



## CUP ASX ANNOUNCEMENT

### Amended Scheme Implementation Agreement for the Diverger Acquisition

17 November 2023

Count Limited (**ASX: CUP**) (**Count** or **the Company**) today announces the following amendments to the binding Scheme Implementation Agreement (**SIA**) with Diverger Limited (**ASX: DVR**) (**Diverger**) dated 22 September 2023 under which Count proposes to acquire 100% of the issued shares in Diverger by way of a board-recommended scheme of arrangement (**Scheme** or **Transaction**).

Count and Diverger have agreed that the standard consideration to Diverger shareholders will be increased to:

- \$0.400 in cash per Diverger ordinary share (reduced to the extent of any Permitted Dividend as set out below)<sup>1</sup>; and
- 1.44 newly issued ordinary shares in Count per Diverger ordinary share.

As an alternative to the standard consideration, Diverger shareholders will be offered the choice of receiving alternative consideration of either \$1.20 per Diverger ordinary share in cash (reduced to the extent of any Permitted Dividend)<sup>1</sup> or 2.16 Count ordinary shares per Diverger ordinary share (reduced to the extent of any Permitted Dividend), 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 \$15.9 million (to be reduced by the total amount of any Permitted Dividend)<sup>1</sup> and the number of new Count ordinary shares issued at 57.3 million.

---

<sup>1</sup> For example, if a Permitted Dividend of \$0.100 per Diverger ordinary share was declared and paid, the \$0.400 cash per Diverger ordinary share would become \$0.300 with the maximum cash alternative of \$1.20 being reduced to \$1.100. The total amount of cash consideration to be paid to Diverger shareholders would also be reduced from \$15.9 million to \$11.9m by the \$4.0m total amount of the Permitted Dividend.



As part of the Scheme consideration and under the amendments to the SIA, Diverger may (subject to the Scheme becoming effective and there being sufficient franking credits available) declare a fully franked special dividend of up to \$0.10 per ordinary share (**Permitted Dividend**) (including up to \$0.04 per share in franking credits to Diverger shareholders) to be paid on the implementation date of the Scheme, equivalent to approximately \$4 million if declared and paid in full.<sup>2</sup>

This updated scheme standard consideration and maximum Permitted Special Dividend (to the extent it is declared and paid) implies a total value of \$1.365 per Diverger ordinary share<sup>3</sup> based on the last closing share price of Count as at 16 November 2023 of \$0.67.

Based on the undisturbed Diverger share price as at 21 September 2023 prior to announcement of the Transaction, this represents a 52% premium to Diverger's one month VWAP of \$0.90 and a 57% premium to Diverger's three month VWAP of \$0.87.

The Transaction continues to be unanimously recommended by the Board of Directors of Diverger, in the absence of a superior proposal and subject to the independent expert engaged by Diverger concluding (and continuing to conclude) that the Scheme is in the best interests of Diverger shareholders. Diverger's major shareholder, HUB24 Limited which currently holds approximately 34.4% of Diverger's ordinary shares, has reconfirmed their 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. In addition, Harvest Lane Asset Management (5.7% holder of Diverger shares) and Kevin White (4.8% holder of Diverger shares) (and his associated entities) have also confirmed to Diverger that they intend to vote all of the Diverger shares they hold or control in favour of the Scheme, subject to the same qualifications.

---

<sup>2</sup> Based on the expected fully diluted Diverger share capital at implementation of the Scheme. It remains at the discretion of the Diverger board whether the Permitted Special Dividend is ultimately declared and paid.

<sup>3</sup> Excludes the potential benefit from franking credits which will depend on their individual tax circumstances for each Diverger shareholder.



Count Chief Executive Officer Hugh Humphrey said "We remain excited by the opportunity to create the leading integrated accounting and wealth management business through an acquisition of Diverger by Count given our shared core beliefs and strong cultural fit."

Based on the updated scheme consideration, the Transaction is expected to unlock significant value for shareholders, be EPS accretive after completion and around 25% EPS accretive after realisation of the expected full \$3m in run-rate cost synergies (excluding revenue synergies and one-off transaction and integration costs). The combined entity will also be better positioned to lead further industry consolidation and inorganic growth opportunities.

