to the Scheme becoming Effective and clauses 4.5 and 4.6, Count must:

(i) in accordance with the Deed Poll, issue the Count Consideration Shares to the Scheme Shareholders in accordance with the Scheme on terms that each Count Consideration Share will rank equally in all respects with each other Count Share then on issue;

(ii) ensure that, on issue, each Count Consideration Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of Count); and

(iii) use all reasonable endeavours to ensure that such Count Consideration Shares are, from the Business Day following the date the Scheme becomes Effective (or such later date as ASX requires), quoted for trading on the ASX initially on a deferred settlement basis and thereafter, in accordance with the requirements of the Listing Rules or ASX, on an ordinary settlement basis.

(b) To facilitate the issue of the Count Consideration Shares to Scheme Shareholders, Diverger must provide to Count, or procure the provision to Count of, a complete copy of the Diverger register of members as at the Record Date (which must include the name, address and registered holding of each Diverger Shareholder as at the Record Date together with details of all valid Elections received from Scheme Shareholders), within two Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as Count, its Advisers or share registry may reasonably require.

(c) Count will not issue any Count Consideration Shares to Foreign Scheme Shareholders or Small Shareholders.

4.4 Fractional entitlements

(a) Where the calculation of the number of Count Consideration Shares to be issued to a Scheme Shareholder would result in the issue of a fraction of Count Consideration Share, the fractional entitlement will be rounded up or down to the nearest whole number of Count Consideration Shares (rounded up if the fractional entitlement is equal to or greater than 0.5, and rounded down if the fractional entitlement is less than 0.5), except where this would result in a Scheme Shareholder receiving less than one Count Consideration Share, in which case that Scheme Shareholder will only receive one Count Consideration Share.

(b) Where the calculation of the additional Cash Consideration to be paid to an Ineligible Shareholder would result in the Ineligible Shareholder becoming entitled to a fraction of a cent, that fractional entitlement will be rounded up or down to the nearest whole cent (rounded up if the fractional entitlement is equal to or greater than 0.5, and rounded down if the fractional entitlement is less than 0.5), except where this would result in an Ineligible Shareholder receiving less than one cent, in which case that Ineligible Shareholder will only receive one cent.

4.5 Foreign Scheme Shareholders

Unless Count is satisfied (in its absolute discretion) that the laws of a Foreign Scheme Shareholder's country of residence (as shown in the Diverger register of members) permits the issue of Count Consideration Shares to the Foreign Scheme Shareholder either unconditionally or after compliance with terms which Count reasonably regards as acceptable and practical, Count will be under no obligation under the Scheme to issue, and will not issue, any Count Consideration Shares to Foreign Scheme Shareholders, and instead must procure that the Count Consideration Shares (to the extent contained in the Election Form of that Foreign Scheme Shareholder) that would otherwise have been issued to the Foreign Scheme Shareholder are dealt with in accordance with the Scheme.

4.6 Small Shareholders

Count will be under no obligation under the Scheme to issue, and will not issue any Count Consideration Shares to Small Shareholders, and instead, unless Count and Diverger otherwise agree, Count will procure that the Count Consideration Shares that each Small Shareholder elects to receive as Scheme Consideration in its Election Form are dealt with in accordance with the Scheme.

4.7 Deed Poll

Count covenants in favour of Diverger (in Diverger's own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll to Diverger before 5:00pm on the Business Day before the First Court Date and, if the Scheme becomes Effective, fully comply with its obligations under the Deed Poll.

5. Treatment of Diverger Options and Diverger Performance Rights

5.1 Diverger Options

(a) Diverger must ensure that, before the Delivery Time on the Second Court Date, Diverger has entered into a cancellation deed with each Diverger Optionholder in the form agreed between Diverger and Count on or before the date of this agreement (or as otherwise consented to by Count, acting reasonably) under which Diverger agrees to cancel, and the Diverger Optionholder agrees to the cancellation of, the Diverger Options held by that Diverger Optionholder on or before the Record Date for consideration per Diverger Option agreed between Diverger and Count in writing on or before the date of this agreement (**Option Cancellation Consideration**), subject to:

(i) ASX issuing or providing a waiver of the applicable requirements of Listing Rule 6.23 to enable any action required to be taken by Diverger under clause 5.1 that requires the approval of Diverger Shareholders under that Listing Rule to be taken by Diverger without the approval of Diverger Shareholders under that Listing Rule; and

(ii) the Scheme becoming Effective,

(**Option Cancellation Deeds**).

(b) If the Scheme becomes Effective, Diverger must cancel the Diverger Options the subject of the Option Cancellation Deeds for the applicable Option Cancellation Consideration on or before the Record Date, as required by, and in accordance with, the terms and conditions of the Option Cancellation Deeds.

5.2 Diverger Performance Rights

(a) Diverger must ensure that, by no later than the Record Date, there are no Diverger Performance Rights in existence.

(b) In order to comply with its obligation under clause 5.2(a), within five Business Days of any such date on which the Court makes an order under section 411(1) of the Corporations

Act directing Diverger to convene the Scheme Meeting, the Diverger Board must give a written notice to each Diverger Performance Rights Holder stating that:

(i) subject to Diverger Shareholders approving the Scheme at the Scheme Meeting and the Court approving the Scheme in accordance with section 411(4)(b) of the Corporations Act, all unvested Diverger Performance Rights will vest and the Diverger Performance Rights Holder may exercise his or her Diverger Performance Rights between the date of the Second Court Date and the Record Date; and

(ii) subject to the Diverger Performance Rights Holder exercising his or her rights in accordance with clause 5.2(b)(i), Diverger agrees to issue to each Diverger Performance Rights Holder such number of Diverger Shares prior to the Record Date to which the Diverger Performance Rights Holder is entitled under the terms of the Diverger Incentive Plan.

(c) Diverger must notify Count of the number of Diverger Shares that have or will be issued in accordance with clause 5.2(b) (if any), by no later than three Business Days before the Effective Date.

(d) Diverger must, subject to obtaining the necessary waivers from ASX, take all necessary steps in accordance with the Diverger Incentive Plan to:

(i) permit each Diverger Performance Rights Holder to exercise his or her Diverger Performance Rights prior to the Record Date; and

(ii) ensure that any Diverger Performance Right which is not exercised before the Record Date by the relevant Diverger Performance Rights Holder as contemplated by this clause 5.2 lapses.

(e) Despite the previous provisions of this clause 5.2, clauses 5.2(a) to 5.2(c) inclusive do not apply in relation to a Performance Rights Holder and Performance Rights where the Performance Rights Holder has entered into an agreement with Count and Diverger the effect of which is that:

(i) the Performance Rights are cancelled;

(ii) the Performance Rights Holder releases Diverger from all obligations in relation to the Performance Rights including the obligation to issue or procure the transfer of Diverger Shares on the exercise or vesting of the Performance Rights; and

(iii) Count agrees with effect on and from the Implementation Date to issue to the Performance Rights Holder rights to acquire Count Shares.

6. Recommendation, intentions and announcements

6.1 Diverger Board Recommendation and Voting Intention

(a) Subject to clause 6.2, Diverger must ensure that its Announcement, the Explanatory Booklet and each other material announcement made by Diverger to the ASX in relation to the Proposed Transaction before the Scheme Meeting (**Material Public Announcement**) state that each Diverger Director:

(i) considers the Scheme to be in the best interests of Diverger Shareholders and that the Diverger Director recommends that Diverger Shareholders vote in favour of the Scheme (**Recommendation**); and

(ii) intends to cause any Diverger Shares in which he has a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**),

in each case, qualified only by words to the effect of:

(iii) *'in the absence of a Diverger Superior Proposal'*; and

(iv) in respect of any Material Public Announcement issued before the issue of the Explanatory Booklet, *'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in*

the best interest of Diverger Shareholders ' and in respect of the Explanatory Booklet and any public announcement issued at the time of or after the issue of the Explanatory Booklet, *'subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Diverger Shareholders*'

(b) On the date of this agreement, Diverger represents and warrants to Count that, on or before the date of this agreement, each Diverger Director has confirmed that:

(i) his or her recommendation in respect of the Scheme is that Diverger Shareholders vote in favour of the Scheme; and

(ii) if he or she has a Relevant Interest in any Diverger Shares at the time of giving the confirmation in this clause 6.1(b), he intends to vote, or cause to be voted, all such Diverger Shares in favour of the Scheme,

in each case:

(iii) in the absence of a Diverger Superior Proposal; and

(iv) 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 Diverger Shareholders,

and since giving such confirmation, each such Diverger Director has not withdrawn, adversely changed, adversely modified or adversely qualified such confirmation or advised the Diverger Board that it intends to do so.

(c) Subject to clause 6.2, Diverger must ensure that the Diverger Board collectively, and the members of the Diverger Board individually, do not change, withdraw, modify or qualify their Recommendation or Voting Intention unless:

(i) Diverger has received, other than as a result of a breach of clause 16, a Diverger Superior Proposal and:

(A) has entered into a legally binding agreement to undertake or give effect to that proposal; or

(B) in the case of a proposal by way of takeover bid which is not subject to an agreement with Diverger, an announcement has been made which attracts section 631(1) of the Corporations Act; or

(ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Diverger Shareholders (other than where the conclusion is due to the existence of a Diverger Competing Proposal),

and Diverger has complied with its obligations under clause 16 (including ensuring that all of Count's rights under clause 16.7 have been exhausted).

(d) Despite anything to the contrary in this clause 6.1 or elsewhere in this agreement, a statement made by Diverger, the Diverger Board or any Diverger Director to the effect that no action should be taken by Diverger Shareholders pending the assessment of a Diverger Competing Proposal by the Diverger Board or the completion of the matching right process set out in clause 16.7 does not contravene this clause 6.1 or any other provision of this agreement.

6.2 Exclusion from Recommendation

The obligation of Diverger under clause 6.1 to ensure that each Diverger Director provides and maintains the Recommendation is qualified to the extent that any Diverger Director considers, after first obtaining written advice from independent senior counsel of the Victorian or New South Wales bar, that he or she should not provide or continue to maintain any Recommendation (positive or adverse) because that Diverger Director has an interest in the Scheme that is so materially different from other Diverger Shareholders which would properly preclude or render it inappropriate for him or her to provide any such recommendation (in which case, Diverger's obligations under this clause 6 cease to apply only in respect of the Recommendation of each Diverger Director(s) to which this clause 6.2 applies and not the Recommendations of the other Diverger Director(s)) (if any).

6.3 Confirmation

Diverger represents and warrants to Count that each Diverger Director has confirmed their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 6.1(b).

