

## Scheme Implementation Deed

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Commonwealth Bank of Australia

Count Financial Limited

tony.damian@freehills.com

**Freehills**

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### **Indicative Timetable**

#### **Scheme of arrangement**

#### **Deed poll**

#### **Option scheme of arrangement**

#### **Option deed poll**

#### **Public announcements**

# The Deed

## Scheme Implementation Deed

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Date ► 30 August 2011

Between the parties

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Commonwealth  
Bank

**Commonwealth Bank of Australia** (ABN 48 123 123 124)  
Ground Level, Tower 1, 201 Sussex Street, Sydney NSW 2000  
**(Commonwealth Bank)**

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Count

**Count Financial Limited** (ABN 19 001 974 625)  
of Gold Fields House, Level 19, 1 Alfred Street, Sydney NSW 2000  
**(Count)**

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Background

- 1 The parties have agreed that Capital 121 will acquire all of the ordinary shares in Count by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Count and Scheme Shareholders.
  - 2 The parties have agreed to implement the scheme of arrangement on the terms of this Deed.
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The parties agree

as set out in the Operative part of this Deed, in consideration of, among other things, the mutual promises contained in this Deed.

## Operative part

### 1 Definitions and interpretation

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#### 1.1 Definitions

The meanings of the terms used in this Deed are set out below.

Term	Meaning
<b>ACCC</b>	the Australian Competition and Consumer Commission.
<b>AIFRS</b>	the International Financial Reporting Standards as adopted in Australia.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act.
<b>ASX</b>	ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.
<b>Business Day</b>	a day in Sydney that is not a Saturday, Sunday or public holiday and on which banks and ASX are open for trading.
<b>Capital 121</b>	Capital 121 Pty Limited (ACN 003 148 187), a wholly owned subsidiary of Commonwealth Bank.
<b>Cash Consideration</b>	A\$1.40 cash for each Scheme Share held by a Scheme Shareholder receiving Cash Consideration in accordance with clauses 4.5 and 4.6 and the terms of the Scheme.
<b>Commonwealth Bank Constitution</b>	the constitution, as amended from time to time, of Commonwealth Bank.
<b>Commonwealth Bank Group</b>	Commonwealth Bank and each of its subsidiaries and a reference to a 'Commonwealth Bank Group Member' or a 'member of the Commonwealth Bank Group' is to Commonwealth Bank or any of its subsidiaries.
<b>Commonwealth Bank Indemnified Parties</b>	Commonwealth Bank, its subsidiaries, and all of their respective directors, officers and employees.

Term	Meaning
<b>Commonwealth Bank Information</b>	information regarding the Commonwealth Bank Group, and the merged Count-Commonwealth Bank entity following implementation of the Scheme, provided by Commonwealth Bank to Count in writing for inclusion in the Scheme Booklet.
<b>Commonwealth Bank Insolvency Event</b>	<p>the occurrence of any of the following between the date of this Deed and 8.00am on the Second Court Date:</p> <ol style="list-style-type: none"> <li>1 Commonwealth Bank resolving that it be wound up or the making of an order for the winding up or dissolution of Commonwealth Bank other than where the order is set aside within 14 days;</li> <li>2 an insolvency official being appointed to Commonwealth Bank;</li> <li>3 a court making an order for the winding up of Commonwealth Bank;</li> <li>4 Commonwealth Bank ceases, or threatens to cease to, carry on substantially all the business conducted by the Commonwealth Bank Group as at the date of this Deed;</li> <li>5 Commonwealth Bank is or becomes unable to pay its debts when they fall due within the meaning of legislation of its place of incorporation;</li> <li>6 Commonwealth Bank executing a deed of company arrangement; or</li> <li>7 Commonwealth Bank being deregistered as a company or otherwise dissolved.</li> </ol>
<b>Commonwealth Bank Registry</b>	Link Market Services Ltd (ABN 54 083 214 537).
<b>Commonwealth Bank Representations and Warranties</b>	the representations and warranties of Commonwealth Bank set out in Schedule 1.
<b>Commonwealth Bank Shares</b>	fully paid ordinary shares in the capital of Commonwealth Bank.
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction, which, if entered into or completed, would mean a Third Party (either alone or together with any Associate) would:</p> <ol style="list-style-type: none"> <li>1 directly or indirectly acquire a Relevant Interest in, or have the right to acquire, a legal, beneficial or economic interest in, or control of, more than 10% of the Count Shares;</li> <li>2 acquire Control of Count;</li> <li>3 otherwise acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an exclusive economic interest in all or a material part of Count's business or assets or the business or assets of the Count Group;</li> <li>4 otherwise acquire (whether directly or indirectly) or merge with</li> </ol>

Term	Meaning
	<p>Count; or</p> <p>5 enter into any agreement, arrangement or understanding requiring Count to abandon, or otherwise fail to proceed with, the Transaction,</p> <p>whether by way of takeover bid, scheme of arrangement, securityholder approved acquisition, capital reduction or buy back, sale or purchase of shares, securities or assets, global assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), or other transaction or arrangement.</p>
<b>Confidentiality Agreement</b>	the Confidentiality Agreement between Commonwealth Bank and Count dated 23 August 2011.
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Count Board</b>	the Count board of directors.
<b>Count Consolidated Tax Group</b>	the consolidated group of which Count is the head company (where “consolidated group” and “head company” have the same meaning in the Tax Act).
<b>Count Group</b>	Count and each of its subsidiaries and a reference to a ‘Count Group Member’ or a ‘member of the Count Group’ is to Count or any of its subsidiaries.
<b>Count Group Net Tangible Assets</b>	<p>the consolidated net tangible assets of the Count Group, taken as a whole from its audited accounts, as at 30 June 2011, calculated according to AIFRS but adjusted by:</p> <ol style="list-style-type: none"> <li>1 valuing the Listed Investments at \$100,692,626 in total (being the aggregated daily volume weighted average price of the Listed Investments traded on ASX during the 30 day period immediately prior to the date of this Deed); and</li> <li>2 excluding the aggregate amount payable by Count in respect of the Permitted Dividend.</li> </ol>
<b>Count Indemnified Parties</b>	Count, its subsidiaries and all of their respective directors, officers and employees.



Term	Meaning
<b>Count Information</b>	information regarding the Count Group provided by Count for inclusion in the Scheme Booklet (which for the avoidance of doubt does not include the Commonwealth Bank Information or the Independent Expert's Report or an investigating accountants report).
<b>Count Insolvency Event</b>	<p>in relation to a person means:</p> <ol style="list-style-type: none"> <li>1 a member of the corporate group to which that person belongs resolving that it be wound up or the making of an application or order for the winding up or dissolution of that member other than where the application or order (as the case may be) is set aside within 14 days;</li> <li>2 a liquidator or provisional liquidator of a member of the relevant corporate group to which that person belongs being appointed;</li> <li>3 a court making an order for the winding up of a member of the relevant corporate group to which that person belongs;</li> <li>4 an administrator of a member of the relevant corporate group to which that person belongs being appointed under the Corporations Act;</li> <li>5 a member of the relevant corporate group to which that person belongs 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 unless that member has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;</li> <li>6 a member of the relevant corporate group to which that person belongs executing a deed of company arrangement; or</li> <li>7 a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the relevant corporate group to which that person belongs.</li> </ol>
<b>Count Loan Funded Share Plan</b>	the Count Loan Funded Share Plan, dated 25 July 2011.
<b>Count Material Adverse Change</b>	<p>one or more changes, events, occurrences, facts or matters (including for the avoidance of doubt any actions of Government Agencies) which, whether individually or when aggregated with all such changes, events, occurrences or matters of a like kind, has had or could reasonably be expected to have:</p> <ol style="list-style-type: none"> <li>1 the effect of a diminution in the Count Group Net Tangible Assets of at least A\$20 million;</li> <li>2 the effect of a diminution in the consolidated underlying annual net profit after tax (calculated on the basis of AIFRS after excluding the earnings impact of the Listed Investments) of the Count Group in any financial year, taken as a whole, of at least A\$3 million;</li> <li>3 the result of at least 15% of the Top Tier Financial Advisors terminating, or issuing a notice of termination of, their franchisee relationship with the Count Group; or</li> <li>4 the result that the Count Group is unable to carry on its business in</li> </ol>

Term	Meaning
	<p>substantially the same manner as it is currently carried on, other than those changes, events, occurrences or matters:</p> <ol style="list-style-type: none"> <li>required or permitted by this Deed, the Scheme, the Option Scheme or transactions contemplated by them;</li> <li>which took place with the written consent of Commonwealth Bank; and</li> <li>which was fairly disclosed by Count in an announcement made to ASX or a document lodged with ASIC prior to entry into this Deed.</li> </ol>
<b>Count Option</b>	an option issued pursuant to the Count Option Plan to acquire one unissued Count Share.
<b>Count Optionholder</b>	each person who is registered as the holder of a Count Option.
<b>Count Option Plan</b>	the Count Employee Share Option Plan, dated 24 October 2000 and amended 25 September 2006, Franchisee Incentive Option Plan, dated 24 October 2000 and amended 24 October 2007.
<b>Count Prescribed Occurrence</b>	<p>the occurrence of any of the following between the date of this Deed and 8.00am on the Second Court Date:</p> <ol style="list-style-type: none"> <li>Count converting all or any of its shares into a larger or smaller number of shares;</li> <li>Count resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;</li> <li>Count: <ul style="list-style-type: none"> <li>entering into a buy-back agreement; or</li> <li>resolving to approve the terms of a buy-back agreement under the Corporations Act;</li> </ul> </li> <li>other than a Permitted Dividend, Count declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;</li> <li>a member of the Count Group issuing shares or securities convertible into shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option other than: <ul style="list-style-type: none"> <li>to a directly or indirectly wholly-owned subsidiary of Count; or</li> <li>pursuant to the exercise of any Count Options listed in Schedule 3 to this Deed; or</li> <li>pursuant to offers made under the Count Loan Funded Share Plan in respect of not more than 2,909,866 Count Shares.</li> </ul> </li> <li>Count amending the terms of a Count Option Plan or the Count Loan Funded Share Plan;</li> <li>a member of the Count Group making any change to its constitution;</li> </ol>

Term	Meaning
	<p>8 a member of the Count Group:</p> <ul style="list-style-type: none"> <li>• acquiring, leasing or disposing of;</li> <li>• agreeing or offering to acquire, lease or dispose of; or</li> <li>• announcing a bid or tendering for,</li> </ul> <p>any business, assets, entity or undertaking, the value of which exceeds A\$2 million (individually or in aggregate);</p> <p>9 a member of the Count Group entering into a contract or commitment restraining a member of the Count Group from competing with any person or conducting activities in any market;</p> <p>10 a member of the Count Group creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due;</p> <p>11 a member of the Count Group:</p> <ul style="list-style-type: none"> <li>• entering into any contract or commitment (including in respect of Financial Indebtedness) requiring payments by the Count Group in excess of A\$3 million (individually or in aggregate) other than to members of the Count Group, and any payment required by law; or</li> <li>• (without limiting the foregoing) agreeing to incur capital expenditure from the date of this Deed of more than A\$3 million (individually or in aggregate); or</li> <li>• waiving any material Third Party default where the financial impact on the Count Group will be in excess of A\$3 million (individually or in aggregate); or</li> <li>• accepting as a compromise of a matter less than the full compensation due to a member of the Count Group where the compromise is more than A\$3 million (individually or in aggregate);</li> </ul> <p>12 a member of the Count Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;</p> <p>13 Count:</p> <ul style="list-style-type: none"> <li>• materially altering, amending or terminating, except in the ordinary course of business, any Designated Agreements; and</li> <li>• (without limiting the foregoing) taking any action (including amending, terminating or entering into new wealth management platform agreements) which would, or would likely, hinder or restrict the ability to transfer existing, or new, funds under management onto new wealth management platforms;</li> </ul> <p>14 a Count Insolvency Event occurs;</p> <p>15 a member of the Count Group entering into or resolving to enter into a transaction with any related party of Count (other than a related party which is a member of the Count Group) as defined in section 228 of the Corporations Act, other than an employment, consulting, severance or similar agreement or arrangement or the giving of reasonable financial benefits to a related party as an</p>