All other terms of the SIA remain unchanged except as otherwise noted above. The Scheme remains subject to customary conditions and approvals including Court, regulatory and Diverger shareholder approval. The Transaction remains on track to close in 1H CY24 following satisfaction of these conditions.

The SIA has been amended to reflect the increased scheme consideration and a copy of the amending deed is attached to this announcement.

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

---

**For further information please contact:**

**Hugh Humphrey**

Chief Executive Officer

**T** 02 8218 8778

**E** [hugh.humphrey@count.au](mailto:hugh.humphrey@count.au)

**Ray Kellerman**

Chairman

**T** 02 8218 8778

**E** [ray.kellerman@count.au](mailto:ray.kellerman@count.au)

[www.count.au](http://www.count.au)



---

## **Amending Deed**

**Diverger Limited**

**Count Limited**

---

Baker & McKenzie  
ABN 32 266 778 912  
Level 19  
181 William Street  
Melbourne VIC 3000  
Australia  
[www.bakermckenzie.com](http://www.bakermckenzie.com)

**Title**                    **Amending Deed**

**Date**                    17 November 2023

**Parties**                **Diverger Limited** (ACN 111 695 357) of Level 7, 115 Pitt Street, Sydney NSW 2000 (**Diverger**)

**Count Limited** (ACN 126 990 832) of Level 8, 1 Chifley Square, Sydney NSW 2000 (**Count**)

## Recitals

- A     Diverger and Count are parties to the Scheme Implementation Agreement.
- B     Clause 21.7 of the Scheme Implementation Agreement provides that the Scheme Implementation Agreement may only be varied by a document signed by or on behalf of each of the parties to that agreement.
- C     Diverger and Count wish to amend the Scheme Implementation Agreement and Scheme in the manner set out in this deed.
- D     This deed is supplemental to the Scheme Implementation Agreement.

## Operative provisions

---

### 1.     **Definitions and Interpretation**

- 1.1     In this deed, unless otherwise defined below, terms defined in the Scheme Implementation Agreement have the same meaning when used in this deed:

**Scheme Implementation Agreement** means the scheme implementation agreement between Diverger and Count dated 22 September 2023.

- 1.2     The rules specified in clauses 1.2 to 1.4 of the Scheme Implementation Agreement apply in interpreting this deed as if set out in full in this deed (with such changes as are necessary).
- 

### 2.     **Amendments to Scheme Implementation Agreement and Scheme**

#### **Amendments**

- 2.1     The parties acknowledge and agree that, on and with effect from the date of this deed, the Scheme Implementation Agreement and the Scheme are each amended by:
- (a)     deleting the definition of "Cash Consideration" and replacing it with the following:  
  
*"Cash Consideration means the amount of \$0.40 for each Scheme Share held by a Scheme Shareholder less the amount of any Permitted Dividend (on a per Diverger Share basis)."*;
  - (b)     deleting the definition of "Cash Consideration Cap" and replacing it with the following:

**"Cash Consideration Cap** means \$15,907,873 in aggregate less the amount of any Permitted Dividend (on an aggregate basis), which excludes any payments made to Ineligible Shareholders.";

- (c) deleting the definition of "Maximum Cash Consideration " and replacing it with the following:

**"Maximum Cash Consideration** means the amount of \$1.20 for each Scheme Share held by a Scheme Shareholder less the amount of any Permitted Dividend (on a per Diverger Share basis), subject to the Cash Consideration Cap.";

- (d) deleting the definition of "Maximum Scrip Consideration " and replacing it with the following:

**"Maximum Scrip Consideration** means the number of Count Consideration Shares for each Scheme Share, calculated in accordance with the following formula:

$$1.44 \times \left( \frac{1.2 \text{ less the amount (expressed as a dollar decimal amount) of any Permitted Dividend (on a per Diverger Share basis)}}{0.8} \right)$$

subject to the Scrip Consideration Cap. For the avoidance of doubt, this equates to 2.16 Count Consideration Shares for each Scheme Share if there is no Permitted Dividend.";