7. Scheme – parties' respective implementation obligations

7.1 Diverger's obligations

Diverger must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this agreement and, subject to clause 2.2(a), in accordance with the Timetable, including without limitation taking each of the following steps:

(a) (**Explanatory Booklet**) prepare the Explanatory Booklet in accordance with clause 7.3;

(b) (**Independent Expert**) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

(c) (**review of draft Independent Expert's Report**) on receipt from the Independent Expert, provide Count with the draft report received from the Independent Expert for factual accuracy review (noting that any draft of the Independent Expert's Report provided to Count for review will not include those sections containing the Independent Expert's opinion), and promptly give to the Independent Expert any comments that Count provides Diverger in relation to factual matters regarding Count in any draft of the Independent Expert's Report;

(d) (**information provided to the Independent Expert**) ensure that all information provided by or on behalf of Diverger to the Independent Expert is provided in good faith and, on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet, is true and correct in all material respects and is not misleading or deceptive in any material respects, including by omission;

(e) (**Investigating Accountant**) promptly appoint an investigating accountant (**Investigating Accountant**) to review the financial information included in the Explanatory Booklet and assist with the preparation of the pro forma historical accounts and provide all assistance and information reasonably requested by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report for inclusion in the Explanatory Booklet;

(f) (**approval of draft for ASIC and ASX**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the Diverger Board, or of a committee of the Diverger Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Listing Rule 15.1.3 and Appendix 7A to the Listing Rules;

(g) (**liaison with ASIC and ASX**) as soon as reasonably practicable after the date of this agreement:

(i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 7.1(f) and 7.2(g), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Listing Rule 15.1.3 and Appendix 7A to the Listing Rules; and

(ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep Count reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with Count, to resolve any such matters

(provided that, where any matters relate to Count Information or Combined Group Information, Diverger must not take any steps to address them with ASIC or ASX (as applicable) without the prior written consent of Count, not to be unreasonably withheld or delayed);

(h) (**apply for ASX and ASIC relief**) use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX and ASIC as may be required to facilitate the implementation of the Scheme;

(i) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the Diverger Board, or of a committee of the Diverger Board appointed for the purpose, is held to consider approving the Explanatory Booklet for dispatch to the Diverger Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;

(j) (**section 411(17)(b) statement**) apply to ASIC for the production of a statement in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

(k) (**confirmation of no objection from ASX**) request ASX to confirm that it has no objection to the draft Explanatory Booklet;

(l) (**first Court hearing**) lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 7.1(i) and 7.2(g) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Diverger to convene the Scheme Meeting;

(m) (**registration of explanatory statement**) subject to receipt from Count of the written confirmation referred to in clause 7.2(f), request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;

(n) (**information**) promptly provide, and direct the Diverger share registry to provide, reasonable information about the Scheme and the Diverger Shareholders to Count and its Authorised Persons, which Count requests and reasonably requires in order to:

(i) canvass views on the Scheme by Diverger Shareholders;

(ii) facilitate the provision by, or on behalf of, Count of the Scheme Consideration; or

(iii) review the tally of proxy appointments and directions received by Diverger before the Scheme Meeting;

(o) (**convene Scheme Meeting**) take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Diverger Shareholders and convening and holding the Scheme Meeting;

(p) (**supplementary disclosure**) if, after despatch of the Explanatory Booklet, it becomes aware:

(i) that information included in the Explanatory 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 Diverger Shareholders under any applicable law (including RG 60),

promptly consult in good faith with Count as to the need for, and form of, any supplementary disclosure to Diverger Shareholders, and make any such disclosure as it considers reasonably necessary as soon as reasonably practicable and having regard to applicable laws (including RG 60);

(q) (**Court approval application if parties agree that conditions are capable of being satisfied**) if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the

proposed Second Court Date, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;

(r) (**appeal process**) if the Court refuses to make any orders directing Diverger to convene the Scheme Meeting or approving the Scheme:

(i) consult with Count 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 or King's Counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;

(s) (**lodgement of Court order**) 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 5.00pm on the Business Day following the day on which such office copy is received;

(t) (**implementation of Scheme**) subject to the Scheme becoming Effective:

(i) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;

(ii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Count on the Implementation Date; and

(iii) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;

(u) (**Count Information**)

(i) seek approval from Count for the form and context in which the Count Information appears in the Explanatory Booklet, which approval Count must not unreasonably withhold or delay, and Diverger must not lodge the Explanatory Booklet with ASIC until such approval is obtained from Count; and

(ii) without the prior written consent of Count, not use the Count Information for any purposes other than those contemplated by this agreement or the Scheme;

(v) (**consultation for Combined Group Information**) consult in good faith with Count for the form and context in which the Combined Group Information appears in the Explanatory Booklet, and Diverger must not lodge the Explanatory Booklet with ASIC until such consultation is provided to Count and the form and context of the Combined Group Information is agreed by Diverger and Count;

(w) (**Count representation at Court hearings**) allow, and not oppose, any application by Count for leave of the Court to be represented by counsel at a Court hearing;

(x) (**documents**) consult with Count in relation to the content of the documents required for the purpose of the Scheme including originating process, affidavits, submissions and draft minutes of Court orders and consider in good faith any reasonable comments provided by or on behalf of Count on those drafts, provided that such comments are provided in a timely manner;

(y) (**Diverger Shareholder support**) promote to its shareholders the merits of the Scheme and encourage Diverger Shareholders to vote on the Scheme in accordance with the recommendation of the Diverger Board, including soliciting proxy votes in favour of the Scheme and if requested by Count, procuring that senior Diverger Group employees provide Count with information and assistance reasonably requested to enable it to promote the merits of the Scheme;

(z) (**quotation of Diverger Shares and ASX delisting**) apply to ASX to have:

(i) trading in Diverger Shares suspended with effect from the close of trading on the Effective Date; and

(ii) Diverger removed from the official list of ASX with effect from:

(A) the close of trading on the Business Day immediately following the Implementation Date; or

(B) such other later date after the Implementation Date to be determined by Count,

and not do anything to cause any of these things to happen before the relevant date specified in this clause 7.1(z) without the prior consent of Count;

(aa) (**ASX listing**) maintain Diverger's admission to the official list of ASX and the quotation of Diverger Shares on ASX up to and including the Implementation Date (except in respect of the suspension from quotation described in clause 7.1(z));

(bb) (**compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations; and

(cc) (**all other things necessary**) all other actions and do all things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable and the other provisions of this agreement.

7.2 Count's obligations

Count must take all steps reasonably necessary to assist Diverger to implement the Scheme as soon as reasonably practicable after the date of this agreement and, subject to clause 2.2(a), in accordance with the Timetable including, without limitation, taking each of the following steps

(a) (**Count Information**)

(i) provide to Diverger, in a form appropriate for inclusion in the Explanatory Booklet, all Count Information that is required by all applicable laws, including the Corporations Act, the Corporations Regulations, RG 60, any applicable Takeovers Panel policy and guidance notes and the Listing Rules; and

(ii) provide Diverger with drafts of the Count Information and consider in good faith any reasonable comments provided by or on behalf of Diverger;

(b) (**Independent Expert**) provide all assistance and information reasonably requested by the Independent Expert in connection with the factual accuracy or other technical information relating to the Independent Expert's Report;

(c) (**Investigating Accountant**) promptly provide all assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report for inclusion in the Explanatory Booklet;

(d) (**review of Explanatory Booklet**) as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Diverger and provide comments on those drafts in good faith;

(e) (**liaison with ASIC**) provide reasonable assistance to Diverger to assist Diverger to resolve any matter raised by ASIC regarding the Explanatory Booklet or the Scheme during its review of the Explanatory Booklet;

(f) (**confirmation of Count Information**) confirm in writing to Diverger before 5:00pm on the day before the First Court Date that:

(i) it consents to the inclusion of the Count Information in the Explanatory Booklet, in the form and context in which the Count Information appears; and

(ii) the Count Information, in that form and context, is not false or misleading in any material respect (whether by omission or otherwise) and otherwise complies with all applicable laws, RG 60, any applicable Takeovers Panel policy and guidance notes and the Listing Rules;

(g) (**consultation for Combined Group Information**) promptly after Diverger provides the first draft of the Combined Group Information to Count, consult with Diverger in good faith as to the format and context in which the Combined Group Information appears and agree with Diverger on the inclusion of such Combined Group Information, in that form and context, in the Explanatory Booklet;

(h) (**approval of draft for ASIC and ASX**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC

and ASX, procure that a meeting of the appropriate representatives of Count is held to consider approving the Count Information as being in a form appropriate for provision to ASIC and ASX for review;

(i) (**apply for ASX and ASIC relief**) use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX and ASIC as may be required to facilitate the implementation of the Scheme;

(j) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the appropriate representatives of Count is held to consider approving the Count Information for inclusion in the Explanatory Booklet, subject to approval of the Court;

(k) (**update Count Information**) promptly advise Diverger in writing if it becomes aware:

(i) of information which should have been included in any Count Information previously provided to Diverger, and promptly provide to Diverger all such information; or

(ii) that any Count Information previously provided to Diverger is false or misleading in any material respect (whether by omission or otherwise), and promptly provide Diverger with all information required to correct the misleading or deceptive statements;

(l) (**representation**) unless the parties otherwise agree, procure that Count is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;

(m) (**quotation of Count Consideration Shares**) apply to ASX for official quotation by ASX of the Count Consideration Shares to be issued under the Scheme;

(n) (**Diverger Information**) without the prior written consent of Diverger, not use Diverger Information for any purposes other than those contemplated by this agreement or the Scheme;

(o) (**ASX listing**) use best endeavours to maintain Count's admission to the official list of ASX and the quotation of Count Shares on ASX;

(p) (**compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations; and

(q) (**all other things necessary**) all other actions and do things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable.

7.3 Explanatory Booklet - preparation principles

(a) As soon as reasonably practicable after the date of this agreement and, subject to clause 2.2(a), in accordance with the Timetable, Diverger must prepare the Explanatory Booklet in compliance with:

(i) all applicable laws, including the Corporations Act, the Corporations Regulations, RG 60, any applicable Takeovers Panel policy and guidance notes and the Listing Rules; and

(ii) this clause 7.3.

(b) The Explanatory Booklet will include:

(i) the terms of the Scheme;

(ii) the notice of Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;

(iii) the Diverger Information;

(iv) the Count Information;

(v) the Combined Group Information;

(vi) a summary of this agreement;

(vii) a copy of the executed Deed Poll;

(viii) a copy of the Independent's Expert Report; and

(ix) a copy of the Investigating Accountant's Report.

(c) The Explanatory Booklet must include a statement that:

(i) other than the Count Information, the Independent Expert's Report and the Investigating Accountant's Report, the Explanatory Booklet has been prepared by Diverger and is the responsibility of Diverger, and that none of Count or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Explanatory Booklet (other than the Count Information);

(ii) the Count Information has been provided by Count and is the responsibility of Count, and none of Diverger or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Count Information; and

(iii) Diverger and Count have prepared and are jointly responsible for the Combined Group Information contained in the Explanatory Booklet.

(d) Diverger must make available to Count drafts of the Explanatory Booklet (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion) in a timely manner, consult with Count in relation to the content of those drafts (other than the Count Information), and consider in good faith (and, where applicable and appropriate, promptly provide to the Independent Expert in writing), for the purpose of amending those drafts, comments from Count on those drafts. Count acknowledges and agrees that Diverger has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this agreement with respect to the Count Information and the Combined Group Information.

(e) If Diverger and Count disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If complete agreement is not reached after reasonable consultation, then:

(i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the Count Information or the Combined Group Information, the Diverger Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet (acting reasonably and in good faith); and

(ii) if the disagreement relates to the form or content of the Count Information or the Combined Group Information, Diverger will make such amendments to the form or content of the disputed part of the Count Information or Combined Group Information as required by Count (acting reasonably and in good faith).

(f) Diverger must take all reasonable steps to ensure that the Explanatory Booklet (other than the Count Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Diverger Shareholders.

(g) Count must take all reasonable steps to ensure that the Count Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Diverger Shareholders.