Term	Meaning
	officer or employee within the scope of section 211 or 212 of the Corporations Act;
16	Count or any of its operating subsidiaries being deregistered as a company or otherwise dissolved except in the case of a Count Group Member with less than A\$10,000 in net assets as at the date of this Deed;
17	<p>a member of the Count Group entering into or materially amending any employment, consulting, severance or similar agreement or arrangement with officers, directors, other executives or employees of a Count Group Member, accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to:</p> <ul style="list-style-type: none"> <li>contractual arrangements in effect on the date of this Deed and which have been disclosed in writing to Commonwealth Bank prior to the date of this Deed; or</li> <li>Count's policies and guidelines in effect on the date of this Deed and which have been disclosed in writing to Commonwealth Bank prior to the date of this Deed,</li> </ul> <p>provided that the aggregate of all increases in such compensation or benefits is no greater than A\$1,500,000;</p>
18	a member of the Count Group paying any of its directors or employees a termination or retention payment, other than in accordance with contractual arrangements in effect on the date of this Deed and which have been disclosed in writing to Commonwealth Bank prior to the date of this Deed;
19	a member of the Count Group entering into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this Deed and which have been disclosed in writing to Commonwealth Bank prior to the date of this Deed;
20	a member of the Count Group amending in any material respect any arrangement with its Financial Advisor, or entering into arrangements with a new Financial Advisor, in respect of the Transaction;
21	a member of the Count Group changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards and other than as disclosed in writing by Count to Commonwealth Bank prior to the date of this Deed;
22	a member of the Count Group doing anything that would result in a change in the membership of the Count Consolidated Tax Group; or
23	<p>notice of any material investigation, prosecution, arbitration, litigation or dispute threatened against a member of the Count Group which could reasonably be expected to give rise to a liability for the Count Group in excess of A\$2 million (<b>Material Proceedings</b>) and for the avoidance of doubt which is not frivolous or vexatious, or circumstances arising which would reasonably be expected to more likely than not give rise to any Material Proceedings. For the avoidance of doubt, Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a member of the Count Group,</p>

<b>Term</b>	<b>Meaning</b>
	<p>other than:</p> <p>24 as required by this Deed, the Scheme or the Option Scheme;</p> <p>25 in relation to the Listed Investments (which, for the avoidance of doubt, items 1 – 23 above place no restriction on the ability of Count to dispose of, or vote, in relation to the Listed Investments or otherwise provide Commonwealth Bank with any ability to control the disposal or votes attaching to the relevant shares);</p> <p>26 as agreed to in writing by Commonwealth Bank; or</p> <p>27 as fairly disclosed by Count as a prospective occurrence in an announcement made to ASX within the 12 month period immediately prior to the date of this Deed.</p>
<b>Count Registry</b>	Computershare Investor Services Pty Limited (ACN 078 279 277).
<b>Count Representations and Warranties</b>	the representations and warranties of Count set out in Schedule 2.
<b>Count Share</b>	a fully paid ordinary share of Count.
<b>Count Shareholder</b>	each person who is registered as the holder of a Count Share.
<b>Count Share Register</b>	the register of members of Count maintained in accordance with the Corporations Act.
<b>Count Staff Equity Plan</b>	the "Count Staff Equity Plan" pursuant to which 34,854 Shares were issued on or around 10 June 2011.
<b>Court</b>	The Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Commonwealth Bank and Count.
<b>Deed</b>	this document including any schedule or annexure.
<b>Deed Poll</b>	a deed poll substantially in the form of Annexure 3 under which Commonwealth Bank and Capital 121 covenant in favour of the Scheme Shareholders to perform their obligations under the Scheme.
<b>Designated Agreements</b>	<p>the:</p> <p>1 agreements with Count franchisees;</p> <p>2 Bilateral Funding Agreement between Countplus Limited and Count</p>

Term	Meaning
	<p>Financial Limited, dated 4 November 2010;</p> <p>3 Deed of Assignment of Loan Agreements between Countplus Limited and Count Financial Limited, dated 4 November 2010;</p> <p>4 Escrow Deed between Countplus Limited and Count Financial Limited, undated;</p> <p>5 Loan Agreement between Countplus Limited and Count Financial Limited, dated 4 November 2010;</p> <p>6 Relationship Deed between Countplus Limited and Count Financial Limited, dated 4 November 2010;</p> <p>7 Services Agreement between Countplus Limited and Count Financial Limited dated, 4 November 2010;</p> <p>8 Trade Mark Assignment Deed between Countplus Limited and Count Financial Limited, dated 4 November 2010;</p> <p>9 Underwriting Deed between Countplus Limited, Count Financial Limited and Barry Lambert, dated 4 November 2010; and</p> <p>10 wealth management platform agreements.</p>
<b>Effective</b>	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.
<b>Effective Date</b>	the date on which the Scheme becomes Effective.
<b>Election Form</b>	has the meaning set out in clause 4.5(a).
<b>Election Time</b>	has the meaning set out in clause 4.6(b).
<b>End Date</b>	24 February 2012, or such other date as agreed in writing by the parties.
<b>Excluded Shareholder</b>	any Count Shareholder who is a member of the Commonwealth Bank Group or any Count Shareholder who holds any Count Shares on behalf of, or for the benefit of, any member of the Commonwealth Bank Group, but does not include any Count Shareholder in respect of Count Shares held by, on behalf of, or for the benefit of, any Commonwealth Bank Group Member as a result of a Non-Proprietary Acquisition.
<b>Exclusivity Period</b>	<p>the period from and including the date of this Deed to the earlier of:</p> <p>1 the termination of this Deed; and</p> <p>2 the End Date.</p>

<b>Term</b>	<b>Meaning</b>
<b>Financial Advisor</b>	any financial advisor retained by a party in relation to the Scheme or a Third Party Transaction from time to time.
<b>Financial Indebtedness</b>	<p>any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:</p> <ol style="list-style-type: none"> <li>1 bill, bond, debenture, note or similar instrument;</li> <li>2 acceptance, endorsement or discounting arrangement;</li> <li>3 guarantee;</li> <li>4 finance or capital lease;</li> <li>5 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or</li> <li>6 obligation to deliver goods or provide services paid for in advance by any financier.</li> </ol>
<b>First Court Date</b>	the first day on which an application made to the Court for an order under section 411(4)(a) of the Corporations Act convening the Scheme Meeting is heard.
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any other federal, state, provincial, or local government.
<b>Implementation Date</b>	the fourth calendar day after the Record Date, or such other day as the parties agree.
<b>Independent Expert</b>	the independent expert in respect of the Scheme appointed by Court.
<b>Independent Expert's Report</b>	means the report to be issued by the Independent Expert in connection with the Scheme.
<b>Ineligible Foreign Shareholder</b>	a Scheme Shareholder whose address shown in the Count Share Register is a place outside Australia and its external territories or New Zealand unless Commonwealth Bank determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Commonwealth Bank Shares when the Scheme becomes Effective.
<b>Integration Committee</b>	a committee comprised of senior Count executives and senior Commonwealth Bank wealth management division executives, and other persons as agreed by the parties.

<b>Term</b>	<b>Meaning</b>
<b>Listed Investments</b>	<p>being:</p> <ol style="list-style-type: none"> <li>1 DKN Financial Group Limited (ACN 008 112 150) – 10,453,840 ordinary shares;</li> <li>2 CountPlus Limited (ACN 126 990 832) – 40,945,747 ordinary shares;</li> <li>3 Mortgage Choice Limited (ACN 009 161 979) – 20,611,785 ordinary shares;</li> <li>4 Centrepont Alliance Limited (ACN 052 507 507) – 11,452,157 ordinary shares;</li> <li>5 Century Australia Investments Limited (ACN 107 772 761) – 1,000,000 ordinary shares;</li> <li>6 Platinum Asset Management Limited (ACN 050 064 287) – 200,000 ordinary shares;</li> <li>7 van Eyk Three Pillars Limited (ACN 106 854 175) – 59,947 ordinary shares;</li> <li>8 Australia and New Zealand Banking Group Limited (ACN 005 357 522) – 15,504 convertible preference shares;</li> <li>9 Bank of Queensland Limited (ACN 009 656 740) – 14,531 perpetual equity preference shares; and</li> <li>10 Preferred Capital Limited (ACN 101 938 176) – 9,243 PERLS III.</li> </ol>
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Marketable Parcel</b>	a marketable parcel as defined by the Operating Rules.
<b>New Commonwealth Bank Share</b>	a fully paid ordinary share in Commonwealth Bank to be issued to Scheme Shareholders who elect, or are deemed to have elected, to receive Scrip Consideration under the Scheme.
<b>Non-Proprietary Acquisition</b>	an acquisition by Commonwealth Bank or by a wholly owned subsidiary of it, made on behalf of, or for the benefit of, a Third Party, including on behalf of external investors, unitholders or beneficiaries of funds, managed investment schemes, superannuation funds, trusts, all other trades on behalf of clients and all dealings by life insurance and other insurance funds and companies.
<b>Operating Rules</b>	the official operating rules of ASX.
<b>Option Consideration</b>	the consideration to be provided by Commonwealth Bank to each Scheme Optionholder for the cancellation of each Scheme Option, as determined in accordance with clause 4.11 and the Option Scheme .
<b>Option Deed Poll</b>	a deed poll substantially in the form of Annexure 5 under which



Term	Meaning
	Commonwealth Bank and Capital 121 covenant in favour of the Scheme Optionholders to perform their obligations under the Option Scheme.
<b>Option Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between Count and the Scheme Optionholders, the form of which is attached as Annexure 4, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Commonwealth Bank and Count.
<b>Permitted Dividend</b>	being A\$0.04 per Count Share, to be paid on 14 October 2011.
<b>RG 60</b>	Regulatory Guide 60 issued by ASIC on 11 December 2009 relating to ASIC's role under the scheme provisions in Part 5.1 of the Corporations Act, the application of section 411(17) of the Corporations Act and matters considered during ASIC's review of scheme documentation.
<b>Record Date</b>	5.00pm on the fifth Business Day after the Effective Date.
<b>Registered Address</b>	in relation to a Count Shareholder, the address shown in the Count Share Register.
<b>Regulator's Draft</b>	the draft of the Scheme Booklet in a form which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.
<b>Regulatory Approval</b>	an approval set out in clause 3.1(a).
<b>Reimbursement Fee</b>	A\$3,730,000.
<b>Related Bodies Corporate</b>	has the meaning set out in the Corporations Act.
<b>Related Person</b>	<ol style="list-style-type: none"> <li>1 in respect of a party or its subsidiaries, each director, officer, employee, advisor, agent or representative of that party or Related Body Corporate; and</li> <li>2 in respect of a Financial Advisor, each director, officer, employee or contractor of that Financial Advisor.</li> </ol>
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.