- (e) in the definition of "Scheme Consideration", replacing all references to:

(i) "1.38" with "1.44";

(ii) "2.07" with

$$"1.44 \times \left( \frac{1.2 \text{ less the amount (expressed as a dollar decimal amount) of any Permitted Dividend (on a per Diverger Share basis)}}{0.8} \right)"$$

(iii) "0.367" with "0.40 less the amount of any Permitted Dividend (on a per Diverger Share basis, expressed as a dollar decimal amount)"; and

(iv) "1.10" with "1.20 less the amount of any Permitted Dividend (on a per Diverger Share basis, expressed as a dollar decimal amount)";

- (f) deleting the definition of "Scrip Consideration Cap" and replacing it with the following:

**"Scrip Consideration Cap** means 57,268,344 Count Shares in aggregate."; and

- (g) deleting the definition of "Scrip Consideration Ratio" and replacing it with the following.

**"Scrip Consideration Ratio** means 1.44 Count Consideration Shares per Scheme Share."

2.2 The parties further acknowledge and agree that, on and with effect from the date of this deed, the Scheme Implementation Agreement is amended as follows:

- (a) deleting the definition of "Diverger Interim Dividend" in clause 1.1 of the Scheme Implementation Agreement and replacing it with the following:

*" Diverger Interim Dividend means a cash only interim dividend declared or paid by Diverger for the period ending 31 December 2023 in an amount not exceeding \$0.02 per Diverger Share.";*

- (b) in the definition of "Diverger Prescribed Occurrences" in clause 1.1 of the Scheme Implementation Agreement, replacing paragraph (f) with the following:

*"other than in relation to the Diverger Interim Dividend and the Permitted 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)";*

- (c) adding to clause 1.1 of the Scheme Implementation Agreement in alphabetical order the following definition of "Permitted Dividend":

*"Permitted Dividend means any cash only fully franked special dividend of up to \$0.10 per Diverger Share, that may be declared by the Diverger Board and paid by Diverger in accordance with, and in satisfaction with the requirements of, clause 7.5."*

- (d) inserting a new clause 7.5 immediately after clause 7.4:

**"7.5 Payment of Permitted Dividend, Diverger Interim Dividend and internal payments**

- (a) *Despite any other provision of this agreement, Diverger may in, its sole discretion, declare and pay the Permitted Dividend or the Diverger Interim Dividend (or both) to Diverger Shareholders, provided that:*

- (i) *there cannot be more than one Permitted Dividend or Diverger Interim Dividend;*
- (ii) *the Permitted Dividend is declared (subject to the Scheme becoming Effective and there being sufficient franking credits and Diverger funding from existing cash or debt facilities available) on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for that dividend is at least 2 clear days before the Scheme Record Date;*
- (iii) *the payment date for the Permitted Dividend will be the Implementation Date (or such other date as Diverger and Count agree in writing);*
- (iv) *the Permitted Dividend and the Diverger Interim Dividend must be fully franked, and the franking account of Diverger must not be in deficit after the payment of the Permitted Dividend and the Diverger Interim Dividend;*
- (v) *Diverger does not make any variation to the PAYG instalment rate of Diverger without the prior written approval of Count. Such a request for approval by Diverger must include the calculations (and supporting workpapers) of Diverger's instalment income, and varied instalment rate (if applicable);*
- (vi) *the Permitted Dividend and the Diverger Interim Dividend must be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of Diverger existing immediately prior to the declaration of that dividend; and*
- (vii) *payment of the Permitted Dividend and the Diverger Interim Dividend must comply with the Corporations Act.*