(h) Both parties must take all reasonable steps to ensure that the Combined Group Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Diverger Shareholders.

(i) Diverger and Count each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of Diverger Shareholders and Count and that they will use all reasonable endeavours and utilise all necessary resources

(including management resources and the resources of external advisers) to comply with their respective obligations under this clause 7.3 and to implement the Scheme as soon as reasonably practicable and, subject to clause 2.2(a), in accordance with the Timetable.

7.4 Verification

Each party must undertake an appropriate verification process for the information supplied by that party which is included in the Explanatory Booklet or any supplementary disclosure in respect of the Scheme.

8. Conduct of business before the Implementation Date

8.1 Conduct of Diverger business

(a) Subject to clause 8.2(a), from the date of this agreement up to and including the Implementation Date, and without limiting any other obligations of Diverger under this agreement, Diverger must:

(i) conduct and must cause each member of the Diverger Group to conduct and operate their businesses:

(A) in the ordinary and usual course of business:

(B) consistent with past practice, in substantially the same manner as previously conducted; and

(C) in accordance with applicable laws;

(ii) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all officers and key employees;

(iii) use reasonable endeavours to ensure that all assets are maintained in the normal course and consistent with past practice;

(iv) maintain at least the level of insurance current as at the date of this agreement;

(v) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Diverger Group is a party, and with laws, authorisations and licences applicable to each member of the Diverger Group;

(vi) promptly notify Count of any claim with an amount in excess of $100,000 which may be threatened, brought, asserted or commenced against any member of the Diverger Group, or their officers, and consult with Count in relation to such claim to the extent Count reasonably requires;

(vii) not take or fail to take any action that constitutes a Diverger Prescribed Occurrence or that could reasonably be expected to result in a Diverger Prescribed Occurrence; and

(viii) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

(b) Without limiting clause 8.1(a) but subject to clause 8.2(a), Diverger must not, and must procure that each member of the Diverger Group does not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):

(i) incur or commit to any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Diverger Group, other than in the usual and ordinary course of business and consistent with past practice;

(ii) amend or take any action that:

(A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or

(B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,

any Financial Indebtedness to which one or more members of the Diverger Group are a party;

(iii) acquire, lease or dispose (or agree to acquire, lease or dispose) any business, asset, entity, or undertaking of any business or entity, the value of, or consideration payable for, which exceeds A$100,000 (individually with each such acquisitions, leases or disposals) or A$500,000 (in aggregate with all such acquisitions, leases or disposals);

(iv) enter into a new contract or materially vary or terminate (or agree to enter into or materially amend or terminate) any contract existing as at the date of this agreement, under which the Diverger Group:

(A) will receive, or is expected to receive, A$100,000 or more in revenue in any financial year (individually) or A$500,000 or more in revenue in any financial year (when aggregated with all other such contracts); or

(B) will incur, or is expected to incur, A$100,000 or more in costs or expenditure in any financial year during the term of that contract (individually) or A$500,000 or more in costs or expenditure in any financial year during the term of that contract (aggregated with all other such contracts),

other than a contract:

(C) in respect of Financial Indebtedness, which is dealt with in paragraph (i) above; or

(D) in respect of capital expenditure, which is dealt with in paragraph (v) below;

(v) incur any capital expenditure item for an amount in excess of A$100,000 (individually) or A$500,000 (in aggregate with all other such capital expenditure), other than in relation to a capital expenditure item, or series of related capital expenditure items, in respect of a capital project that was Fairly Disclosed in the Diverger Due Diligence Materials;

(vi) commence or settle any legal proceeding, claim, investigation or arbitration where the claimed or settlement amount is in excess of A$100,000 (individually) or A$500,000 (in aggregate with any other such claimed or settlement amounts), other than:

(A) as claimant in respect of the collection of debts arising in the ordinary course of the Diverger Group's business; or

(B) in respect of an actual or potential legal proceeding, claim, investigation or arbitration for which a provision has been made by the Diverger Group, provided that the provision has been Fairly Disclosed in the Diverger Due Diligence Materials and the relevant member of the Diverger Group does not commence or settle any actual or potential legal proceeding, claim, investigation or arbitration in respect of the relevant matter where the claimed or settlement amount is materially in excess of the provisioned amount;

(vii) change in any material respect any accounting policy applied by it to report its financial position, other than any change required by a change in the Accounting Standards, or the interpretation of them, or law;

(viii) except as required by law or as provided in an existing contract in place as at the date of this agreement and which has been Fairly Disclosed in the Diverger Due Diligence Materials, enter into, make any material change to the terms any contract of employment of (including increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee, whose total employment cost exceeds $200,000 (**Diverger Key Person**), in each case other than relating to rights or entitlements in effect on the date of this agreement and which are Fairly Disclosed in the Diverger Due Diligence Material and other than pay reviews in the ordinary course of business;

(ix) increase the remuneration or compensation of any existing officer, director, executive or other employee of the Diverger Group that would result in an increase of $20,000 (in aggregate) other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Diverger Due Diligence Material and other than pay reviews in the ordinary course of business;

(x) amend the terms of any option, performance right, incentive or share plan;

(xi) other than as required under clause 5, accelerate the rights of any of their directors or employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan) for, in aggregate, in excess of $100,000;

(xii) encourage the resignation of a Diverger Key Person;

(xiii) terminate a Diverger Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this agreement or otherwise in accordance with current personnel practices;

(xiv) pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment in excess of $100,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Diverger Due Diligence Material and other than annual bonus appropriations in the ordinary course of business;

(xv) settle or compromise or make any concessions in relation to any tax claims, liabilities disputes, audits or inquiries, or make any election in relation to tax or duty, or amend any tax return, or otherwise engage in any transaction, act or event which gives rise to tax liability other than in the ordinary course of its business;

(xvi) except under contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Diverger Due Diligence Material, enter into any enterprise bargaining agreement or similar collective employment agreement; or

(xvii) extend an existing lease or enter into any new leases.

8.2 Permitted activities

(a) The obligations of Diverger under clause 8.1 do not apply in respect of any matter:

(i) required to be done or procured by Diverger under this agreement or the Scheme;

(ii) required by law, Accounting Standards, contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement) or by an order of a court or Governmental Agency;

(iii) required in order to pay any tax or duty when due;

(iv) required to obtain insurances for the Diverger Group (or any member thereof) or the business conducted by the Diverger Group (or any member thereof) in ordinary course and consistent with past practice;

(v) which, in the reasonable opinion of Diverger, is a necessary and prudent response to any emergency or disaster (including an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Diverger has consulted with Count in good faith in respect of the proposal to take such action or not take

such action (as applicable) and considers any reasonable comments or requests of Count in relation to such proposal in good faith;

(vi) Fairly Disclosed in the Diverger Due Diligence Material or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Diverger with ASX as being actions that the Diverger Group would carry out between the date of this agreement and the Implementation Date; or

(vii) the undertaking of which Count has approved in writing (such approval not to be unreasonably withheld or delayed).

8.3 Conduct of Count business

(a) Subject to clause 8.4(a), from the date of this agreement up to and including the Implementation Date, and without limiting any other obligations of Count under this agreement, Count must:

(i) conduct and must cause each member of the Count Group to conduct and operate their businesses:

(A) in the ordinary and usual course of business;

(B) consistent with past practice, in substantially the same manner as previously conducted; and

(C) in accordance with applicable laws;

(ii) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all officers and key employees;

(iii) use reasonable endeavours to ensure that all assets are maintained in the normal course and consistent with past practice;

(iv) maintain at least the level of insurance current as at the date of this agreement;

(v) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Count Group is a party, and with laws, authorisations and licences applicable to each member of the Count Group;

(vi) promptly notify Diverger of any claim with an amount in excess of $500,000 which may be threatened, brought, asserted or commenced against any member of the Count Group, or their officers, and consult with Diverger in relation to such claim to the extent the Diverger reasonably requires;

(vii) not take or fail to take any action that constitutes a Count Prescribed Occurrence or that could reasonably be expected to result in a Count Prescribed Occurrence; and

(viii) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

(b) Without limiting clause 8.3(a) but subject to clause 8.4(a), Count must not, and must procure that each member of the Count Group does not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):

(i) other than in accordance with covenants applicable to such Financial Indebtedness, incur or commit to any additional Financial Indebtedness (except for draw-downs on existing banking facilities or new banking facilities put in place in connection with the Scheme or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Count Group, other than in the usual and ordinary course of business and consistent with past practice;

(ii) acquire, lease or dispose (or agree to acquire, lease or dispose) of any business, asset, entity, or undertaking of any business or entity, the value of, or consideration payable for, which exceeds A$300,000 (individually) or A$1,500,000 (in aggregate with all such acquisitions);

(iii) enter into a new contract or materially vary or terminate (or agree to enter into or materially amend or terminate) any contract existing as at the date of this agreement, under which the Count Group:

(A) will receive, or is expected to receive, A$300,000 or more in revenue in any financial year (individually) or A$1,500,000 or more in revenue in any financial year (when aggregated with all other such contracts); or

(B) will incur, or is expected to incur, A$200,000 or more in costs or expenditure in any financial year during the term of that contract (individually) or A$750,000 or more in costs or expenditure in any financial year during the term of that contract (aggregated with all other such contracts),

other than a contract:

(C) in respect of Financial Indebtedness, which is dealt with in paragraph (i) above; or

(D) in respect of capital expenditure, which is dealt with in paragraph (iv) below; and

(iv) incur any expenditure in respect of a capital expenditure item for an amount in excess of A$300,000 (individually) or A$1,500,000 (in aggregate with all other such expenditure), other than in relation to a capital expenditure item, or series of related capital expenditure items, in respect of a capital project that was Fairly Disclosed in the Count Due Diligence Materials.

8.4 Permitted activities

(a) The obligations of Count under clause 8.3 do not apply in respect of any matter:

(i) required to be done or procured by Count under this agreement or the Scheme;

(ii) required by law, Accounting Standards, contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement) or by an order of a court or Governmental Agency;

(iii) required in order to pay any tax or duty when due;

(iv) required to obtain insurances for the Count Group (or any member thereof) or the business conducted by the Count Group (or any member thereof) in ordinary course and consistent with past practice;

(v) which, in the reasonable opinion of Count, is a necessary and prudent response to any emergency or disaster (including an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Count has consulted with Diverger in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Diverger in relation to such proposal in good faith;

(vi) Fairly Disclosed in the Count Due Diligence Material or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Count with ASX as being actions that the Count Group would carry out between the date of this agreement and the Implementation Date; or

(vii) the undertaking of which Diverger has approved in writing (such approval not to be unreasonably withheld or delayed).

8.5 Access to Diverger information

(a) Subject to clauses 8.5(b), 8.5(c) and 8.5(d), from and including the date of this agreement up until and including the Implementation Date, Diverger must ensure that Diverger and the Diverger Group:

(i) respond to any reasonable request from Count and its Authorised Persons (including in response to requests for information from financial markets and Governmental Agencies) for information concerning the Diverger Group and its business and operations; and

(ii) provide Count and its Authorised Persons reasonable access to officers and employees, offices and other facilities, and books and records of members of the Diverger Group, and otherwise provide reasonable co-operation to Count and its Authorised Persons, for the purpose of doing all things necessary or desirable under this agreement or in connection with the Proposed Transaction (including compliance with any regulatory or financial market reporting requirements), and any plans for the integration of the Diverger Group into the Count Group following the Implementation Date.