Term	Meaning
<b>Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between Count and the Scheme Shareholders, the form of which is attached as Annexure 2, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Commonwealth Bank, Capital 121 and Count.
<b>Scheme Booklet</b>	the information described in clause 5.1(a) to be approved by the Court and despatched to the Count Shareholders (other than Excluded Shareholders) and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and an independent expert's report, notices of meeting, proxy form and Election Form.
<b>Scheme Consideration</b>	the consideration to be provided by Commonwealth Bank to each Scheme Shareholder for the transfer to Capital 121 of each Scheme Share, as determined in accordance with clause 4.3.
<b>Scheme Meeting</b>	the meeting of Count Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.
<b>Scheme Option</b>	a Count Option held by a Scheme Optionholder as at 5.00 pm on the fifth Business Day after the date on which the Option Scheme comes into effect under section 411(10) of the Corporations Act.
<b>Scheme Optionholders</b>	holders of Count Options recorded in Count's register of optionholders as at 5.00 pm on the fifth Business Day after the date on which the Option Scheme comes into effect under section 411(10) of the Corporations Act.
<b>Scheme Share</b>	a Count Share held by a Scheme Shareholder as at the Record Date.
<b>Scheme Shareholders</b>	holders of fully paid ordinary shares in Count (other than Excluded Shareholders) recorded in the Register as at the Record Date.
<b>Scrip Consideration</b>	<p>such number of New Commonwealth Bank Shares for each Scheme Share held by a Scheme Shareholder electing to receive Scrip Consideration in accordance with clauses 4.5 and 4.6 calculated as follows:</p> $N = \frac{A\$1.40}{W}$ <p>where:</p> <p>N = Number of New Commonwealth Bank Shares.</p> <p>W = The VWAP of Commonwealth Bank Shares on ASX in the 5</p>

Term	Meaning
	Business Day period ending on (and including) the last Business Day before the Scheme Meeting Date.
<b>Second Court Date</b>	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.
<b>Superior Proposal</b>	<p>a bona fide Competing Proposal (not resulting from a breach by Count of any of its obligations under clause 11 (it being understood that any actions by the Related Persons of Count in breach of clause 11 shall be deemed to be a breach by Count for the purposes hereof)) which the Count Board, acting in good faith, and after consultation with its legal and financial advisors, determines:</p> <ol style="list-style-type: none"> <li>1 is reasonably capable of being valued and completed taking into account all aspects of the Competing Proposal including any timing considerations and any conditions precedent; and</li> <li>2 would, if completed substantially in accordance with its terms, be more favourable to Count Shareholders (as a whole) than the Transaction, taking into account all terms and conditions of the Competing Proposal.</li> </ol>
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Third Party</b>	a person other than Commonwealth Bank and its Associates.
<b>Timetable</b>	the indicative timetable for the implementation of the Transaction set out in Annexure 1.
<b>Top Tier Financial Advisor</b>	a franchised Count Group financial advisor who is ranked in the top 50 Count Group financial advisors, as at the date of this Deed.
<b>Transaction</b>	the acquisition of Count by Capital 121 through implementation of the Scheme in accordance with the terms of this Deed.
<b>VWAP</b>	<p>the average of the daily volume weighted average price of Commonwealth Bank Shares traded on ASX during the relevant period or on the relevant days, but excluding:</p> <ol style="list-style-type: none"> <li>1 any "crossing" transacted outside the "Open Session State" or any "Special Crossing" transacted at any time, each as defined in the Operating Rules; and</li> <li>2 any overseas trades or trades pursuant to the exercise of options over Commonwealth Bank Shares,</li> </ol> <p>except that if Commonwealth Bank Shares have gone ex an entitlement to a distribution after the beginning of the relevant period and before New Commonwealth Bank Shares are issued for Scheme</p>

Term	Meaning
	Shares, the prices used for this calculation will be reduced by the value of that distribution.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Deed, and a reference to this Deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is to the time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed; and
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

## 1.3 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.

## 1.4 Contra proferentem excluded

No term or condition of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or a provision of it.

## 2 Agreement to proceed with the Transaction

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- (a) Count agrees to propose the Scheme on and subject to the terms of this Deed.
- (b) Commonwealth Bank agrees with Count to assist Count to propose the Scheme, and to procure Capital 121 to assist Count propose the Scheme, on and subject to the terms of this Deed.

## 3 Conditions precedent and pre-implementation steps

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### 3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Commonwealth Bank under clause 4.3 are not binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in clause 3.3.

- (a) **ACCC Clearance:** before 5.00pm on the Business Day before the Second Court Date, Commonwealth Bank has received informal merger clearance in respect of the acquisition of Count Shares by Commonwealth Bank, either unconditionally or on conditions acceptable to Commonwealth Bank by notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the acquisition of Count Shares by Commonwealth Bank and that notice has not been withdrawn, revoked or amended (**ACCC Clearance**).
- (b) **Shareholder approval:** Count Shareholders (other than Excluded Shareholders) agree to the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act.
- (c) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **Restraints:** No temporary restraining order, preliminary or permanent injunction or other order issued by, or other material legal restraint or prohibition imposed by, any court of competent jurisdiction or Government Agency preventing the Transaction is in effect at 8.00am on the Second Court Date and subsists during that hearing or any adjournment of it for a period of at least fourteen days.
- (e) **Quotation of New Commonwealth Bank Shares:** before 8.00am on the Second Court Date, the New Commonwealth Bank Shares are approved for official quotation by ASX (such approval providing that on the Business Day immediately following the Implementation Date, the New Commonwealth Bank Shares will commence trading on a normal settlement basis), subject only to customary conditions and the Scheme becoming Effective;
- (f) **No Count Prescribed Occurrence:** no Count Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date.
- (g) **No Count Material Adverse Change:** no Count Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to Commonwealth Bank between the date of this Deed and 8.00am on the Second Court Date.
- (h) **Commonwealth Bank Insolvency Event:** No Commonwealth Bank Insolvency Event occurs between the date of this Deed and 8.00am on the Second Court Date.

- (i) **No distribution:** other than a Permitted Dividend, after the date of this deed Count does not declare, pay or distribute any dividend, bonus or other share of its profits or assets or returns or agrees to return any capital to its members (which, for the avoidance of doubt, includes any dividend in specie).

### 3.2 Reasonable endeavours

- (a) Count must use its reasonable endeavours to procure that the conditions precedent in clauses 3.1(b), 3.1(f), 3.1(g) and 3.1(i) are satisfied.
- (b) Commonwealth Bank must use its reasonable endeavours to procure that the conditions precedent in clauses 3.1(e) and 3.1(h) are satisfied.
- (c) Each party must use its reasonable endeavours to procure that:
  - (1) the conditions precedent in clauses 3.1(a), 3.1(c) and 3.1(d), are satisfied; and
  - (2) there is no occurrence within the control of Count or Commonwealth Bank (as the context requires) that would prevent the conditions precedent in clause 3.1, which such party must use reasonable endeavours to satisfy, being satisfied.
- (d) Without limiting this clause 3.2:
  - (1) Commonwealth Bank must promptly apply for the ACCC Clearance and supply to the ACCC all necessary information as would reasonably be required for the purpose of obtaining the ACCC Clearance;
  - (2) Commonwealth Bank must take all steps it is responsible for as part of the ACCC Clearance process, including responding to requests for information at the earliest practicable time;
  - (3) each party must provide the other with all information reasonably requested in connection with the applications for Regulatory Approvals and advance copies of any documents that the party or any of its Related Persons intends to provide to the ACCC as part of the ACCC Clearance process; and
  - (4) each party must consult with the other in advance in relation to any other material communication that it or any of its Related Persons intends to engage in with the ACCC in connection with, and in relation to the progress of, obtaining the ACCC Clearance.

### 3.3 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The condition precedent in clauses 3.1(f), 3.1(g) and 3.1(i) are for the sole benefit of Commonwealth Bank and may only be waived by Commonwealth Bank (in its absolute discretion) in writing.
- (c) The condition precedent in clauses 3.1(e) and 3.1(h) are for the sole benefit of Count and may be waived by Count (in its absolute discretion) in writing.
- (d) If a party waives the breach or non-fulfilment of any of the conditions precedent in clause 3.1, that waiver does not prevent it from suing the other party for any breach of this Deed that resulted in the breach or non-fulfilment of the condition precedent.
- (e) Waiver of a breach or non-fulfilment in respect of one condition precedent does not constitute:

- (1) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event; or
- (2) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.

### **3.4 Termination on failure of condition precedent**

- (a) If any event occurs which would prevent any of the conditions precedent in clause 3.1 being satisfied, or there is an occurrence that will prevent the condition precedent being satisfied by the time and date specified in this Deed for its satisfaction or if it becomes probable that the Scheme will not become Effective by the End Date, the parties must consult in good faith to:
  - (1) consider and if agreed determine whether the Transaction may proceed by way of alternative means or methods;
  - (2) consider and if agreed change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Commonwealth Bank and Count (being a date no later than 5 Business Days before the End Date); or
  - (3) consider and if agreed extend the relevant date or End Date.
- (b) Subject to clause 3.4(d) and clause 3.4(e), if the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days of becoming aware of the relevant occurrence or relevant date or by the End Date, then unless that condition precedent is waived by Commonwealth Bank or Count as provided in clause 3.3, then either party may terminate this Deed without any liability to the other party because of that termination, unless the relevant occurrence or the failure of the condition precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by the terminating party of this Deed (in such circumstances, the party which is not the terminating party of this Deed may still terminate this Deed). For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Count to pay the Reimbursement Fee, if it is required to do so under clause 12.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 13.3), on termination of this Deed, no party shall have any rights against or obligations to any other party under this Deed except for those rights and obligations which accrued prior to termination.
- (d) If the condition in clause 3.1(b) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.
- (e) If the Court refuses to make an order approving the Scheme satisfying clause 3.1(c), at Commonwealth Bank's request Count must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in his or her view, an appeal would not have reasonable prospects of success before the End Date). Count may bring an appeal even if not requested by Commonwealth Bank. If any such appeal is undertaken at the request of Commonwealth Bank, Commonwealth Bank will bear Count's costs of the appeal (including costs of the independent Senior Counsel) unless the parties otherwise agree. If any such appeal is undertaken by Count, without the prior request from

Commonwealth Bank, Count will bear Commonwealth Bank's costs of the appeal unless the parties otherwise agree.

### **3.5 Certain notices**

- (a) Count and Commonwealth Bank (as the case may be) must promptly advise each other, orally and in writing, of satisfaction of a condition precedent.
- (b) If a condition precedent is not satisfied by the time and date specified, the parties agree that (unless there is no reasonable prospect that the condition precedent will be satisfied before the End Date) an application will be made to defer the Second Court Date until such time (not later than the Business Day before the End Date) as reasonably required to enable the relevant condition precedent to be satisfied.
- (c) If, before the time and date specified for satisfaction of a condition precedent, an event that will prevent that condition precedent being satisfied occurs, the party with knowledge of that event must immediately give the other party written notice of that event.
- (d) Count and Commonwealth Bank (as the case may be) must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
  - (1) a representation or warranty provided in this Deed by the relevant party to be false;
  - (2) a breach or non-fulfilment of any of the conditions precedent; or
  - (3) a material breach of this Deed by the relevant party.

## **4 Transaction steps**

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### **4.1 Scheme**

Count must propose a scheme of arrangement under which all of the Scheme Shares will be transferred to Capital 121 and the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### **4.2 No amendment to the Scheme without consent**

Count must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Commonwealth Bank or counsel acting for Commonwealth Bank.

### **4.3 Scheme Consideration**

- (a) The Scheme Consideration in respect of each Scheme Share is either:
  - (1) the Cash Consideration; or
  - (2) the Scrip Consideration.
- (b) Each Scheme Shareholder is entitled to receive either Cash Consideration or Scrip Consideration in respect of each Scheme Share held by that Scheme Shareholder, in accordance with the election process set out in clauses 4.5 and 4.6.
- (c) Subject to clause 4.3(d) and 4.3(e), Commonwealth Bank undertakes and warrants to Count that in consideration of the transfer to Capital 121 of each



Count Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Commonwealth Bank will:

- (1) procure that Capital 121 will accept that transfer; and
  - (2) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this Deed and the Scheme.
- (d) Where the calculation of the number of Commonwealth Bank Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a Commonwealth Bank Share, the fractional entitlement will be rounded up to the nearest whole number of New Commonwealth Bank Shares.
- (e) If Commonwealth Bank is of the opinion, formed reasonably, that several Scheme Shareholders, each of which holds a holding of Count Shares which results in a fractional entitlement to New Commonwealth Bank Shares, have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scheme Consideration, Commonwealth Bank may direct Count to give notice to those Scheme Shareholders:
- (1) setting out the names and Registered Addresses of all of them;
  - (2) stating that opinion; and
  - (3) attributing to one of them specifically identified in the notice the Count Shares held by all of them,
- and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice shall, for the purposes of the Scheme, be taken to hold all those Count Shares and each of the other Scheme Shareholders whose names are set out in the notice shall, for the purposes of the Scheme, be taken to hold no Count Shares.
- (f) Where the issue or transfer of New Commonwealth Bank Shares to which a Scheme Shareholder would otherwise be entitled under the Scheme would result in a breach of law or breach of a provision of the Commonwealth Bank Constitution:
- (1) Capital 121 will cause the issue or transfer of the maximum possible number of New Commonwealth Bank Shares to the Scheme Shareholder without giving rise to such a breach; and
  - (2) the relevant Scheme Shareholder will be deemed to have elected to receive Cash Consideration in respect of the remaining Scheme Shares held by that Scheme Shareholder.