- (b) *Despite any other provision of this agreement, Diverger may make any intra group distributions and payments between members of the Diverger Group, in order to be able to declare and pay the Permitted Dividend and the Diverger Interim Dividend in accordance with clause 7.5(a), provided that such distributions or payments do not result in any deficit in the franking account of any member of the Diverger Group and is otherwise in accordance with the Corporations Act.*
- (c) *The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 7.5(a), the Cash Consideration and the Cash Consideration Cap will be reduced by the amount of the Permitted Dividend (disregarding and excluding the value attributed to any franking credits attached to any such Permitted Dividend). In addition, the Count Consideration Shares under any Maximum Scrip Consideration will be reduced in accordance with the formula in the definition of "Maximum Scrip Consideration" in clause 1.1.*
- (d) *The parties acknowledge and agree that if the Diverger Interim Dividend is declared in accordance with clause 7.5(a), the Cash Consideration and the Cash Consideration Cap will not be reduced by the amount of the Diverger Interim Dividend.*

*The provisions of this clause 7.5 do not prevent the declaration, determination or payment of a dividend by Diverger if this agreement is terminated."*

## **References**

- 2.3 On and from the date of this deed, any reference in any document (other than this deed) to the Scheme Implementation Agreement or Scheme is a reference to the Scheme Implementation Agreement or Scheme as amended under clauses 2.1 and 2.2.

---

## **3. Confirmation of Scheme Implementation Agreement**

### **Effect**

- 3.1 Clauses 2.1 and 2.2 of this deed are intended only to amend the relevant provisions of the Scheme Implementation Agreement and Scheme and not to terminate, discharge, rescind or replace the Scheme Implementation Agreement. Except as amended under clauses 2.1 and 2.2, the Scheme Implementation Agreement continues in full force and effect.

### **Continuing liabilities and obligations**

- 3.2 Nothing in this deed:
  - (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Scheme Implementation Agreement before the date of this deed; or
  - (b) discharges, releases or otherwise affects the liability or obligation arising under the Scheme Implementation Agreement before the date of this deed.

---

## **4. General provisions**

### **Notices**

- 4.1 Any notice or other communication to or by a party to this deed must be provided in accordance with clause 20 of the Scheme Implementation Agreement.



### **Amendment**

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

### **Counterparts**

4.3 This deed 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 deed.

4.4 This deed is binding on the parties on the exchange of duly executed counterparts.

4.5 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 of the Scheme Implementation Agreement, 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.

### **Electronic execution**

4.6 Each party consents to the signing of this deed by electronic means. The parties agree to be legally bound by this deed signed in this way.

### **Costs**

4.7 Each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and transactions contemplated by this deed.

### **Governing law**

4.8 This deed is governed by and will be construed according to the laws of New South Wales, Australia.

4.9 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.


### **Deed is supplemental**

4.10 This deed is supplemental to the Scheme Implementation Agreement.

## Execution

Executed as a deed.


**Executed by**  
**Diverger Limited ACN 111 695 357**  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by a director  
and secretary/director:

DocuSigned by:  
  
F53A9A3BAD3A1B5...

Signature of director

Peter Brook

Name of director (please print)

DocuSigned by:  
  
B56BC053CAFA1AE...

Signature of secretary/director

Nathan Jacobsen

Name of secretary/director (please 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 2001 (Cth). 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* (Cth) by a director  
and secretary/director:

Signature of director

Hugh Humphrey

Name of director (please print)

Signature of secretary

Doug Richardson

Name of secretary/director (please 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 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*

## Execution

**Executed** as a deed.

**Executed by**  
**Diverger Limited ACN 111 695 357**  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by a director  
and secretary/director:

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

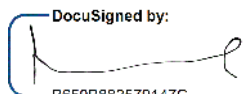
\_\_\_\_\_  
Signature of secretary/director

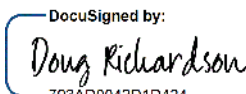
\_\_\_\_\_  
Name of director (please print)

\_\_\_\_\_  
Name of secretary/director (please 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 2001 (Cth). 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* (Cth) by a director  
and secretary/director:

DocuSigned by:  
  
B659B882579147C...  
\_\_\_\_\_  
Signature of director

DocuSigned by:  
  
793AD0042D1D424...  
\_\_\_\_\_  
Signature of secretary

Hugh Humphrey

Doug Richardson

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

\_\_\_\_\_  
Name of secretary/director (please 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 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*