(b) Nothing in this clause 8.5 requires Diverger to provide Count with any information:

(i) concerning or in connection with any actual, proposed or potential Diverger Competing Proposal (including a Diverger Director's, the Diverger Board's (or any sub-committee of the Diverger Board's) and management's consideration of any actual, proposed or potential Diverger Competing Proposal) provided that nothing in this clause 8.5(b) limits the obligations of Diverger in clause 16;

(ii) concerning the Diverger Group's business that is, in the reasonable opinion of Diverger, commercially or competitively sensitive;

(iii) in breach of an obligation of confidentiality to any person or any applicable law, regulatory requirement, authorisation or court order;

(iv) if to do so would or would be reasonably likely to result in a waiver of legal professional privilege; or

(v) concerning the consideration of the Proposed Transaction by the Diverger Board or Diverger management.

(c) Count must, and must procure that each of its Authorised Persons and each other member of the Count Group and their respective Authorised Persons:

(i) keep all information obtained by it or them as a result of the operation of this clause 8.5 confidential in accordance with the terms of the Confidentiality Deed;

(ii) provide Diverger with reasonable notice of any request for information or access; and

(iii) comply with the reasonable requirements of Diverger in relation to any access granted.

(d) Diverger will provide reasonable assistance to Count for the purpose of satisfying Diverger's obligations under this clause 8.5 but nothing in this clause 8.5 requires Diverger to provide access to its people or documentation or to take any other action would disrupt the usual and ordinary course of its businesses and operations.

8.6 Access to Count information

(a) Subject to clauses 8.6(b), 8.6(c) and 8.6(d), from and including the date of this agreement up until and including the Implementation Date, Count must ensure that Count and the Count Group:

(i) respond to any reasonable request from Diverger and its Authorised Persons (including in response to requests for information from financial markets and Governmental Agencies) for information concerning the Count Group and its business and operations; and

(ii) provide Diverger and its Authorised Persons reasonable access to officers and employees, offices and other facilities, and books and records of members of the Count Group, and otherwise provide reasonable co-operation to Diverger and its Authorised Persons, for the purpose of doing all things necessary or desirable under this agreement or in connection with the Proposed Transaction (including compliance with any regulatory or financial market reporting requirements), and any plans for the integration of the Diverger Group into the Count Group following the Implementation Date.

(b) Nothing in this clause 8.6 requires Count to provide Diverger with any information:

(i) concerning or in connection with any actual, proposed or potential Count Competing Proposal (including a Count Director's, the Count Board's (or any sub-committee of the Count Board's) and management's consideration of any actual, proposed or potential Count Competing Proposal) provided that nothing in this clause 8.6(b) limits the obligations of Count in clause 17;

(ii) concerning the Count Group's business that is, in the reasonable opinion of Count, commercially or competitively sensitive;

(iii) in breach of an obligation of confidentiality to any person or any applicable law, regulatory requirement, authorisation or court order;

(iv) if to do so would or would be reasonably likely to result in a waiver of legal professional privilege; or

(v) concerning the consideration of the Proposed Transaction by the Count Board or Count management.

(c) Diverger must, and must procure that each of its Authorised Persons and each other member of the Diverger Group and their respective Authorised Persons:

(i) keep all information obtained by it or them as a result of the operation of this clause 8.6 confidential in accordance with the terms of the Confidentiality Deed;

(ii) provide Count with reasonable notice of any request for information or access; and

(iii) comply with the reasonable requirements of Count in relation to any access granted.

(d) Count will provide reasonable assistance to Diverger for the purpose of satisfying Count's obligations under this clause 8.6 but nothing in this clause 8.6 requires Count to provide access to its people or documentation or to take any other action would disrupt the usual and ordinary course of its businesses and operations.

8.7 Change of control rights

As soon as practicable after the date of this agreement, Diverger and Count must seek to identify any change of control or similar provisions in leases, licences and material contracts to which Diverger or a Diverger Group Member is a party which may be triggered by the implementation of the Proposed Transaction. In respect of those leases, licences and contracts, the parties agree as follows:

(a) Diverger and Count will agree a proposed course of action to obtain any consents required in accordance with the terms of any identified change of control requirements and then jointly initiate contact with the relevant landlords and other counterparties and request that they provide any consents required (unless otherwise agreed by the parties). If it is agreed between Diverger and Count that Diverger will initiate contact with the relevant landlord and other counterparties to request that they provide any consents required in accordance with any such course of action agreed between Diverger and Count, Diverger must do so as soon as reasonably practicable after such course of action has been agreed between Diverger and Count. None of Count or any of its Authorised Persons may contact any landlords or other counter-parties without Diverger being present or without Diverger's approval (which is not to be unreasonably withheld or delayed);

(b) Diverger must cooperate with, and provide reasonable assistance to, Count to obtain such consents as expeditiously as possible, including by:

(i) promptly providing any information reasonably required by landlords or counterparties; and

(ii) making representatives available, where necessary, to meet with landlords or counterparties to deal with issues arising in relation to the change of control of Diverger; and

(c) subject to Diverger complying with this clause 8.7, a failure by a member of the Diverger Group to obtain any landlord or third party consent will not constitute a breach of this agreement by Diverger and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this agreement.

9. Actions on and following Implementation Date

9.1 Reconstitution of the board of each member of the Diverger Group

(a) On the Implementation Date, but subject to the Scheme Consideration having been paid and provided by Count and receipt by Diverger of signed consents to act from the incoming directors, Diverger must take all actions necessary (and in accordance with the constitution of the relevant Diverger Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by Count as new Diverger Directors and new directors of each member of the Diverger Group.

(b) Without limiting clause 9.1(a), on the Implementation Date, Diverger must (other than any directors Count agree will continue to be directors) procure that:

(i) all outgoing Diverger Directors resign from the Diverger Board; and

(ii) all outgoing directors of each member of the Diverger Group resign from their office,

by providing to the relevant board his or her resignation in writing, such resignation to include an acknowledgement to the effect that he or she has no claim outstanding against Diverger or any member of the Diverger Group in their capacity as a director (without prejudice to any rights they may have under any deed of indemnity, access and insurance (or similar), policy of directors' and officers' insurance, an indemnity given to the director under the constitution of a member of the Diverger Group (including under the Diverger constitution) or this agreement or the Scheme), and in each case, in accordance with the relevant entities' constituent documents, the Corporations Act and the Listing Rules.

9.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

(a) Count will deposit (or procure the deposit of) the Cash Consideration into the specified Diverger trust account in accordance with the Scheme;

(b) Diverger will commence the distribution of the Cash Consideration to Scheme Shareholders in accordance with the Scheme;

(c) Count will issue the Scrip Consideration to relevant Scheme Shareholders in accordance with the Scheme;

(d) Count will acquire all of the Scheme Shares in accordance with the Scheme;

(e) the Diverger Board and the board of each member of the Diverger Group will be reconstituted in accordance with clause 9.1;

(f) in accordance with clause 5, all Diverger Options will be cancelled and Diverger will provide the Option Cancellation Consideration to those Diverger Optionholders with whom Diverger has entered into an Option Cancellation Deed for the cancellation of their Diverger Options; and

(g) Diverger will apply to ASX to be removed from the official list of ASX with effect from a date nominated by Count.

10. Representations and warranties

10.1 Count representations and warranties

(a) Subject to clause 10.3, Count represents and warrants to Diverger (on Diverger's own behalf and separately as trustee for each of the other Diverger Indemnified Parties) each of the matters set out in clause 10.1(b) as at the date of this agreement and at the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

(b) Count represents and warrants that:

(i) Count is a validly existing corporation registered under the laws of its place of incorporation;

(ii) other than in relation to the Count Minority Interests, no member of the Count Group is:

(A) the legal or beneficial owner of any: (I) share, debenture, note or other interest of or in any other corporation; (II) unit in any unit trust; or (III) other securities or ownership interest in any other entity; or

(B) a member of any partnership, joint venture, consortium or unincorporated association,

other than its shareholdings in another Count Group Member;

(iii) Count, either itself or through a Subsidiary, is the sole legal and beneficial owner of the shares issued by each member of the Count Group (other than Count) and the Count Minority Interests;

(iv) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and Count has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;

(v) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Count is a party or is bound;

(vi) the Count Information provided to Diverger in accordance with clause 7.2(a) for inclusion in the Explanatory Booklet will:

(A) comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, any applicable Takeovers Panel policy and guidance notes and the Listing Rules; and

(B) be provided in good faith on the understanding that each of the Diverger Indemnified Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;

(vii) all information provided by or on behalf of Count to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;

(viii) as at the date the Explanatory Booklet is dispatched to Diverger Shareholders, the Count Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);

(ix) Count will, as a continuing obligation, provide to Diverger all such further or new information which may arise after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting which is necessary to ensure that the Count Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);

(x) all factual information Count has provided to Diverger prior to this agreement is, to the best of Count's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information;

(xi) no shareholder approval of Count is required to agree or complete the Proposed Transaction;

(xii) as at the date of this agreement, the total issued capital of Count is:

(A) 111,528,888 Count Shares; and

(B) 1,653,014 performance rights,

and there are no other Count options, warrants, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing) which are outstanding and may convert into, or give the holder the right to be issued, Count Shares, other than rights arising under the above;

(xiii) as at the date of this agreement, Count is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as Fairly Disclosed in the Count Due Diligence Material) that a reasonable person would expect to have a material effect on the price or value of Count Shares;

(xiv) the Count Due Diligence Material has been collated and disclosed in good faith for the purposes of a due diligence process and, in this context, so far as Count is aware after due enquiry, the Count Due Diligence Material is not materially misleading or deceptive in any material respect (including by omission), provided that Count does not make or give any representation or warranty as to the accuracy, completeness or reasonableness of any projection, forecast or other forward-looking information or statement (including in respect of the future financial position, performance or prospects of the Count Group) or of any assumptions on which they are based or that any such projection, forecast, information or statement will, or is likely to be, achieved other than that any statement of belief or opinion in such information or statement is honestly held and formed on a reasonable basis;

(xv) between and including the date of this agreement and the Record Date, Count will not, and will procure that each other member of the Count Group does not, enter into any arrangement under which it obtains the beneficial interest in any Diverger Shares, unless the Diverger Shares are registered in the name of Count;

(xvi) an Insolvency Event has not occurred in relation to it;

(xvii) all contingent benefits which any Count Director may obtain in connection with the Scheme as at the date of this agreement have been Fairly Disclosed to Diverger;

(xviii) Count's:

(A) reviewed financial statements for the half year ended 31 December 2022; and

(B) audited financial statements for the year ended 30 June 2023,

each show a true and fair view of the financial position and affairs of the Count Group as at that date and the financial performance and operation of the Count Group for the financial period ending on that date and are not misleading or deceptive in any material respect;

(xix) no member of the Count Group has incurred any contingent or other off-balance sheet liabilities or obligations which are not reflected in Count's reviewed financial statements for the half year ended 31 December 2022 or Count's audited financial statements for the year ended 30 June 2023; and

(xx) as at the date of this agreement Count has a reasonable basis to expect that it will, by the Implementation Date, 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 Count's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;

(xxi) by the Delivery Time on the Second Court Date, Count will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Count) sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Count's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll; and

(xxii) Count will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding including debt and equity financing arrangements or a combination of both) to satisfy Count's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll.