#### 4.4 Ineligible Foreign Shareholders

Commonwealth Bank has no obligation to allot or issue New Commonwealth Bank Shares to an Ineligible Foreign Shareholder under the Scheme and, instead, the Ineligible Foreign Shareholder will be deemed to have elected to receive Cash Consideration in respect of all of that Scheme Shareholder's Scheme Shares pursuant to clause 4.6.

#### 4.5 Election mechanism

- (a) Count must ensure that the Scheme Booklet sent to Count Shareholders (other than Excluded Shareholders) is accompanied by a form of election under which each Count Shareholder (other than Excluded Shareholders) is requested to elect to receive either the Cash Consideration or the Scrip Consideration in respect of all of their Count Shares, and which sets out the election process (**Election Form**).

- (b) The Election Form must include the matters set out in clauses 4.6(a) to 4.6(g) and must otherwise be in a form agreed by the parties in writing (acting reasonably).
- (c) Count must procure that, to the extent practicable, Scheme Shareholders who acquired Count Shares after the date of the dispatch of the Scheme Booklet and Election Form receive an Election Form on request to Count.

#### 4.6 Election

- (a) Subject to clause 4.4, a Scheme Shareholder may elect to receive Scrip Consideration in respect of all its Scheme Shares and any such election will apply to all of the Scheme Shareholder's Scheme Shares as at the Record Date.
- (b) A valid election may be made by a Scheme Shareholder by returning the Election Form before 5.00pm on the Record Date, or such other time as Commonwealth Bank and Count agree in writing (**Election Time**), to an address to be specified by Count in the Scheme Booklet and on the Election Form.
- (c) If:
  - (1) a valid election is not made by a Scheme Shareholder prior to the Election Time;
  - (2) the Scheme Shareholder is an Ineligible Foreign Shareholder; or
  - (3) no election is made prior to the Election Time,then that Scheme Shareholder will be deemed to have elected to receive Cash Consideration in respect of all of that Scheme Shareholder's Scheme Shares.
- (d) If a Scheme Shareholder validly elects to receive Scrip Consideration in respect of only some of its Scheme Shares, and makes no election in respect of the remainder of its Scheme Shares, it will be deemed to have elected to receive Scrip Consideration in respect of all of its Scheme Shares not only those for which it has elected to receive Scrip Consideration.
- (e) If a Scheme Shareholder validly elects to receive Cash Consideration in respect of some of its Scheme Shares, and makes no election in respect of the remainder of its Scheme Shares, it will be deemed to have elected to receive Cash Consideration in respect of all of its Scheme Shares not only those for which it has elected to receive Cash Consideration.
- (f) In the manner considered appropriate by Count and Commonwealth Bank (acting reasonably including after consultation with the Count Registry), a Scheme Shareholder who holds one or more parcels of Count Shares as trustee or nominee for, or otherwise on account of, another person, may make separate elections in relation to each parcel of Count Shares held by the Scheme Shareholder.
- (g) Subject to clauses 4.3(d), 4.4 and 4.3(f) and the terms of the Scheme, if a Scheme Shareholder makes a valid election to receive Scrip Consideration, it will receive:
  - (1) Scrip Consideration in respect of the number of Scheme Shares held by it at the Record Date only if the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in accordance with the Scheme, comprises a number of New Commonwealth Bank Shares that is a Marketable Parcel; and
  - (2) Cash Consideration in respect of the number of Scheme Shares held by it at the Record Date, if the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in

accordance with the terms of the Scheme, would comprise a number of New Commonwealth Bank Shares that is not a Marketable Parcel.

#### **4.7 Election updates and provision of Count Share information**

- (a) In order to facilitate the issue or transfer of New Commonwealth Bank Shares, Count must use reasonable endeavours to provide, or procure the provision of, to Commonwealth Bank or a nominee of Commonwealth Bank:
  - (1) reasonable written updates of the elections that have been received in the period up to the Election Time;
  - (2) written details of the final elections made by each Scheme Shareholder, within one Business Day after the Record Date; and
  - (3) a complete copy of the Count Share Register as at the Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Record Date), within one Business Day after the Record Date.
- (b) The details and information to be provided under clause 4.7(a) must be provided in such form as Commonwealth Bank, its Related Persons or the Commonwealth Bank Registry may reasonably require.

#### **4.8 Shares to rank equally**

Commonwealth Bank covenants in favour of Count (in its own right and on behalf of the Scheme Shareholders) that:

- (a) the New Commonwealth Bank Shares will rank equally in all respects with all existing Commonwealth Bank Shares; and
- (b) on issue each New Commonwealth Bank Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

#### **4.9 Option Scheme**

- (a) Count must propose a creditors' scheme of arrangement, to be conducted concurrently with the Scheme, between itself and each Scheme Optionholder under which all outstanding Scheme Options will be cancelled and each Count Optionholder will be entitled to receive the Option Consideration.
  - (b) Count and Commonwealth Bank agree that their obligations in clause 5.1 (for Count) and clause 5.2 (for Commonwealth Bank) will apply mutatis mutandis to the creditors' scheme of arrangement (proposed in clause 4.9(a) above) as if the reference to the Scheme is to be construed as a reference to the Options Scheme.
  - (c) Commonwealth Bank will execute the Option Deed Poll in which it undertakes in favour of each Scheme Optionholder that it will, subject to the Scheme and the Option Scheme becoming Effective, pay the consideration under the Option Scheme to each Scheme Optionholder.
  - (d) The Option Scheme will be conditional on:
    - (1) ASX granting a waiver from rule 6.23 of the Listing Rules in relation to the Option Scheme or Count Shareholders giving any necessary approvals under rule 6.23 of the Listing Rules in relation to the Option Scheme; and
    - (2) the Scheme becoming Effective.
- The conditions in this clause 4.9(d) cannot be waived.

#### **4.10 No amendment to the Option Scheme without consent**

Count must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of Commonwealth Bank or counsel acting for Commonwealth Bank.

#### **4.11 Option Consideration**

Commonwealth Bank undertakes and warrants to Count that in consideration for the cancellation of the Count Options held by a Scheme Optionholder under the terms of the Option Scheme, on the Implementation Date, Commonwealth Bank will provide or procure that Capital 121 provides to each Scheme Optionholder, the Option Consideration for each Scheme Option.

#### **4.12 ASX Waiver**

- (a) As soon as reasonably practicable after the date of this Deed, Count must use its reasonable endeavours to procure that ASX grants a waiver from rule 6.23 of the Listing Rules in respect of the Option Scheme.
- (b) If the waiver referred to in clause 4.12(a):
  - (1) is obtained on or before the date the Regulator's Draft is provided to ASIC, but is subject to one or more conditions that are not reasonably satisfactory to Commonwealth Bank; or
  - (2) is not obtained on or before the date the Regulator's Draft is provided to ASIC,

Count agrees to seek any approvals that are required from the Count Shareholders under rule 6.23 of the Listing Rules in relation to the Option Scheme on the same date on which the meeting of Count Optionholders is held.

#### **4.13 Permitted Dividend**

Count may declare and pay the Permitted Dividend. For the avoidance of doubt, the Permitted Dividend shall not reduce the amount of any Cash Consideration or Scrip Consideration payable to Scheme Shareholders.

#### **4.14 Count Loan Funded Share Plan**

In relation to the Count Loan Funded Share Plan, the Count Board must, as soon as reasonably practicable, but in any event before the Effective Date:

- (a) issue or procure the issue of 2,909,866 Count Shares to persons as disclosed in writing to Commonwealth Bank in accordance with the Count Loan Funded Share Plan;
- (b) take all steps necessary or desirable to amend the terms of the Count Loan Funded Share Plan, to provide arrangements in connection with the distribution and allocation of the Scheme Consideration under the Count Loan Funded Share Plan, provided that the terms of the amendment are approved by Commonwealth Bank acting reasonably; and
- (c) resolve that upon the Scheme becoming Effective, then for the purposes of the Count Loan Funded Share Plan, a 'Change of Control' (as defined in the Count Loan Funded Share Plan) will occur.

### 4.15 Count Staff Equity Plan

The Count Board must, as soon as reasonably practicable, but in any event before the Effective Date take all steps necessary or desirable to amend the terms of the Count Staff Equity Plan to permit the transfer pursuant to the Scheme of the Count Shares that are subject to the Count Staff Equity Plan.

## 5 Implementation

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### 5.1 Count's obligations

Count must take all necessary steps to implement the Scheme as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with Commonwealth Bank on a regular basis about its progress in that regard), including doing any acts it is authorised and able to do, on behalf of Count Shareholders, and including each of the following:

- (a) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Count Board:
  - (1) that all or a majority of the members of the Count Board, including the chairman of the Count Board, recommend that Count Shareholders (other than Excluded Shareholders) vote in favour of the Scheme in the absence of any Superior Proposal unless there has been a change of recommendation permitted by clause 5.5; and
  - (2) that each such Count Board member referred to in clause 5.1(b)(1) will (in the absence of a Superior Proposal) vote, or procure the voting of any Count Shares (as applicable) held by or on behalf of a Count Board Member at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting;
- (c) **section 411(17)(b) statement:** apply to ASIC for the production of:
  - (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (2) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to section 411(1) of the Corporations Act directing Count to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to agree to the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (f) **Court documents:** consult with Commonwealth Bank in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Commonwealth Bank and its Related Persons on those documents;

- (g) **Court approval:** (subject to all conditions precedent in clause 3.1, other than the condition relating to Court approval being satisfied or waived in accordance with this Deed) apply to the Court for orders approving the Scheme as agreed to by the Count Shareholders (other than Excluded Shareholders) at the Scheme Meeting;
- (h) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the conditions precedent in clause 3.1 (other than the conditions in clause 3.1(c)) have been satisfied or waived in accordance with this Deed. A draft of such certificate shall be provided by Count to Commonwealth Bank by 4.00 pm on the Business Day prior to the Second Court Date;
- (i) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with section 411(10) of the Corporations Act approving the Scheme on the day such office copy is received (or such later date as agreed in writing by Commonwealth Bank);
- (j) **Scheme Consideration:** close the Count Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and the Deed Poll;
- (k) **registration:** subject to Commonwealth Bank having issued the Scheme Consideration in accordance with the Scheme and Deed Poll, register all transfers of Count Shares held by Scheme Shareholders to Capital 121 on or as soon as practicable after the Implementation Date;
- (l) **consultation with Commonwealth Bank in relation to Scheme Booklet:** consult with Commonwealth Bank as to the content and presentation of the Scheme Booklet including:
  - (1) providing to Commonwealth Bank drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Commonwealth Bank to review and comment on those draft documents. In relation to the Independent Expert's Report, Commonwealth Bank's review is to be limited to a factual accuracy review;
  - (2) taking all comments made by Commonwealth Bank into account in good faith when producing a revised draft of the Scheme Booklet;
  - (3) providing to Commonwealth Bank a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Commonwealth Bank to review the Regulator's Draft before the date of its submission;
  - (4) obtaining written approval from Commonwealth Bank for the form and content in which the Commonwealth Bank Information appears in the Scheme Booklet; and
  - (5) confirming to Commonwealth Bank the accuracy of the Count Information in the Scheme Booklet;
- (m) **information:** provide all necessary information, or procure that the Count Registry provides all necessary information, in each case in a form reasonably requested by Commonwealth Bank, about the Scheme, the Scheme Shareholders and Count Shareholders to Commonwealth Bank and its Related Persons which Commonwealth Bank reasonably requires in order to:
  - (1) canvass agreement to the Scheme by Count Shareholders (including the results of directions by Count to Count Shareholders under Part 6C.2 of the Corporations Act); or
  - (2) facilitate the provision by, or on behalf of, Capital 121 of the Scheme Consideration.

Count must comply with any reasonable request of Commonwealth Bank for Count to give directions to Count Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in (1) or (2) above;

- (n) **ASIC and ASX review:** keep Commonwealth Bank informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by Commonwealth Bank;
- (o) **Independent Expert:** promptly appoint the Independent Expert, and any investigating accountant to be appointed in connection with the preparation of the Scheme Booklet or the Independent Expert's Report, and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);
- (p) **Count Prescribed Occurrence:** ensure that no Count Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date;
- (q) **listing:** other than as required by this Deed or the Scheme, not do anything to cause Count Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to completion the Transaction unless Commonwealth Bank has agreed in writing; and
- (r) **merged co-information:** Count will prepare and promptly provide to Commonwealth Bank any information regarding the Count Group which Commonwealth Bank reasonably requires in order to prepare the information regarding the merged Count–Commonwealth Bank entity following implementation of the Scheme for inclusion in the Scheme Booklet.

## 5.2 Commonwealth Bank's obligations

Commonwealth Bank must take all necessary steps to implement the Scheme as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with Count on a regular basis about its progress in that regard), including doing each of the following:

- (a) **Commonwealth Bank Information:** prepare and promptly provide to Count the Commonwealth Bank Information for inclusion in the Scheme Booklet, including all information regarding the Commonwealth Bank Group, the merged Count–Commonwealth Bank entity following implementation of the Scheme, and the Scheme Consideration required by all applicable laws and in particular by the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules, and consent to the inclusion of that information (other than any information provided by Count to Commonwealth Bank or obtained from Count's public filings on ASX regarding the Count Group contained in, or used in the preparation of, the information regarding the merged Count–Commonwealth Bank entity following implementation of the Scheme) in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Count and provide comments promptly on those drafts in good faith;
- (c) **Independent Expert's report:** subject to the Independent Expert entering into arrangements with Commonwealth Bank including in relation to confidentiality in a form reasonably acceptable to Commonwealth Bank, provide any assistance or information reasonably requested by Count or by the Independent Expert in connection with the preparation of the Independent Expert's report to be sent together with the Scheme Booklet;

- (d) **representation:** procure that it is represented by counsel at the Court hearing convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Commonwealth Bank will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Deed and the Scheme;
- (e) **Deed Poll:** on the Business Day prior to the First Court Date, enter into the Deed Poll and procure that Capital 121 will enter into the Deed Poll;
- (f) **accuracy of Commonwealth Bank Information:** confirm to Count the accuracy of the Commonwealth Bank Information in the Scheme Booklet (other than any information regarding the Count Group contained in, or used in the preparation of, the information regarding the merged Count–Commonwealth Bank entity following implementation of the Scheme);
- (g) **Share transfer:** if the Scheme becomes Effective, accept, or will procure that Capital 121 will accept, a transfer of the Scheme Shares as contemplated by clause 4.3(c)(1);
- (h) **Commonwealth Bank Scheme Consideration:** if the Scheme becomes Effective, procure the provision of, by or on behalf of, Capital 121, the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme.

### 5.3 Conduct of business

- (a) Subject to clause 5.3(b) and 5.3(c), from the date of this Deed up to and including the Implementation Date, and without limiting any other obligations of Count under this Deed, Count must:
  - (1) conduct its businesses, and must cause each of its subsidiaries to conduct their respective businesses, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this Deed (for the avoidance of doubt, the conduct of Count's business in the ordinary and usual course does not include the public offering of securities, or similar transactions, in Count's subsidiaries);
  - (2) inform Commonwealth Bank of any Count Prescribed Occurrence;
  - (3) not enter into any lines of business or other activities in which Count and its subsidiaries are not engaged as of the date of this Deed;
  - (4) provide regular reports on the financial affairs of the Count Group, including the provision of Count Group's monthly management accounts in a timely manner to Commonwealth Bank; and
  - (5) make all reasonable efforts to:
    - (A) keep available the services of their directors, officers, franchisees, advisors and employees; and
    - (B) maintain and preserve their relationships with Government Agencies, customers, suppliers, licensors, licensees and others having business dealings with Count and any subsidiary of Count (including, using reasonable endeavours to obtain consents from Third Parties to any change of control provisions which Commonwealth Bank reasonably requests in contracts or arrangements to which a member of the Count Group is a party).
- (b) Nothing in clause 5.3(a) restricts the ability of Count to take any action:
  - (1) which is required by this Deed, the Scheme or the Option Scheme;



- (2) in relation to the Listed Investments (which, for the avoidance of doubt, includes disposing of the Listed Investments or Count exercising its voting power in relation to the Listed Investments); or
  - (3) which has been agreed to in writing by Commonwealth Bank.
- (c) For the avoidance of doubt, nothing in this section 5.3 restricts the ability of Count to respond to a Competing Proposal in accordance with clause 11.

## **5.4 Appointment of directors**

Count must, as soon as practicable:

- (a) after the Second Court Date (provided the Scheme is approved), take all actions necessary to cause the appointment of that number of nominees of Commonwealth Bank to the Count Board which gives those nominees, acting together, control of the Count Board;
- (b) on the Implementation Date, take all actions necessary to cause the appointment of Commonwealth Bank's further nominees to the Count Board and ensure that all directors on the Count Board, other than the chairman of the Count Board and the Commonwealth Bank nominees, resign; and
- (c) on the Implementation Date, take all actions to ensure that all directors on the boards of Count's subsidiaries resign and to cause the appointment of nominees of Commonwealth Bank to those boards.

## **5.5 Count Board recommendation**

- (a) Subject to clause 5.5(b), the Count Board must unanimously recommend that Count Shareholders (other than Excluded Shareholders) vote in favour of:
  - (1) the Scheme in the absence of a Superior Proposal; and
  - (2) all of the resolutions in the Scheme Booklet,at the Scheme Meeting and the Scheme Booklet must include a statement by the Count Board to that effect.
- (b) The Count Board collectively, and the members of the Count Board individually, must not change, withdraw or modify its, his or her recommendation in favour of the Scheme unless:
  - (1) the Independent Expert provides a report to Count which concludes that the Share Scheme is not in the best interests of Scheme Shareholders;
  - (2) Count has received, other than as a result of a breach of clause 11, a proposal which is a Superior Proposal; or
  - (3) the Count Board has obtained written financial advice from its Financial Advisors and written legal advice from its legal advisors that the directors' duties of the members of the Count Board require them, or are likely to require them to change, withdraw or modify their recommendation,

provided also that the Count Board has complied with its obligations under clause 11.

For the purposes of this clause, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Share Scheme to the effect that the recommendation is made in the absence of a superior proposal from a third party will not be regarded as a failure to make or withdraw the making of a recommendation in favour of the Scheme.

- (c) If the Count Board proposes to change its recommendation in accordance with clause 5.5(b)(3):
  - (1) the Count Board must notify Commonwealth Bank in writing immediately if it is proposing to announce a change, withdrawal or modification of recommendation that it intends to change, withdraw or modify its recommendation and it must at the same time provide a copy of the legal advice referred to clause 5.5(b)(3); and
  - (2) the parties must consult in good faith for 5 Business Days after the date on which the notification in clause 5.5(c)(1) is given to consider and determine whether the recommendation in place at that time can be maintained. For the avoidance of doubt, that recommendation cannot be changed, withdrawn or modified in accordance with clause 5.5(b)(3) until the end of that consultation period.

## **5.6 Conduct of Court proceedings**

- (a) Count and Commonwealth Bank are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This Deed does not give Count or Commonwealth Bank any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) Count and Commonwealth Bank must give all reasonable undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this Deed.

## **5.7 Scheme Booklet**

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
  - (1) Commonwealth Bank is responsible for the Commonwealth Bank Information (other than any information provided by Count to Commonwealth Bank or obtained from Count's public filings on ASX regarding the Count Group contained in, or used in the preparation of, the information regarding the merged Count–Commonwealth Bank entity following implementation of the Scheme) contained in the Scheme Booklet; and
  - (2) Count is responsible for the Count Information contained in the Scheme Booklet and is also responsible for the information contained in the Scheme Booklet provided by Count to Commonwealth Bank or obtained from Count's public filings on ASX regarding the Count Group contained in, or used in the preparation of, the information regarding the merged Count–Commonwealth Bank entity following implementation of the Scheme.
- (b) If after a reasonable period of consultation, Count and Commonwealth Bank are unable to agree on the form or content of the Scheme Booklet:
  - (1) where the determination relates to Commonwealth Bank Information, Commonwealth Bank will make the final determination as to the form and content of the Commonwealth Bank Information; and
  - (2) in any other case, Count will make the final determination as to the form and content of the Scheme Booklet.

## 6 Co-operation and Integration

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- (a) Between the date of this Deed and the Implementation Date, Count must, and must cause each of its subsidiaries to, afford to Commonwealth Bank and its Related Persons reasonable access to information (subject to any existing confidentiality obligations owed to third parties) and senior executives of any member of the Count Group or any entity Count manages as reasonably requested by Commonwealth Bank at mutually convenient times and afford Commonwealth Bank reasonable co-operation for the purpose of implementation of the Scheme, provided that:
- (1) nothing in this clause will require Count to provide information to Commonwealth Bank concerning Count's directors and management's consideration of the Scheme;
  - (2) such requests by Commonwealth Bank do not result in unreasonable disruptions to Count Group's business; and
  - (3) Count may provide to Commonwealth Bank its records at a place other than Count's business premises.
- (b) After the dispatch of the Scheme Booklet, that parties will establish the Integration Committee as a forum for consultation and planning for the transition of the ownership of Count Group and its businesses to Commonwealth Bank. The Integration Committee will:
- (1) oversee implementation of the Scheme;
  - (2) assist Commonwealth Bank in obtaining an understanding of the operations and conduct of Count's business; and
  - (3) discuss how to best integrate Count's business into the operations of Commonwealth Bank,
- and will meet no less than once a month, commencing on the one month anniversary of the date of this Deed. The parties will co-operate with each other in good faith to facilitate the work of the Integration Committee. To that end, each party will provide reasonable access to information (subject to any existing confidentiality obligations owed to third parties) and senior executives as reasonably requested by the other. For the avoidance of doubt, the Integration Committee is a consultative body only.

## 7 Representations and warranties

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### 7.1 Commonwealth Bank's representations and warranties

Commonwealth Bank represents and warrants to Count (in its own right and separately as trustee or nominee for each of the other Count Indemnified Parties) each of the Commonwealth Bank Representations and Warranties.

### 7.2 Commonwealth Bank's indemnity

Commonwealth Bank agrees with Count (in its own right and separately as trustee or nominee for each of the other Count Indemnified Parties) to indemnify the Count Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Count or any of the other Count Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Commonwealth Bank Representations and Warranties.

### **7.3 Count's representations and warranties**

Count represents and warrants to Commonwealth Bank (in its own right and separately as trustee or nominee for each of the other Commonwealth Bank Indemnified Parties) each of the Count Representations and Warranties.

### **7.4 Count's indemnity**

Count agrees with Commonwealth Bank (in its own right and separately as trustee or nominee for of each Commonwealth Bank Indemnified Party) to indemnify Commonwealth Bank and each of the other Commonwealth Bank Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Commonwealth Bank or any of the other Commonwealth Bank Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Count Representations and Warranties.