10.2 Count's indemnity

Subject to clause 10.3, Count agrees with Diverger (on Diverger's own behalf and separately as trustee or nominee for each of the other Diverger Indemnified Parties) to indemnify and keep indemnified the Diverger Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Diverger Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.1(a) or 10.1(b).

10.3 Qualifications on Count's representations, warranties and indemnities

The representations and warranties in clause 10.1 and the indemnity in clause 10.2 are each subject to matters which:

(a) are expressly provided for in this agreement or the Scheme;

(b) have been Fairly Disclosed in:

(i) the Count Due Diligence Material; and

(ii) any of Count's announcements to ASX in the 12 month period prior to the date of this agreement; or

(iii) a publicly available register maintained by ASIC or the PPSR in relation to Count or a Count Group Member (as applicable) on the day that is one Business Day prior to the date of this agreement; or

(c) are required by law, Accounting Standards, contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement and disclosed in the Count Due Diligence Material) or by an order of a court or Governmental Agency.

10.4 Diverger representations and warranties

(a) Subject to clause 10.6, Diverger represents and warrants to Count (on its own behalf and separately as trustee for each of the Count Indemnified Parties) each of the matters set out in clause 10.4(b) as at the date of this agreement and at the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

(b) Diverger represents and warrants that:

(i) Diverger is a validly existing corporation registered under the laws of its place of incorporation;

(ii) other than in relation to the Diverger Minority Interests, no member of the Diverger Group is:

(A) the legal or beneficial owner of any: (I) share, debenture, note or other interest of or in any other corporation; (II) unit in any unit trust; or (III) other securities or ownership interest in any other entity; or

(B) a member of any partnership, joint venture, consortium or unincorporated association,

other than its shareholdings in another Diverger Group Member;

(iii) Diverger, either itself or through a Subsidiary, is the sole legal and beneficial owner of the shares issued by each member of the Diverger Group (other than Diverger) and the Diverger Minority Interests;

(iv) the execution and delivery of this agreement by Diverger has been properly authorised by all necessary corporate action and Diverger has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;

(v) this agreement constitutes legal, valid and binding obligations on Diverger and the execution of this agreement of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Diverger or any of its Subsidiaries is a party or to which they are bound;

(vi) the Diverger Information contained in the Explanatory Booklet will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, any applicable Takeovers Panel policy and guidance notes and the Listing Rules;

(vii) all information provided by or on behalf of Diverger to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;

(viii) as at the date the Explanatory Booklet is dispatched to Diverger Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Count Information, the Independent Expert's Report and the Investigating Accountant's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);

(ix) all factual information Diverger has provided to Count prior to this agreement is, to the best of Diverger's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information;

(x) as at the date of this agreement, the total issued capital of Diverger is:

(A) 37,674,103 Diverger Shares;

(B) 1,700,000 Diverger Options; and

(C) 2,095,580 Diverger Performance Rights,

and there are no other Diverger options, warrants, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing) which are outstanding and may convert into, or give the holder the right to be issued, Diverger Shares, other than rights arising under the above;

(xi) as at the date of this agreement, Diverger is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as Fairly Disclosed in Diverger Due Diligence Material) that a reasonable person would expect to have a material effect on the price or value of Diverger Shares;

(xii) the Diverger Due Diligence Material has been collated and disclosed in good faith for the purpose of a due diligence process and, in this context, so far as Diverger is aware after due enquiry, the Diverger Due Diligence Material is not materially misleading or deceptive in any material respect (including by omission), provided that Diverger does not make or give any representation or warranty as to the accuracy, completeness or reasonableness of any projection, forecast or other forward-looking information or statement (including in respect of the future financial position, performance or prospects of the Diverger Group) or of any assumptions on which they are based or that any such projection, forecast, information or statement will, or is likely to be, achieved other than that any statement of belief or opinion in such information or statement is honestly held and formed on a reasonable basis;

(xiii) an Insolvency Event has not occurred in relation to it;

(xiv) all contingent benefits which any Diverger Director may obtain in connection with the Scheme as at the date of this deed have been Fairly Disclosed to Count and:

(A) after due consideration with the benefit of external legal advice, the Diverger Board has concluded that any such benefits ought not prevent any Diverger Director from making a Recommendation or giving a Voting Intention; and

(B) any such contingent benefit will be cited in the Explanatory Booklet where the relevant Diverger Director Recommendation or Voting Intention is referred to;

(xv) Diverger's:

(A) reviewed financial statements for the half year ended 31 December 2022; and

(B) audited financial statements for the year ended 30 June 2023,

each show a true and fair view of the financial position and affairs of the Diverger Group as at that date and the financial performance and operation of the Diverger Group for the financial period ending on that date and are not misleading or deceptive in any material respect; and

(xvi) no member of the Diverger Group has incurred any contingent or other off-balance sheet liabilities or obligations which are not reflected in Diverger's reviewed financial statements for the half year ended 31 December 2022 or Diverger's audited financial statements for the year ended 30 June 2023.

10.5 Diverger's indemnity

Subject to clause 10.6, Diverger agrees with Count (on Count's own behalf and separately as trustee for each of the Count Indemnified Parties) to indemnify and keep indemnified the Count Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Count Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.4(a) or 10.4(b).

10.6 Qualifications on Diverger's representations, warranties and indemnities

The representations and warranties in clause 10.4 and the indemnity in clause 10.5 are each subject to matters which:

(a) are expressly provided for in this agreement or the Scheme;

(b) have been Fairly Disclosed in:

(i) the Diverger Due Diligence Material;

(ii) any of Diverger's announcements to ASX in the 12 month period prior to the date of this agreement; or

(iii) a publicly available register maintained by ASIC or the PPSR in relation to Diverger or a Diverger Group Member (as applicable) on the day that is one Business Day prior to the date of this agreement; or

(c) are required by law, Accounting Standards, contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement and has been disclosed in the Diverger Due Diligence Material) or by an order of a court or Governmental Agency.

10.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 10.

10.8 Survival of representations

Each representation and warranty in clauses 10.1 and 10.4:

(a) is severable;

(b) will survive the termination of this agreement;

(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 agreement;

(d) is to be construed independently; and

(e) is not limited by any other representation and warranty.

10.9 Survival of indemnities

Each indemnity in this agreement (including those in clauses 10.2 and 10.5) will:

(a) be severable;

(b) be a continuing obligation;

(c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and

(d) survive the termination of this agreement.

11. Releases

11.1 Diverger Indemnified Parties

(a) Subject to clause 11.1(b) and without limiting Count's rights under clause 10, Count (for itself and as agent of every member of the Count Group) releases all rights against and agrees with Diverger that it will not make a Claim against, any Diverger Indemnified Party (other than Diverger) in connection with:

(i) Diverger's execution or delivery of this agreement;

(ii) any breach of any representation, covenant and warranty of Diverger or any other member of Diverger Group in this agreement;

(iii) the implementation of the Scheme;

(iv) any disclosure made by any Diverger Indemnified Party including in the Diverger Due Diligence Material that contains any statement which is false or misleading whether in content or by omission; or

(v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent the relevant Diverger 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 11.1 limits the rights of Count to terminate this agreement under clause 13.

(b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Diverger receives and holds the benefit of this clause as trustee for each other Diverger Indemnified Party.

11.2 Count Indemnified Parties

(a) Subject to clause 11.2(b) and without limiting Diverger's rights under clause 10, Diverger (for itself and as agent of every member of the Diverger Group) releases its rights against, and agrees with Count that it will not make a Claim against any Count Indemnified Party (other than Count) in connection with:

(i) Count's execution or delivery of this agreement;

(ii) any breach of any representation, covenant and warranty of Count or any other member of the Count Group in this agreement;

(iii) the implementation of the Scheme;

(iv) any disclosure made by any Count Indemnified Party including in the Count Due Diligence Material that contains any statement which is false or misleading whether in content or by omission; or

(v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent that the relevant Count 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 11.2 limits the rights of Diverger to terminate this agreement under clause 13.

(b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Count receives and holds the benefit of this clause as trustee for each other Count Indemnified Party.

11.3 Deeds of indemnity

(a) Subject to the Scheme becoming Effective, Count undertakes in favour of Diverger and each other person who is a Diverger Indemnified Party that it will:

(i) subject to clause 11.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Diverger and each other member of the Diverger Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Diverger Group; and

(ii) procure that Diverger and each other member of the Diverger Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.

(b) The undertakings contained in clause 11.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.

(c) Diverger receives and holds for the benefit of clause 11.3(a), to the extent it relates to the other Diverger Indemnified Parties, as trustee for them.

(d) The undertakings contained in clause 11.3(a) are given:

(i) in the case of clause 11.3(a)(i), until the earlier of 7 years from the Implementation Date and the relevant member of the Diverger Group ceasing to be part of the Count Group; or

(ii) in the case of clause 11.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer and the relevant member of the Diverger Group ceasing to be part of the Count Group.

11.4 Directors' and officers' insurance

(a) Count acknowledges that Diverger will in respect of Diverger and all other members of the Diverger Group prior to the Effective Date, enter into arrangements to secure directors and officers run-off insurance for a period of 7 years following the Implementation Date (**Run-Off Policy**) and that any actions to facilitate that insurance or in connection with such insurance will not be a Diverger Material Adverse Change, a Diverger Prescribed Occurrence, a breach of a Diverger Warranty or a breach of any provision of this agreement or give right to any right to terminate this agreement, provided that:

(i) the scope of cover of the Run-Off Policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of Diverger at the date of this agreement; and

(ii) Diverger will use reasonable endeavours to obtain the most attractive commercial terms for the Run-Off Policy from a reputable insurer provided that Diverger will be deemed to have satisfied its obligation to use all reasonable endeavours under this paragraph (ii) if it engages a reputable insurance broker to obtain quotes and/or proposals from reputable insurers in respect of the Run-Off Policy and enters into arrangements to secure the Run-Off Policy with one or more of those insurers selected by Diverger (acting reasonably, having regard to the insurer's or insurers' proposed terms in respect of the Run-Off Policy (including in respect of the premium)); and the premium for the Run-Off Policy does not exceed an amount agreed between the parties in writing on or before the date of this agreement.

(b) Diverger receives and holds the benefit of this clause as trustee for each other Diverger Indemnified Party.

11.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Diverger must not:

(a) vary or cancel the Run-Off Policy; or

(b) unless required under the Run-Off Policy, commit any act or omission that may prejudice any claim by a director or officer of Diverger under the Run-Off Policy.

12. Confidentiality and announcements

12.1 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

12.2 Announcements

(a) Immediately after the execution of this agreement each party must issue its Announcement to the ASX (which each party acknowledges and agrees will attach a copy of this agreement or a redacted version of this agreement that omits personal information, the Timetable and the form of the Scheme, which has been duly executed by Diverger and Count).

(b) Subject to clauses 12.2(c) and 12.2(d), any further public announcements by either of the parties in relation to, or in connection with the Scheme may only be made in a form approved by the other party in writing (acting reasonably).

(c) Where a party is required by applicable law, the Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in

connection with the Proposed Transaction or any other transaction the subject of this agreement or the Scheme, it may do so but must:

(i) use reasonable endeavours, to the extent practicable and lawful, to consult with the other party;

(ii) give the other party as much notice as reasonably practicable; and

(iii) consider all reasonable comments from that party and its Authorised Persons (that are provided in a timely manner) on the disclosure,

before making the relevant disclosure.