### **7.5 Survival of representations**

Each representation and warranty referred to in clauses 7.1 and 7.3:

- (a) is severable; and
- (b) survives the termination of this Deed.

### **7.6 Survival of indemnities**

Each indemnity in this Deed (including those in clauses 7.2 and 7.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survives the termination of this Deed.

### **7.7 Timing of representation and warranties**

Each representation and warranty made or given under clauses 7.1 or 7.3 is given:

- (a) at the date of this Deed; and
- (b) at 8.00am on the Second Court Date; or

where expressed to be given at a particular time, at that time.

## **8 Releases**

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### **8.1 Count directors and officers**

- (a) Commonwealth Bank releases its rights, and agrees with Count that it will not make a claim, against any Count Indemnified Party as at the date of this Deed in connection with:
  - (1) any breach of any representations, covenants and warranties of Count or any member of the Count Group in this Deed; or
  - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,

except where the Count Indemnified Party has not acted in good faith or has engaged in wilful misconduct.

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

## **8.2 Commonwealth Bank directors and officers**

- (a) Count releases its rights, and agrees with Commonwealth Bank that it will not make a claim, against any Commonwealth Bank Indemnified Party as at the date of this Deed in connection with:

- (1) any breach of any representations, covenants and warranties of Commonwealth Bank in this Deed; or
- (2) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where the Commonwealth Bank Indemnified Party has not acted in good faith or has engaged in wilful misconduct.

- (b) This clause is subject to any statutory restriction and will be read accordingly. Commonwealth Bank receives and holds the benefit of this clause to the extent it relates to each Commonwealth Bank Indemnified Party as trustee for each of them.

## **8.3 Deeds of indemnity and insurance**

- (a) Subject to the Scheme being Effective and the Transaction completing, Commonwealth Bank undertakes that it will:

- (1) subject to clause 8.3(b), for a period of 6 years from the Implementation Date, ensure that the constitutions of Count and each Count Group Member continues to contain such rules as are contained in those constitutions at the date of this Deed which provide for each company to indemnify each of its officers against any liability incurred by that officer in his or her capacity as an officer of the company and to any person other than Count or a Related Body Corporate of Count; and
- (2) procure that Count and each Count Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors and officers' run-off insurance cover for such directors and officers is maintained, subject to clause 8.3(b), for a period of 6 years from the retirement date of each director and officer so long as it is available on commercially reasonable terms.

- (b) The undertakings contained in clause 8.3(a) is subject to any Corporations Act restriction and will be read accordingly. Count receives and holds the benefit of clause 8.3(a), to the extent it relates to the directors and officers of Count and other members of the Count Group, as trustee for each of them.

## 9 Public announcement

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### 9.1 Announcement of transaction

As soon as reasonably practical after the execution of this Deed, Count and Commonwealth Bank must issue public announcements in the form set out in Annexure 6.

### 9.2 Public announcements

Subject to clause 9.3, no public announcement or disclosure of the Transaction or any other transaction the subject of this Deed or the Scheme may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.

### 9.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this Deed or the Scheme, it must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party prior to making the relevant disclosure.

## 10 Confidentiality

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Count and Commonwealth Bank acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this Deed. The rights and obligations of the parties under the Confidentiality Agreement survive termination of this Deed.

## 11 Exclusivity

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### 11.1 Prohibition

During the Exclusivity Period, Count must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 11.1(a); or
- (b) **(no talk)** subject to clause 11.2:
  - (1) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make or which would reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal;
  - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;

- (3) disclose any non-public information about the business or affairs of Count or its subsidiaries to a Third Party (other than a Government Agency) with a view to obtaining or which would reasonably be expected to encourage or lead to receipt of an actual, proposed or potential Competing Proposal; or
- (4) communicate to any person an intention to do anything referred to in this clause 11.1(b).

## **11.2 Fiduciary exception to no talk and notification provisions**

Clause 11.1(b) does not prohibit any action or inaction by Count or any of its Related Persons in relation to an actual, proposed or potential Competing Proposal if compliance with that clause would, in the opinion of the Count Board, formed in good faith after consultation with its external legal advisers, constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the directors, provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 11.1(a).

## **11.3 Notification of approaches**

- (a) During the Exclusivity Period, Count must as soon as possible notify Commonwealth Bank in writing if it, or any of its Related Persons, becomes aware of any direct or indirect:
  - (1) approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
  - (2) proposal made to Count or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
  - (3) provision by Count or any of its Related Persons of any material confidential information concerning Count's or its subsidiaries' operations to any person in relation to an actual, proposed or potential Competing Proposal.
- (b) A notification given under clause 11.3(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.

## **11.4 Cease discussions**

Count must cease any discussions or negotiations existing as at the date of this deed relating to:

- (a) any actual, proposed or potential Competing Proposal; or
- (b) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Transaction.

## 12 Reimbursement Fees

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### 12.1 Background to Reimbursement Fee

- (a) Commonwealth Bank and Count acknowledge that, if they enter into this Deed and the Scheme is subsequently not implemented, Commonwealth Bank will incur significant costs.
- (b) In these circumstances, Commonwealth Bank has requested that provision be made for the payments outlined in clause 12.2, without which Commonwealth Bank would not have entered into this Deed or otherwise agreed to implement the Scheme.
- (c) The Count Board believes, having taken advice from its legal advisors and Financial Advisors, that the implementation of the Scheme will provide benefits to Count and that it is appropriate for Count to agree to the payments referred to in clause 12.2 in order to secure Commonwealth Bank's participation in the Transaction.

### 12.2 Reimbursement Fee triggers

Count must pay the Reimbursement Fee to Commonwealth Bank, without set-off or withholding, if:

- (a) during the Exclusivity Period, the majority of the members of the Count Board or the chairman of the Count Board withdraw or adversely modify his, her or their support of the Scheme or his, her or their recommendation that Count Shareholders (other than Excluded Shareholders) vote in favour of the Scheme, or, having made such a recommendation, withdraw, adversely revise or adversely qualify that recommendation for any reason;
- (b) during the Exclusivity Period, the majority of the members of the Count Board or the chairman of the Count Board recommend that Count Shareholders accept, vote in favour of or otherwise support (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of Shares the relevant member of the Count Board owns, controls or otherwise has a Relevant Interest in) a Competing Proposal of any kind which is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period;
- (c) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within one year of the date of such announcement, the Third Party or any Associate of that Third Party:
  - (1) completes a Competing Proposal of a kind referred to in any of paragraphs 2 to 4 of the definition of Competing Proposal;
  - (2) enters into an agreement, arrangement or understanding with Count or the Count Board of the kind referred to in paragraph 5 of the definition of Competing Proposal; or
  - (3) without limiting clause 12.2(c)(1) or 12.2(c)(2), acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the Count Shares or acquires (either alone or in aggregate) Control of Count; or
- (d) Commonwealth Bank has terminated this Deed pursuant to clause 13.1(b)(2) (other than in respect of an occurrence or circumstance referred to in paragraph 23 of the definition of Count Prescribed Occurrence, provided that Count was not aware of the occurrence or circumstance at the time of executing this Deed) and the Transaction does not complete.



### **12.3 Timing of payment of Reimbursement Fee**

- (a) A demand by Commonwealth Bank for payment of the Reimbursement Fee under clause 12.2 must be in writing and state the circumstances which give rise to the demand.
- (b) Count must pay the Reimbursement Fee to Commonwealth Bank, without set-off or withholding, within 5 Business Days after receiving a demand for payment where Commonwealth Bank is entitled under clause 12.2 to the Reimbursement Fee.

### **12.4 Basis of Reimbursement Fee**

The Reimbursement Fee has been calculated to reimburse Commonwealth Bank for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction;
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Commonwealth Bank and Commonwealth Bank's employees, advisers and agents in planning and implementing the Transaction.

### **12.5 Compliance with law**

This clause 12 does not impose an obligation on Count to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:

- (a) is declared by the Takeovers Panel to constitute Unacceptable Circumstances; or
- (b) is determined to be unenforceable as determined by a court.

### **12.6 Reimbursement Fee payable only once**

Where the Reimbursement Fee becomes payable to Commonwealth Bank under clause 12.2 and is actually paid to Commonwealth Bank, Commonwealth Bank cannot make any claim against Count for payment of any subsequent Reimbursement Fee.

### **12.7 Other Claims**

Where an amount becomes payable to Commonwealth Bank under clause 12.2 and is actually paid to Commonwealth Bank (or is payable, but no demand is made under clause 12.3), Commonwealth Bank cannot make any Claim (other than a Claim under this clause 12) against Count which relates to the event that gave rise to the right to make a demand under clause 12.3 except a claim in relation to a breach of clause 11. For the avoidance of doubt, the amount of any loss or damage caused in relation to a breach of clause 11 shall be reduced by the amount paid to Commonwealth Bank under clause 12.2.

## 13 Termination

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### 13.1 Termination

- (a) Without prejudice to any other rights of termination under this Deed, either party may terminate this Deed by written notice to the other party:
  - (1) other than in respect of a breach of either a Commonwealth Bank Representation and Warranty or a Count Representation and Warranty which are dealt with in clause 13.2, at any time before 8.00am on the Second Court Date if the other party has materially breached any provision of this Deed, the party wishing to terminate has given written notice to the other party in a timely manner setting out the relevant circumstances and stating an intention to terminate this Deed, and the relevant circumstances continue to exist for 10 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) from the time the notice is given;
  - (2) at any time before 8.00am on the Second Court Date if a Court or Government Agency has taken any action permanently restraining or otherwise prohibiting the Transaction, or has refused to do any thing necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed; or
  - (3) in the circumstances set out in, and in accordance with, clause 3.4.
- (b) Commonwealth Bank may terminate this Deed by written notice to Count if:
  - (1) a Count Material Adverse Change occurs prior to 8.00am on the Second Court Date;
  - (2) a Count Prescribed Occurrence occurs prior to 8.00am on the Second Court Date;
  - (3) the majority of the members of the Count Board or the chairman of the Count Board:
    - (A) fail to recommend the Scheme; or
    - (B) withdraw or adversely modify his, her or their recommendation that Count Shareholders (other than Excluded Shareholders) vote in favour of the Scheme; or
    - (C) make a public statement indicating that he, she or they no longer recommend the Transaction or recommend another transaction.
- (c) Count may terminate this Deed by written notice to Commonwealth Bank if at any time before 8.00am on the Second Court Date:
  - (1) the Count Board or a majority of the Count Board has changed, withdrawn or modified its recommendation as permitted under clause 5.5 and Count has paid the Reimbursement Fee to Commonwealth Bank; or
  - (2) a Commonwealth Bank Insolvency Event occurs.

### 13.2 Breach of representations and warranties

Despite any other term of this Deed, prior to 8.00am on the Second Court Date:

- (a) Commonwealth Bank may terminate this Deed for breach of a Count Representation and Warranty only if:

- (1) Commonwealth Bank has given written notice to Count setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) from the time the notice is given under clause 13.2(a)(1); and
  - (3) the loss that could reasonably be expected to follow from such a breach would exceed A\$10 million in aggregate.
- (b) Count may terminate this Deed for breach of a Commonwealth Bank Representation and Warranty only if:
  - (1) Count has given written notice to Commonwealth Bank setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) from the time the notice is given under clause 13.2(b)(1); and
  - (3) the loss could reasonably be expected to lead to Commonwealth Bank not being able to provide the Scheme Consideration.

### **13.3 Effect of termination**

If this Deed is terminated by either party under clauses 3.4, 13.1 or 13.2, except if that the termination results from a breach by either party of its obligations under this Deed, this Deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and other than in relation to the provisions of this clause 13 and of clauses 7.5 to 7.7, 10, 12, 14, 15, 16.2, 16.4 and 16.5, which will remain in force after termination.

### **13.4 Termination**

Where a party has a right to terminate this Deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this Deed and the provision under which it is terminating the Deed.

### **13.5 Terminable in writing**

This Deed is terminable if agreed to in writing by Commonwealth Bank and Count.

## **14 Duty, costs and expenses**

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### **14.1 Stamp duty**

Commonwealth Bank must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this Deed or the Scheme or the steps to be taken under this Deed or the Scheme.

### **14.2 Costs and expenses**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of

this Deed and the proposed, attempted or actual implementation of this Deed and the Transaction.

## 15 GST

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- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with clause 15(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 15(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 15(b):
  - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this Deed if an amount payable under or in connection with this Deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## 16 General

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### 16.1 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this Deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed.
- (c) Each party acknowledges and confirms that clauses 16.1(a) and 16.1(b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or ASX (as the case may be).

### 16.2 No merger

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

### 16.3 Consents

Any consent referred to in, or required under, this Deed from any party may not be unreasonably withheld, unless this Deed expressly provides for that consent to be given in that party's absolute discretion.

### 16.4 Notices

Any communication under or in connection with this Deed:

- (a) must be in legible writing. A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under clause 16.4(f)(1) and informs the sender that it is not legible;
- (b) must be in English; and
- (c) must be addressed as shown below:

Party	Address	Addressee	Fax
Count	Level 19, 1 Alfred Street, Sydney NSW 2000	Andrew Gale, Managing Director & Chief Executive Officer	+61 2 9241 7342
Copy to:		Anna Smith, General Counsel, Company	+61 2 9241 7342

Count Financial Limited,  
Level 19, 1 Alfred Street,  
Sydney NSW 2000

Secretary & Senior  
Executive – Corporate  
Services

Copy to:  
Minter Ellison  
Aurora Place, 88 Phillip  
Street  
Sydney NSW 2000

James Philips, Partner +61 2 9921 8307

**Commonwealth  
Bank**

Commonwealth Bank of  
Australia, Level 29, 52  
Martin Place, Sydney NSW  
2000

David Lane, General  
Manager, Strategic  
Development, Wealth  
Management

+61 2 9303 6397

Copy to:  
Freehills, Level 32, MLC  
Centre, Martin Place,  
Sydney NSW 2000

Tony Damian, Partner +61 2 9322 4000

(or as otherwise notified by that party to the other party from time to time);

- (d) must be signed by the party making the communication or by a person duly authorised by that party;
- (e) must be delivered or sent by fax to the fax number, of the addressee, in accordance with clause 16.4(b); and
- (f) is regarded as received by the addressee:
  - (1) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day in the place of receipt, when that communication will be regarded as received at 9.00am on the next Business Day; and
  - (2) if delivered by hand, on delivery at the address of the addressee as provided in clause 16.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

## 16.5 Governing law and jurisdiction

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

## 16.6 Waivers

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by any party does not in any way preclude, or operate as a waiver of,

any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.

- (b) Any waiver or consent given by any party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **16.7 Variation**

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

### **16.8 Assignment**

A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this Deed without the prior written consent of the other party.

### **16.9 Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 11 and that Commonwealth Bank is entitled to seek and obtain without limitation injunctive relief if Count breaches clause 11.

### **16.10 No third party beneficiary**

This Deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this Deed is intended to or shall confer on any other person, other than the Commonwealth Bank Indemnified Parties and the Count Indemnified Parties, to the extent set forth in clause 7 and clause 8, any third party beneficiary rights.

### **16.11 Further action**

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

### **16.12 Entire Agreement**

This Deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Agreement) in respect of its subject matter and embodies the entire Deed between the parties.

### **16.13 Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.

## Schedules

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## Schedule 1

### Commonwealth Bank Representations and Warranties

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Commonwealth Bank represents and warrants to Count (in its own right and separately as trustee or nominee for each of the other Count Indemnified Parties) that:

- (a) **Not misleading:** the Commonwealth Bank Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Count Shareholders (other than Excluded Shareholders), will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission from that Commonwealth Bank Information;
- (b) **New information:** it will, as a continuing obligation, provide to Count all further or new information which arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that there would be no breach of clause 7.1 if it applied as at the date on which that information arose;
- (c) **Validly existing:** it is, and Capital 121 is, a validly existing corporation registered under the laws of its place of incorporation;
- (d) **Authority:** the execution and delivery of this Deed has been properly authorised by all necessary corporate action of Commonwealth Bank;
- (e) **Capital 121:** Capital 121 is a wholly owned subsidiary of Commonwealth Bank;
- (f) **Power:** it has full corporate power and lawful authority to execute, deliver and perform this Deed and Capital 121 will have full corporate power and lawful authority to execute, deliver and perform the Deed Poll and Option Deed Poll;
- (g) **No default:** this Deed does not conflict with or result in the breach of or a default under:
  - (1) Commonwealth Bank's Constitution or other constituent documents;  
or
  - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound;
- (h) **New Commonwealth Bank Shares:** the New Commonwealth Bank Shares to be issued in accordance with clause 4.3 and the terms of the Scheme will be duly authorised and validly issued or transferred, fully paid and free of all security interests and third party rights and will rank equally with all other Commonwealth Bank Shares then on issue; and
- (i) **Continuous disclosure:** it has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1.

### Count Representations and Warranties

---

Count represents and warrants to Commonwealth Bank (in its own right and separately as trustee or nominee for each of the other Commonwealth Bank Indemnified Parties) that:

- (a) **Scheme Booklet:** no Count Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Count Shareholders (other than Excluded Shareholders), will contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission from that statement;
- (b) **Continuous disclosure:** as at the date of this Deed Count has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing 3.1 to withhold any material information from public disclosure;
- (c) **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (d) **Authority:** the execution and delivery of this Deed has been properly authorised by all necessary corporate action of Count;
- (e) **Power:** Count has full corporate power and lawful authority to execute and deliver this Deed;
- (f) **Advisors:** it has provided complete and accurate information regarding fee levels in all retainers and mandates with Financial Advisors in relation to the Scheme or any other transaction where such retainer or mandate is current, or under which the Count Group still has obligations;
- (g) **Capital structure:** its capital structure, including all issued securities as at the date of this Deed is as set out in Schedule 3 and it has not issued any other securities, options or other instruments which are still outstanding and may convert into Count Shares other than as set out in Schedule 3;
- (h) **Interest:** the name of any company, partnership, trust, joint venture or other enterprise in which Count or a Count subsidiary owns or has a material interest in, has been disclosed in writing by Count to Commonwealth Bank prior to entry into this Deed;
- (i) **Compliance:** except as fairly disclosed by written information provided by Count to Commonwealth Bank prior to entry into this Deed, each member of the Count Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and has all material licenses, and permits necessary for it to conduct the business of the Count Group as presently being conducted.
- (j) **No default:** except as fairly disclosed by written information provided by Count to Commonwealth Bank prior to entry into this Deed, this Deed does not conflict with or result in the breach of or default under any provision of Count's constitution or any material term or provision of any material agreement including any financing arrangements or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any of its subsidiaries is bound;

- (k) **All information:** it is not aware of any information relating to the Count Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this Deed that has or could reasonably be expected to give rise to a Count Material Adverse Change that has not been disclosed to ASX; and
- (l) **Not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.1(o) or otherwise, or Commonwealth Bank is not misleading and:
  - (1) it is not aware that any such information is inaccurate; and
  - (2) it has not omitted any information required to make the information provided to the Independent Expert or Commonwealth Bank not materially misleading.

## Schedule 3

### Count details

Security	Total number on issue
Count Shares	262,247,830
Count Options	35,187,104 (consisting of 30,370,433 Franchisee Incentive Option Plan options and 4,816,671 Employee Share Option Plan options), which collectively are capable of being converted into not more than 35,187,104 Count Shares.
Count Shares to be issued	2,909,866 consisting of Count Shares to be issued pursuant to the Count Loan Funded Share Plan.

Executed as a Deed

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Executed by  
**Commonwealth Bank of Australia on 30 August 2011 by an attorney  
authorised under a power of attorney dated 3 December 2003**

Executed by  
**Count Financial Limited on 30 August 2011 in accordance with  
section 127 of the Corporations Act**

## Annexure 1

### Indicative Timetable

Event	Target date
Announcement and signing of scheme implementation deed	Tuesday, 30 August 2011
Scheme Booklet provided to ASIC in draft	Friday, 30 September 2011
First Court hearing	Monday, 17 October 2011
Scheme Meeting	Monday, 21 November 2011
Second Court hearing	Wednesday, 23 November 2011
Effective Date	Thursday, 24 November 2011
Record Date	Thursday 1 December 2011
Implementation Date	Wednesday, 7 December 2011

Scheme of arrangement

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Attached

# Scheme of arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between the parties

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Count Financial Limited (ABN 19 001 974 625)  
of Gold Fields House, Level 19, 1 Alfred Street, Sydney NSW 2000  
(Count)

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Each person registered as a holder of fully paid ordinary shares in  
Count in the Share Register as at the Record Date (other than the  
Excluded Shareholders)  
(Scheme Shareholders)

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## 1 Definitions, interpretation and scheme components

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### 1.1 Definitions

Schedule 1 contains definitions used in this Scheme.

### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Scheme.

### 1.3 Scheme components

This Scheme includes any schedule to it.

## 2 Preliminary matters

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- (a) Count is a public company limited by shares, registered in New South Wales, Australia, and has been admitted to the official list of the ASX. Count Shares are quoted for trading on the ASX.
- (b) As at 29 August 2011:
  - (1) 262,247,830 Count Shares were on issue and before the record date Count proposes to issue up to 2,909,866 Count Shares in respect of its loan funded share plan; and
  - (2) 35,187,104 Count Options were on issue.
- (c) Commonwealth Bank is a listed company limited by shares incorporated in the Australian Capital Territory, Australia. Capital 121 is a wholly-owned subsidiary of Commonwealth Bank, registered in New South Wales, Australia.



- (d) If this Scheme becomes Effective:
- (1) Commonwealth Bank will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
  - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Capital 121 and Count will enter the name of Capital 121 in the Share Register in respect of the Scheme Shares.
- (e) Count and Commonwealth Bank have agreed, by executing the Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to Commonwealth Bank and Capital 121 but does not itself impose an obligation on them to perform those actions. Commonwealth Bank and Capital 121 have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including providing or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

## 3 Conditions

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### 3.1 Conditions precedent

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

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Commonwealth Bank and Count; and
- (d) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme coming into effect, pursuant to section 411(10) of the Corporations Act.

### 3.2 Certificate

- (a) Count and Commonwealth Bank will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

## 4 Implementation of the Scheme

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### 4.1 Lodgement of Court orders with ASIC

Count will inform ASX on the day on which the Court approves the Scheme that it will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office

copy of the Court order approving the Scheme by 5.00pm on the first Business Day after the day on which the Court approves the Scheme (or such later date as ASX requires).

## 4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Capital 121, without the need for any further act by any Scheme Shareholder (other than acts performed by Count as attorney and agent for Scheme Shareholders under clause 8.5), by:
  - (1) Count delivering to Capital 121 a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Count; and
  - (2) Capital 121 duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Count for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(2), Count must enter, or procure the entry of, the name of Capital 121 in the Share Register in respect of all the Scheme Shares transferred to Capital 121 in accordance with this Scheme.

## 5 Scheme Consideration

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### 5.1 Amount of Scheme Consideration

- (a) The Scheme Consideration in respect of each Scheme Share is either:
  - (1) the Cash Consideration; or
  - (2) the Scrip Consideration.
- (b) Each Scheme Shareholder is entitled to receive either Cash Consideration or Scrip Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### 5.2 Election

- (a) A Scheme Shareholder, other than an Ineligible Foreign Shareholder, may make an election (**Election**) to receive either Cash Consideration or Scrip Consideration for all of their Scheme Shares by completing the Election Form, such Election being subject to the terms of the Scheme including without limitation clauses 5.6, 5.7 and 5.8.
- (b) A valid Election may be made by a Scheme Shareholder if the Election Form is in writing and is received by the Count Registry before the Election Time at the address specified by Count in the Scheme Booklet and on the Election Form.
- (c) An Election made by a Scheme Shareholder pursuant to clause 5.2(a), whether valid or not, will be irrevocable unless Count in its absolute discretion agrees to the revocation of the Election.
- (d) If:
  - (1) a valid Election is not made by a Scheme Shareholder prior to the Election Time;
  - (2) the Scheme Shareholder is an Ineligible Foreign Shareholder; or
  - (3) no Election is made prior to the Election Time,then that Scheme Shareholder will be deemed to have elected to receive Cash Consideration in respect of all of that Scheme Shareholder's Scheme Shares.