(d) Clauses 12.2(b) and 12.2(c) do not apply to any announcement or disclosure:

(i) where, in the reasonable opinion of the party proposing to make the relevant disclosure, seeking such consent would result in that party breaching its continuous disclosure obligations or other applicable laws; or

(ii) in connection with the termination of this agreement or an actual, proposed or potential Diverger Competing Proposal (in the case of Diverger) or a Count Competing Proposal (in the case of Count).

12.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 12.2 applies to any such statements or disclosures.

13. Termination

13.1 Termination by notice

(a) Either party may terminate this agreement in accordance with clause 3.7.

(b) Count or Diverger may, by notice in writing to the other, terminate this agreement at any time prior to the Delivery Time:

(i) if the other is in material breach of any of its obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 13.2) and the other party has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;

(ii) if the Court refuses to make any order directing Diverger to convene the Scheme Meeting, provided that both Diverger and Count have met and consulted in good faith and agreed that they do not wish to proceed with the Scheme; or

(iii) if the Effective Date for the Scheme has not occurred on or before the End Date.

(c) Diverger may, by notice in writing to Count, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of Diverger Directors as constitutes a majority of the Diverger Board publicly recommend a Diverger Superior Proposal; and

(d) Count may, by notice in writing to Diverger, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then any Diverger Director:

(i) fails to recommend the Scheme;

(ii) withdraws, adversely revises, adversely modifies or adversely qualifies his recommendation of the Scheme; or

(iii) makes a public statement:

(A) indicating that he recommends, endorses or supports a Diverger Competing Proposal;

(B) to the effect that he no longer supports the Scheme; or

(C) otherwise indicating that he:

(I) no longer recommends the Proposed Transaction; or

(II) recommends that Diverger Shareholders accept or vote in favour of a Diverger Competing Proposal that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

other than as a result of the circumstances described in clause 6.2, which for the avoidance of doubt will not extend to any Diverger Director adversely revising or adversely modifying his recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Diverger Competing Proposal.

(e) This agreement may be terminated by the written agreement of the parties, on such terms as the parties agree.

13.2 Termination for breach of representations and warranties

(a) Count may, by notice in writing to Diverger, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:

(i) Diverger is in material breach of a Diverger Warranty; or

(ii) Diverger is in breach of the Diverger Warranty in clause 10.4(b)(x),

and Diverger has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Count setting out details of the relevant circumstance and requesting Diverger to remedy the breach.

(b) Diverger may, by notice in writing to Count, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:

(i) Count is in material breach of a Count Warranty; or

(ii) Count is in breach of any of the Count Warranty in clause 10.1(b)(xii),

and Count has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Diverger setting out details of the relevant circumstance and requesting Count to remedy the breach.

13.3 Automatic termination

Without limiting any other term of this agreement but subject to clause 3.6, this agreement will terminate automatically if the Scheme is not approved by the necessary majorities at the Scheme Meeting.

13.4 Effect of termination

(a) In the event of termination of this agreement under clause 3.7, 13.1, 13.2 or 13.3, this agreement will become void and have no effect, except that the provisions of this clause 13.4, clauses 1, 10.8, 10.9, 11, 12.1, 14, 15 and 21.2 to 21.17 (inclusive) survive termination.

(b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

14. Diverger Break Fee

14.1 Background

(a) Diverger and Count acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Count will incur significant costs including those described in clause 14.2.

(b) In the circumstances referred to in clause 14.1(a), Count has requested that provision be made for the payments outlined in clause 14.3, without which Count would not have entered into this agreement.

(c) The Diverger Board believes that the Scheme will provide benefit to Diverger and Diverger Shareholders and that it is appropriate for Diverger to agree to the payments referred to in this clause 14 in order to secure Count's participation in the Proposed Transaction.

14.2 Costs incurred by Count

(a) The fee payable under clause 14.3 has been calculated to reimburse Count for the following:

(i) fees for legal and financial advice in planning and implementing the Proposed Transaction;

(ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;

(iii) costs of management and directors' time in planning and implementing the Proposed Transaction;

(iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction;

(v) costs associated with the financing arrangements in respect of the Proposed Transaction; and

(vi) any damage to Count's reputation associated with a failed transaction and the implications of those damages if Count seeks to execute alternative acquisitions in the future,

in each case, incurred by Count directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.

(b) The parties acknowledge that:

(i) the amount of fees, costs and losses referred to in this clause 14.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and

(ii) the amount of the costs payable under clause 14.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

14.3 Payment by Diverger to Count

(a) Diverger agrees to pay to Count $500,000 (inclusive of GST) (**Diverger Break Fee**) in any of the following circumstances:

(i) (**Diverger Competing Proposal succeeds**) both of the following occur:

(A) a Diverger Competing Proposal is publicly announced during the period commencing on the date of this agreement and ending on the End Date; and

(B) within 12 months from the date of the public announcement of such Diverger Competing Proposal (or variation):

(I) the Diverger Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or

(II) without limiting clause 14.3(a)(i)(B)(I), the proponent of that Diverger Competing Proposal acquires a relevant interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, at least 50% of Diverger Shares; or

(ii) (**Change of Recommendation**) during the Exclusivity Period, any Diverger Director:

(A) withdraws, adversely revises, adversely modifies or adversely qualifies their Recommendation of the Proposed Transaction or recommends or supports a Diverger Competing Proposal;

(B) does not recommend that Diverger Shareholders approve the Scheme; or

(C) makes any public statement:

(I) indicating that he recommends, endorses or supports a Diverger Competing Proposal;

(II) to the effect that he no longer supports the Scheme; or

(III) otherwise indicating that he:

(1) no longer recommends the Proposed Transaction; or

(2) recommends that Diverger Shareholders accept or vote in favour of a Diverger Competing Proposal that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

except where that act is:

(D) a result of the circumstances set out in clause 6.2, which for the avoidance of doubt will not extend to any Diverger Director adversely revising or adversely modifying his Recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Diverger Competing Proposal;

(E) as a result of the Independent Expert opining that the Scheme is not in the best interest of Diverger Shareholders (other than where the reason for that opinion is a Diverger Superior Proposal);

(F) as a result of any matter or thing giving Diverger the right to terminate this agreement under clause 13.1(b)(i) or 13.2(b); or

(G) as a result of a failure of a Condition in clauses 3.1(b) (No Count Prescribed Occurrence), 3.1(d) (No Count Material Adverse Change) or 3.1(g) (Count Warranties); or

(iii) (**Material breach**) Count terminates this agreement in accordance with (and subject to the cure periods specified in) clause 13.1(b)(i) or 13.2(a); or

(iv) (**Diverger Prescribed Occurrence**) Count terminates this agreement under clause 3.7 due to a failure of a Condition in clause 3.1(a).

(b) Diverger must pay Count the Diverger Break Fee within 5 Business Days of receipt by Diverger of a demand for payment from Count made after the occurrence of the event referred to in clause 14.3(a).

(c) The Diverger Break Fee is not payable 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.

(d) The Diverger Break Fee is only payable once and where the Diverger Break Fee becomes payable to Count under this clause 14.3 and once it is actually paid to Count, Count cannot make any claim against Diverger for payment of any subsequent Diverger Break Fee.

(e) Notwithstanding the occurrence of any event referred to in clause 14.3(a), the Diverger Break Fee will not be payable if the Scheme becomes Effective.

(f) Where the Diverger Break Fee becomes payable to Count under this clause 14.3 following a request from Count under clause 14.3(b) and is actually paid to Count, Count (for itself and as agent of every member of the Count Group):

(i) releases all rights against and agrees with Diverger that Count will not make a Claim against any Diverger Indemnified Party (other than a claim under this clause 14.3 or in relation to any conduct which is designed or intended to frustrate the Proposed Transaction or fraud, wilful misconduct, wilful breach or wilful concealment by or on behalf of Diverger) in connection with:

(A) the event that gave rise to the right to demand the payment of the Diverger Break Fee; nor

(B) any other event, matter or circumstance that may give rise to a separate right to the Diverger Break Fee or that constitutes or may constitute a breach of this agreement; and

(ii) indemnifies any Diverger Indemnified Party against a Claim that is made contrary to the release under clause 14.3(f)(i),

with the effect that the payment of the Diverger Break Fee represents the sole and exclusive liability of any Diverger Group Member.

(g) Count's right to receive the Diverger Break Fee shall not limit or otherwise affect Count's right to seek specific performance, injunctive relief or any other remedies that would otherwise be available in equity or law as a remedy for a breach or threatened breach of this agreement by Diverger (including a breach which causes the implementation of the Scheme to become impossible or impracticable or a breach in order to pursue, agree or implement a Diverger Competing Proposal), provided that in no event shall Count be entitled to receive both specific performance and payment of the Diverger Break Fee.

(h) The Diverger Break Fee is not payable where Diverger has become entitled to the Count Break Fee.

15. Count Break Fee

15.1 Background

(a) Diverger and Count acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Diverger will incur significant costs including those described in clause 15.2.

(b) In the circumstances referred to in clause 15.1(a), Diverger has requested that provision be made for the payments outlined in clause 15.3, without which Diverger would not have entered into this agreement.

(c) The Count Board believes that the Scheme will provide benefit to Count and Count Shareholders and that it is appropriate for Count to agree to the payments referred to in this clause 15 in order to secure Diverger's participation in the Proposed Transaction.

15.2 Costs incurred by Diverger

(a) The fee payable under clause 15.3 has been calculated to reimburse Diverger for the following:

(i) fees for legal and financial advice in planning and implementing the Proposed Transaction;

(ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;

(iii) costs of management and directors' time in planning and implementing the Proposed Transaction;

(iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction;

(v) costs associated with the financing arrangements in respect of the Proposed Transaction; and

(vi) any damage to Diverger's reputation associated with a failed transaction and the implications of those damages if Diverger seeks to execute alternative acquisitions in the future,

in each case, incurred by Diverger directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.

(b) The parties acknowledge that:

(i) the amount of fees, costs and losses referred to in this clause 15.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and

(ii) the amount of the costs payable under clause 15.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

15.3 Payment by Count to Diverger

(a) Count agrees to pay to Diverger $500,000 (inclusive of GST) (**Count Break Fee**) if:

(i) (**Material breach**) Diverger terminates this agreement in accordance with (and subject to the cure periods specified in) clause 13.1(b)(i) or 13.2(b);

(ii) (**Count Prescribed Occurrence**) Diverger terminates this agreement under clause 3.7 due to a failure of a Condition in clause 3.1(b); or

(iii) (**Failure to provide Scheme Consideration**): the Scheme becomes Effective but Count does not provide the Scheme Consideration in accordance with the terms and conditions of this agreement and the Deed Poll.

(b) Count must pay Diverger the Count Break Fee within 5 Business Days of receipt by Count of a demand for payment from Diverger made after the occurrence of the event referred to in clause 15.3(a).

(c) The Count Break Fee is only payable once and where the Count Break Fee becomes payable under this clause 15.3 to Diverger and once it is actually paid to Diverger, Diverger cannot make any claim against Count for payment of any subsequent Count Break Fee.

(d) Notwithstanding the occurrence of any event referred to in clause 15.3(a), the Count Break Fee will not be payable if the Scheme becomes Effective and proceeds to be implemented.

(e) Where the Count Break Fee becomes payable to Diverger under this clause 15.3 following a request from Count under clause 15.3(b) and is actually paid to Diverger, Diverger (for itself and as agent of every member of the Diverger Group):

(i) releases all rights against and agrees with Count that Diverger will not make a Claim against any Count Indemnified Party (other than a claim under this clause 15.3 or in relation to any conduct which is designed or intended to frustrate the Proposed Transaction or fraud, wilful misconduct, wilful breach or wilful concealment by or on behalf of Count) in connection with:

(A) the event that gave rise to the right to demand the payment of the Count Break Fee; nor

(B) any other event, matter or circumstance that may give rise to a separate right to the Count Break Fee or that constitutes or may constitute a breach of this agreement; and

(ii) indemnifies any Count Indemnified Party against a Claim that is made contrary to the release under clause 15.3(e)(i),

with the effect that the payment of the Count Break Fee represents the sole and exclusive liability of any Count Group Member.

(f) Diverger's right to receive the Count Break Fee shall not limit or otherwise affect Diverger's right to seek specific performance, injunctive relief or any other remedies that would otherwise be available in equity or law as a remedy for a breach or threatened breach of this agreement by Count (including a breach which causes the implementation of the Scheme to become impossible or impracticable or a breach in order to pursue, agree or implement a Count Competing Proposal), provided that in no event shall Diverger be entitled to receive both specific performance and payment of the Count Break Fee.

16. Count Exclusivity

16.1 No existing discussions

(a) Other than in relation to the discussions with Count in connection with the Proposed Transaction, Diverger represents and warrants to Count that, as at the date of this agreement it and its Related Bodies Corporate:

(i) is not a party to any agreement with a Third Party entered into for the purpose of facilitating a Diverger Competing Proposal;

(ii) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communication, with a Third Party that concern, or that could reasonably be expected to lead to, a Diverger Competing Proposal;

(iii) has ceased to provide or make available any non-public information in relation to the Diverger Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Diverger Competing Proposal; and

(iv) has requested in writing (or will do so within 5 Business Days) the return or destruction of any non-public information (with such return or destruction to be effected as soon as practicable) in relation to the Diverger Group provided to a Third Party at any time within the 12 months prior to the date of this agreement where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Diverger Competing Proposal.

(b) If requested by Count, Diverger must provide reasonable evidence that it has complied with its obligations in clause 16.1(a)(ii) in the context of terminating any existing discussions, negotiations or other communication, with a Third Party that concern, or that could reasonably be expected to lead to, a Diverger Competing Proposal.

16.2 No shop restriction

(a) During the Exclusivity Period, except with the prior written consent of Count, Diverger must not, and must ensure that none of its Related Bodies Corporate nor any of its Authorised Persons, directly or indirectly solicit, invite, encourage or initiate any Diverger Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Diverger Competing Proposal, or communicate any intention to do any of those things.

(b) Nothing in this clause 16.2 prevents Diverger from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business.

16.3 No talk restriction

Subject to clause 16.5, during the Exclusivity Period, Diverger must not, and must ensure that none of its Related Bodies Corporate nor any of its Authorised Persons (whether directly or indirectly):

(a) negotiate or enter into or participate in negotiations or discussions with any Third Party;

(b) negotiate, accept, or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding; or

(c) communicate any intention to do any of these things,

in relation to, or that may reasonably be expected to lead to, a Diverger Competing Proposal, even if:

(d) the Diverger Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Diverger or any of its Related Bodies Corporate; or

(e) that person has publicly announced the Diverger Competing Proposal.

16.4 No due diligence

(a) Subject to clause 16.5, during the Exclusivity Period, except with the prior written consent of Count, Diverger must not, and must ensure that its Related Bodies Corporate and its Authorised Persons do not, directly or indirectly:

(i) solicit, invite, initiate, or encourage, or facilitate or permit, any person (other than Count) to undertake due diligence investigations in respect of Diverger, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Diverger Competing Proposal; or

(ii) make available to any person (other than Count, a Governmental Agency and other than as required by law or the rules of any prescribed financial market (including, but not limited to, the Listing Rules)) or permit any such person to receive any material non-public information relating to Diverger, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Diverger Competing Proposal.

(b) If Diverger proposes that any non-public information be provided to a Third Party, then:

(i) before Diverger provides such information, the Third Party must enter into a confidentiality agreement which contains obligations on the recipient of that information which are no less onerous in any material respect than the obligations of Count and Diverger under the Confidentiality Deed; and

(ii) any non-public information provided to that Third Party must also be provided to Count (unless the information has already been provided to Count or an Authorised Person).

16.5 Exceptions

Clauses 16.3 and 16.4 do not prohibit or restrict any action or inaction by Diverger, any other Diverger Group Member, or any of their Authorised Persons if the Diverger Board, acting in good faith, determines:

(a) where there is a written Diverger Competing Proposal, after consultation with its financial advisers, that the Diverger Competing Proposal is, or may reasonably be expected to lead to, a Diverger Superior Proposal; and

(b) after receiving written legal advice from Diverger's external legal advisers experienced in transactions of this nature, that failing to take the action or refusing to take the action (as the case may be) in relation to the Diverger Competing Proposal would, or would be reasonably likely to, constitute a breach of the fiduciary or statutory duties of the Diverger Directors.

16.6 Notice of Diverger Competing Proposal

(a) During the Exclusivity Period, Diverger must promptly notify Count in writing of:

(i) any approach, inquiry or proposal made by any person to Diverger, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Diverger Competing Proposal; and

(ii) any request made by any person to Diverger, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Diverger, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Diverger Competing Proposal,

(**Diverger Competing Proposal Notice**).

(b) A Diverger Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):

(i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 16.6(a)(i) or who made the relevant request for information referred to in clause 16.6(a)(ii); and

(ii) the material terms and conditions (including price, form of consideration, proposed deal protection provisions, financing, conditions precedent, timetable and any break or reimbursement fee) of any Diverger Competing Proposal or any proposed Diverger Competing Proposal (to the extent known).

(c) If Diverger gives Count a Diverger Competing Proposal Notice, Count agrees that the notice will be Confidential Information of Diverger (as defined in the Confidentiality Deed).

(d) During the Exclusivity Period, Diverger must also notify Count in writing as soon as reasonably practicable after becoming aware of any material developments in relation to any actual, proposed or potential Diverger Competing Proposal, including in respect of any of the information previously notified to Count under this clause 16.6.

16.7 Diverger's response to Diverger Competing Proposal and Count's right to respond

(a) Without limiting clauses 16.1 to 16.4 (inclusive) and clause 16.6, Diverger must:

(i) not, and must procure that each member of the Diverger Group does not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which one or more of a Third Party, Diverger or a member of the Diverger Group proposes or propose to undertake, implement or give effect to a Diverger Competing Proposal (which, for the avoidance of doubt, excludes a confidentiality agreement entered into between a Diverger Group Member and a Third Party for the purpose of facilitating an actual, proposed or potential Diverger Competing Proposal, to the extent permitted under the terms of this clause 16); and

(ii) use its reasonable endeavours to ensure that no Diverger Director, in connection with a Diverger Competing Proposal, publicly:

(A) withdraws, adversely changes, adversely modifies or adversely qualifies his Recommendation;

(B) recommends or endorses the Diverger Competing Proposal; or

(C) recommends against the Proposed Transaction,

or makes any public statement to the effect that he may do so at a future point,

unless:

(iii) the Diverger Competing Proposal is a Diverger Superior Proposal; and

(iv) each of the following has occurred:

(A) Diverger has given Count written notice (**Relevant Notice**) of the Diverger Director's proposal to take the action referred to in clause 16.7(a)(i) or clause 16.7(a)(ii) (subject to Count's rights under clause 16.7(b)), including details of the grounds on which the Diverger Directors propose to take such action and the material terms and conditions (including price, form of consideration, proposed deal protection provisions, financing, conditions precedent, timetable and any break or reimbursement fee) of the Diverger Competing Proposal (to the extent known); and

(B) Count's rights under clause 16.7(b) have been exhausted.

(b) If Diverger gives a Relevant Notice to Count under clause 16.7(a)(iv)(A), Count will have the right, but not the obligation, at any time during the 4 Business Days following the receipt of the Relevant Notice, to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the Diverger Directors must promptly review the Counter Proposal in good faith. If the Diverger Directors determine, after consultation with Diverger's financial advisers and reputable external Australian legal advisers specialising in the area of corporate law, that the Counter Proposal would be more favourable, or at least no less favourable, to Diverger and the Diverger Shareholders as a whole than the Diverger Competing Proposal (such determination to be made by the Diverger Board within 4 Business Days of receipt of the Counter Proposal), then Diverger must promptly notify Count of the determination in writing and Diverger and Count must use their best endeavours to agree the amendments to this agreement (and any other transaction documents required) and the contents of the Explanatory Booklet that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement (and any other transaction documents required) to give effect to those amendments and to implement the Counter Proposal, and Diverger must use its best endeavours to procure that the Diverger Directors recommend the Counter Proposal to the Diverger Shareholders and not recommend the applicable Diverger Competing Proposal, in each case, as soon as reasonably practicable.

(c) If the Diverger Board determines that a Counter Proposal is not superior to the Diverger Competing Proposal, then:

(i) Diverger must promptly, and in any event within 72 hours, notify Count of the determination in writing; and

(ii) Diverger must not do any of the things referred to in clause 16.7(a)(i), and must use its reasonable endeavours to ensure that the Diverger Board does not do any of the things referred to in clause 16.7(a)(ii), before it has notified Count of the Diverger Board's determination under clause 16.7(c)(i).

(d) For the purposes of this clause 16.7, each successive material modification of any Third Party expression of interest, offer or proposal in relation to a Diverger Competing Proposal will constitute a new Diverger Competing Proposal.

17. Diverger Exclusivity

17.1 No existing discussions

(a) Other than in relation to the discussions with Diverger in connection with the Proposed Transaction, Count represents and warrants to Diverger that, as at the date of this agreement it and its Related Bodies Corporate:

(i) is not a party to any agreement with a Third Party entered into for the purpose of facilitating a Count Competing Proposal;

(ii) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communication, with a Third Party that concern, or that could reasonably be expected to lead to, a Count Competing Proposal;

(iii) has ceased to provide or make available any non-public information in relation to the Count Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Count Competing Proposal; and

(iv) has requested in writing (or will do so within 5 Business Days) the return or destruction of any non-public information (with such return or destruction to be effected as soon as practicable) in relation to the Count Group provided to a Third Party at any time within the 12 months prior to the date of this agreement where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Count Competing Proposal.

(b) If requested by Diverger, Count must provide reasonable evidence that it has complied with its obligations in clause 17.1(a)(ii) in the context of terminating any existing discussions, negotiations or other communication, with a Third Party that concern, or that could reasonably be expected to lead to, a Count Competing Proposal.

17.2 No shop restriction

(a) During the Exclusivity Period, except with the prior written consent of Diverger, Count must not, and must ensure that none of its Related Bodies Corporate nor any of its Authorised Persons, directly or indirectly solicit, invite, encourage or initiate any Count Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Count Competing Proposal, or communicate any intention to do any of those things.

(b) Nothing in this clause 17.2 prevents Count from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business.

17.3 No talk restriction

Subject to clause 17.5, during the Exclusivity Period, Count must not, and must ensure that none of its Related Bodies Corporate nor any of its Authorised Persons, (whether directly or indirectly):

(a) negotiate or enter into or participate in negotiations or discussions with any Third Party;

(b) negotiate, accept, or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding; or

(c) communicate any intention to do any of these things,

in relation to, or that may reasonably be expected to lead to, a Count Competing Proposal, even if:

(d) the Count Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Count or any of its Related Bodies Corporate; or

(e) that person has publicly announced the Count Competing Proposal.

17.4 No due diligence

(a) Subject to clause 17.5, during the Exclusivity Period, except with the prior written consent of Diverger, Count must not, and must ensure that its Related Bodies Corporate and its respective Authorised Persons do not, directly or indirectly:

(i) solicit, invite, initiate, or encourage, or facilitate or permit, any person (other than Diverger) to undertake due diligence investigations in respect of Count, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Count Competing Proposal; or

(ii) make available to any person (other than Count, a Governmental Agency and other than as required by law or the rules of any prescribed financial market (including, but not limited to, the Listing Rules)) or permit any such person to receive any material non-public information relating to Count, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Count Competing Proposal.

(b) If Count proposes that any non-public information be provided to a Third Party, then:

(i) before Count provides such information, the Third Party must enter into a confidentiality agreement which contains obligations on the recipient of that information which are no less onerous in any material respect than the obligations of Count and Diverger under the Confidentiality Deed; and

(ii) any non-public information provided to that Third Party must also be provided to Diverger (unless the information has already been provided to Diverger or an Authorised Person).

17.5 Exceptions

Clauses 17.3 and 17.4 do not prohibit or restrict any action or inaction by Count, any other Count Group Member, or any of their Authorised Persons if the Count Board, acting in good faith, determines, after receiving written legal advice from Count's external legal advisers experienced in transactions of this nature, that failing to take the action or refusing to take the action (as the case may be) in relation to the Count Competing Proposal would, or would be reasonably likely to, constitute a breach of the fiduciary or statutory duties of the Count Directors.

17.6 Notice of Count Competing Proposal

(a) During the Exclusivity Period, Count must promptly notify Diverger in writing of:

(i) any approach, inquiry or proposal made by any person to Count, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Count Competing Proposal; and

(ii) any request made by any person to Count, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Count, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Count Competing Proposal,

(**Count Competing Proposal Notice**).

(b) A Count Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):

(i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 17.6(a)(i) or who made the relevant request for information referred to in clause 17.6(a)(ii); and

(ii) the material terms and conditions (including price, form of consideration, proposed deal protection provisions, financing, conditions precedent, timetable and any break or reimbursement fee) of any Count Competing Proposal or any proposed Count Competing Proposal (to the extent known).

(c) If Count gives Diverger a Count Competing Proposal Notice, Diverger agrees that the notice will be Confidential Information of Count (as defined in the Confidentiality Deed).

(d) During the Exclusivity Period, Count must also notify Diverger in writing as soon as reasonably practicable after becoming aware of any material developments in relation to any actual, proposed or potential Count Competing Proposal, including in respect of any of the information previously notified to Diverger under this clause 17.6.

17.7 No termination right

(a) For the avoidance of doubt, Count is not entitled to terminate this document in order to pursue, agree or implement a Count Competing Proposal.

(b) If Count breaches this document in a manner which causes implementation of the Scheme to become impossible or impracticable, or otherwise materially breaches this document in order to pursue, agree or implement a Count Competing Proposal, Count must pay to Diverger the Liquidated Damages Amount by way of liquidated damages, even if Count's Board determined that the breach was required in order to fulfil the fiduciary or statutory duties of the directors of Count. The parties acknowledge and agree that the loss which would be incurred by Diverger as a result of that breach are of a nature that cannot be accurately quantified and that the Liquidated Damages Amount is a genuine pre-estimate of that loss. The parties further acknowledge and agree that the payment of the Liquidated Damages Amount by Count represents the sole and exclusive liability of any member of the Count Group and any of its Authorised Persons in connection with such breach.

(c) Nothing in this clause 17.7 limits Diverger's right to terminate this agreement under clause 13 which might arise as a result of any breach to which this clause 17.7 relates.

18. Modification of Diverger Break Fee, Count Break Fee or exclusivity arrangements

18.1 Modifications following regulatory intervention

If any of the following occurs:

(a) a Governmental Agency finds that all or any part of the payment required to be made under clause 14 or 15 or an exclusivity arrangement under clause 16 or 17 is unacceptable or unenforceable, is a breach of the fiduciary or statutory duties of the Diverger Board or the Count Board (as applicable) or a breach of applicable law for any other reason; or

(b) as a result of an application to the Takeovers Panel by a Third Party, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Diverger Break Fee or the Count Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clauses 16 or 17, it will make a declaration of unacceptable circumstances,

then, subject to clause 18.2:

(c) the parties must amend clauses 14, 15, 16 and/or 17 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 18.1(b)) must give the required undertaking(s); and

(d) neither the occurrence of any of the events referred to in clause 18.1(a) or 18.1(b) nor the amendment of clauses 14, 15, 16 and/or 17 will be taken to be a breach of, or permit any party to terminate, this agreement.

18.2 No requirement to act unless decision final

The parties are only required to take steps under 18.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

(a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or

(b) Count and Diverger agree in writing not to appeal or seek review of the decision to impose that requirement.

18.3 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clause 18.1(a) or clause 18.1(b). If either Count and Diverger wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

18.4 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the Diverger Break Fee or the Count Break Fee is unacceptable, unenforceable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Diverger Board or the Count Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

(a) the obligation of Diverger or Count (as applicable) to pay the Diverger Break Fee or the Count Break Fee (as applicable) does not apply to the extent of the Impugned Amount; and

(b) if Count or Diverger (as applicable) has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

19. Withholding tax

(a) If Count is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)) or by any Governmental Agency in respect of the acquisition of Scheme Shares from the Scheme Shareholders, Count (subject to clauses 19(b) and 19(c)):

(i) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Governmental Agency under applicable law; and

(ii) will not be required to pay any additional amount and will be deemed for all purposes to have paid the full amount of the Scheme Consideration (or other payment) required under this agreement.

(b) Count acknowledges and agrees that it will not withhold or deduct any Subdivision 14-D amounts under clause 19(a) with respect to a Scheme Shareholder where:

(i) a Scheme Shareholder holds less than a 10% of the issued shares of Diverger (on an Associate inclusive basis); or

(ii) Count has no knowledge or reasonable belief that a particular Scheme Shareholder is a foreign resident; or

(iii) Count receives a declaration in accordance with the requirements of section 14-225 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) that covers, at least, the period between (and including) the date of this agreement and the Implementation Date (**Scheme Shareholder Declaration**) from the Scheme Shareholder prior to the Implementation Date and does not know the Scheme Shareholder Declaration to be false.

(c) Where:

(i) Count either:

(A) knows that a particular Scheme Shareholder is not, or reasonably believes that a particular Scheme Shareholder is not, an Australian resident; or

(B) does not reasonably believe that a particular Scheme Shareholder is an Australian resident and either has an address outside of Australia or directs Count to pay some or all of the Scheme Consideration to a place outside of Australia; and

(ii) that Scheme Shareholder holds more than 10% of the issued shares of Diverger (on an Associate inclusive basis),

Count can withhold in accordance with clause 19(a) if required to do so.

(d) Diverger agrees that Count 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 Count reasonably requires in making any such approach. Count agrees:

(i) to provide Diverger a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office; and

(ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D to the Scheme without Diverger's prior written consent, such consent not to be unreasonably withheld.

(e) 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(b). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this agreement, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.

20. Notices

Any communication under or in connection with this agreement:

(a) must be in writing;

(b) must be sent to the address for service of the addressee specified in the Details;

(c) must be signed by the party making the communication or by a person duly authorised by that party;

(d) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with the Details; and

(e) will be deemed to be received by the addressee:

(i) (**in the case of prepaid post**) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;

(ii) (**in the case of delivery by hand**) on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and

(iii) (**in the case of email**) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

21. General

21.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

21.2 Payments

Unless otherwise provided in this agreement, where an amount is required to be paid to a party (**Receiving Party**) by another party under this agreement, that amount shall be paid:

(a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and

(b) without deduction, withholding or set-off.

21.3 Interest

(a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.

(b) The interest payable under clause 21.3(a):

(i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and

(ii) may be capitalised by the person to whom it is payable at monthly intervals.

21.4 GST

(a) Any reference in this clause 21.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.

(c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 21.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 21.4(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.

(d) The amount on account of GST payable in accordance with this clause 21.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

(e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

21.5 Stamp duty

Count must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement or the Scheme or the steps to be taken under this agreement or the Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Scheme).

21.6 Expenses

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement and the Explanatory Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.

21.7 Amendments

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

21.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

21.9 Business Day

Except where otherwise expressly provided, where under this agreement the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

21.10 Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement 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 agreement.

(b) Any waiver or consent given by any party under this agreement will only be 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 agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.

(d) Nothing in this agreement obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.

21.11 Counterparts

(a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.

(b) This agreement is binding on the parties on the exchange of duly executed counterparts.

(c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 20, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

21.12 Electronic execution

Each party consents to the signing of this agreement by electronic means. The parties agree to be legally bound by this agreement signed in this way.

21.13 Electronic exchange of documents

In relation to the electronic exchange of documents:

(a) parties may exchange executed counterparts of this document, or any other document required to be executed under this document, by delivery from one party to the other party by emailing a pdf (portable document format) copy of the executed counterpart to that other party (**Electronic Delivery**); and

(b) Electronic Delivery of an executed counterpart will be deemed effective delivery of the original executed counterpart, from the date and time of receipt by the other party.

21.14 Entire agreement

(a) This agreement, the Confidentiality Deed and any other documents specified by the parties for the purpose of this clause 21.14:

(i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and

(ii) supersedes any prior agreement (whether or not in writing) between the parties.

(b) Despite clause 21.14(a), the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.

21.15 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 agreement, except for representations or inducements set out in this agreement.

(b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement set out in this agreement.

21.16 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

21.17 Governing law

(a) This agreement is governed by and will be construed according to the laws of New South Wales, Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and of the courts competent to determine appeals from those courts.

Schedule 1 - Timetable

[Not reproduced here. Refer to ASX announcement dated 22 September 2023 for indicative timing. Await Explanatory Booklet for updated indicative timing]

Schedule 2 - Deed Poll

[Not reproduced here. Await Explanatory Booklet]

Schedule 3 - Scheme

[Not reproduced here. Await Explanatory Booklet]

Signing page

EXECUTED as an agreement.

Executed by **Diverger Limited** ACN 111 695 357 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/~~company~~ secretary
(Please delete as applicable)

Peter Brook

Name of director (print)

Nathan Jacobsen

Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by **Count Limited** ACN 126 990 832 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

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Signing page

EXECUTED as an agreement.

Executed by **Diverger Limited** ACN 111 695 357 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director	Signature of director/company secretary (Please delete as applicable)
Name of director (print)	Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by **Count Limited** ACN 126 990 832 in accordance with Section 127 of the *Corporations Act 2001*

DocuSigned by: 1098C87B55CC472... Signature of director	DocuSigned by: Doug Richardson A91E3135BDBC478... Signature of director/company secretary (Please delete as applicable)
Hugh Humphrey	Doug Richardson
Name of director (print)	Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.