- (e) If a Scheme Shareholder validly elects to receive Scrip Consideration in respect of only some of its Scheme Shares, and makes no Election in respect of the remainder of its Scheme Shares, it will be deemed to have elected to receive Scrip Consideration in respect of all of its Scheme Shares not only those for which it has elected to receive Scrip Consideration.
- (f) If a Scheme Shareholder validly elects to receive Cash Consideration in respect of some of its Scheme Shares, and makes no Election in respect of the remainder of its Scheme Shares, it will be deemed to have elected to receive Cash Consideration in respect of all of its Scheme Shares not only those for which it has elected to receive Cash Consideration.
- (g) In the manner considered appropriate by Count and Commonwealth Bank (acting reasonably including after consultation with the Count Registry), a Scheme Shareholder who holds one or more parcels of Count Shares as trustee or nominee for, or otherwise on account of, another person, may make separate elections in relation to each of those parcels of Count Shares.
- (h) Subject to clauses 5.6, 5.7 and 5.8 if a Scheme Shareholder makes a valid Election to receive Scrip Consideration, it will receive:
  - (1) Scrip Consideration in respect of the number of Scheme Shares held by it at the Record Date only if the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in accordance with the terms of this Scheme, comprises a number of New Commonwealth Bank Shares that is a Marketable Parcel;
  - (2) Cash Consideration in respect of the number of Scheme Shares held by it at the Record Date, if the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in accordance with the terms of this Scheme, would comprise a number of New Commonwealth Bank Shares that is not a Marketable Parcel.

### 5.3 Provision of Cash Consideration

- (a) Commonwealth Bank must, and Count must use its best endeavours to procure that Commonwealth Bank or Capital 121 shall, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Cash Consideration payable to Scheme Shareholders, in an Australian dollar denominated trust account operated by Count as trustee for the Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Commonwealth Bank's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.3(a) and in accordance with the Elections, Count must pay or procure the payment of the Cash Consideration from the trust account referred to in clause 5.3(a), to each Scheme Shareholder who:
  - (1) does not make an Election;
  - (2) does not make a valid Election;
  - (3) makes or is deemed to make a valid Election to receive Cash Consideration in respect of all of that Scheme Shareholders' Scheme Shares (including Ineligible Foreign Shareholders in accordance with clause 5.2(d)(2)); or
  - (4) makes a valid Election to receive Scrip Consideration, but where the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in accordance with the terms of this Scheme, would comprise a number of New Commonwealth Bank Shares that is not a Marketable Parcel,
 such amount of cash as is due to that Scheme Shareholder as Cash Consideration in respect of all that Scheme Shareholder's Scheme Shares.

- (c) The obligations of Count under clause 5.3(b) will be satisfied by Count (in its absolute discretion):
- (1) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Count Registry to receive dividend payments from Count by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (2) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 5.3(c)(1), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.5).
- (d) To the extent that there is a surplus in the amount held by Count as trustee for the Scheme Shareholders in the trust account referred to in clause 5.3(a), that surplus may be paid by Count to Commonwealth Bank or Capital 121 following satisfaction of Count's obligations under this clause 5.3.

## 5.4 Provision of Scrip Consideration

Commonwealth Bank must, subject to clauses 5.5, 5.6, 5.7 and 5.8:

- (a) on or before the Implementation Date, issue the New Commonwealth Bank Shares to which each Scheme Shareholder who makes an Election, or is deemed to have made an Election, to receive Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, is entitled under this clause 5 (provided that the total Scrip Consideration in respect of that Scheme Shareholder's Scheme Shares, determined in accordance with the terms of this Scheme, comprises a number of New Commonwealth Bank Shares that is a Marketable Parcel) and procure that the name and address of each such Scheme Shareholder is entered in the Commonwealth Bank Share Register in respect of those New Commonwealth Bank Shares; and
- (b) procure that on or before the date that is two Business Days after the Implementation Date, a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Shareholder to whom New Commonwealth Bank Shares are issued in accordance with 5.4(a) representing the number of New Commonwealth Bank Shares issued to that Scheme Shareholder pursuant to this Scheme.

## 5.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.3(c), any Cash Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date;
- (b) any New Commonwealth Bank Shares to be issued under this Scheme must be issued to and registered in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

## 5.6 Ineligible Foreign Shareholders

Commonwealth Bank will be under no obligation to issue, and will not issue, any New Commonwealth Bank Shares under this Scheme to any Ineligible Foreign Shareholder and instead, the Ineligible Foreign Shareholder will be deemed to have elected to receive Cash Consideration in respect of all of that Scheme Shareholder's Scheme Shares pursuant to clause 5.2.

## 5.7 Breach of law

Where the issue of New Commonwealth Bank Shares to which a Scheme Shareholder would otherwise be entitled under this Scheme would result in a breach of law or of a provision of the constitution of Commonwealth Bank:

- (1) Commonwealth Bank will issue the maximum possible number of New Commonwealth Bank Shares to the Scheme Shareholder without giving rise to such a breach; and
- (2) the relevant Scheme Shareholder will be deemed to have elected to receive Cash Consideration in respect of the remaining Scheme Shares held by that Scheme Shareholder.

## 5.8 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Commonwealth Bank Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a New Commonwealth Bank Share, the fractional entitlement will be rounded up to the nearest whole number of New Commonwealth Bank Shares.
- (b) If Commonwealth Bank is of the opinion, formed reasonably, that several Scheme Shareholders, each of which holds a holding of Count Shares which results in a fractional entitlement to New Commonwealth Bank Shares have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scheme Consideration, Commonwealth Bank may direct Count to give notice to those Scheme Shareholders:
  - (1) setting out the names and Registered Addresses of all of them;
  - (2) stating that opinion; and
  - (3) attributing to one of them specifically identified in the notice the Count Shares held by all of them,

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

## 5.9 Unclaimed monies

- (a) Count may cancel a cheque issued under this clause 5 if the cheque:
  - (1) is returned to Count; or
  - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request from a Scheme Shareholder, Count must reissue a cheque that was previously cancelled under this clause.

### 5.10 Status of New Commonwealth Bank Shares

Subject to this Scheme becoming Effective, Commonwealth Bank must:

- (a) issue the New Commonwealth Bank Shares required to be issued by it under this Scheme on terms such that each such New Commonwealth Bank Share will rank equally in all respects with each existing fully paid ordinary share in Commonwealth Bank;
- (b) ensure that each such New Commonwealth Bank Share is duly and validly issued in accordance with all applicable laws and Commonwealth Bank's constitution, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under Commonwealth Bank's constitution); and
- (c) use all reasonable endeavours to ensure that such New Commonwealth Bank 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 on an ordinary settlement basis.

### 5.11 Orders of a court

If written notice is given to Count (or the Count Registry) of an order made by a court of competent jurisdiction that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Count in accordance with this clause 5, then Count shall be entitled to procure that payment is made in accordance with that order; or
- (b) prevents Count from making a payment to any particular Scheme Shareholder in accordance with clause 5.3(c), or such payment is otherwise prohibited by applicable law, Count shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Cash Consideration until such time as payment in accordance with this clause 5 is permitted by that order or otherwise by law.

## 6 Dealings in Count Shares

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### 6.1 Determination of Scheme Shareholders

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

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

and Count will not accept for registration, nor recognise for any purpose (except a transfer to Commonwealth Bank pursuant to the Scheme and any subsequent transfer by Commonwealth Bank or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

## 6.2 Register

- (a) Count must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) on or before the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Count to register a transfer that would result in a Count Shareholder holding a parcel of Count Shares that is less than a Marketable Parcel.
- (b) If the Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Count shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Count must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Count Shares (other than statements of holding in favour of Capital 121 or any Excluded Shareholders) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries on the Share Register in respect of Capital 121 or any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Count Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Count will ensure that details of the names, Registered Addresses and holdings of Count Shares for each Scheme Shareholder as shown in the Share Register are available to Commonwealth Bank in the form Commonwealth Bank reasonably requires.

## 7 Quotation of Count Shares

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- (a) Count will apply to ASX to suspend trading on the ASX in Count Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Commonwealth Bank, Count will apply:
  - (1) for termination of the official quotation of Count Shares on the ASX; and
  - (2) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

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### 8.1 Consent to amendments to the Scheme

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

- (a) Count may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Commonwealth Bank has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for Count has consented to.

## 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
- (1) agrees to the transfer of their Count Shares together with all rights and entitlements attaching to those Count Shares in accordance with the Scheme;
  - (2) agrees to the variation, cancellation or modification of the rights attached to their Count Shares constituted by or resulting from the Scheme;
  - (3) who makes an Election, or is deemed to have made an Election, to receive Scrip Consideration, agrees to become a shareholder in Commonwealth Bank and to be bound by the constitution of Commonwealth Bank; and
  - (4) acknowledges that the Scheme binds Count and all Scheme Shareholders (including those who do not attend the Scheme Meeting or those who do not vote, or vote against the Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Count and Capital 121, and appointed and authorised Count as its attorney and agent to warrant to Capital 121, that all their Count Shares (including any rights and entitlements attaching to those shares) which are transferred under the Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Count Shares to Capital 121 together with any rights attaching to those shares. Count undertakes that it will provide such warranty to Capital 121 as agent and attorney of each Scheme Shareholder.

## 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares transferred under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) On and from the Effective Date, Capital 121 will be beneficially entitled to the Scheme Shares to be transferred to it under the Scheme pending registration by Count of Capital 121 in the Share Register as the holder of the Scheme Shares.

## 8.4 Appointment of sole proxy

On the Implementation Date, and until Count registers Capital 121 as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Capital 121 as attorney and agent (and directed Capital 121 in each such capacity) to appoint any director, officer, secretary or agent nominated by Capital 121 as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;
- (b) no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Capital 121 reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Capital 121 and any director, officer, secretary or agent nominated by Capital 121 under clause 8.4(a) may act in the best interests of Capital 121 as the intended registered holder of the Scheme Shares.



## 8.5 Authority given to Count

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints Count and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Commonwealth Bank and Capital 121, and Count undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Commonwealth Bank and Capital 121 on behalf of and as agent and attorney for Scheme Shareholders; and
- (b) on the Implementation Date, irrevocably appoints Count and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Count accepts each such appointment. Count as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

## 8.6 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Shareholder to Count binding or deemed binding between the Scheme Shareholder and Count relating to Count or Count Shares (including any email addresses, instructions relating to communications from Count, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from Count) will be deemed from the Implementation Date (except to the extent determined otherwise by Commonwealth Bank in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Commonwealth Bank and to be a binding instruction, notification or election to, and accepted by, Commonwealth Bank in respect of any New Commonwealth Bank Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to Commonwealth Bank at its registry.

## 8.7 Binding effect of Scheme

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

# 9 General

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## 9.1 Stamp duty

Commonwealth Bank will pay all stamp duty in respect of the transfer of Count Shares to Capital 121.

## 9.2 Consent

Each of the Scheme Shareholders consents to Count doing all things necessary or incidental to the implementation of this Scheme.

### **9.3 Notices**

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

### **9.4 Governing law**

- (a) The Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **9.5 Further action**

Count must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

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

Neither Count nor Commonwealth Bank nor any director, officer or secretary of any of those companies will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## Schedule 1

## Definitions and interpretation

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1 Definitions

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The meanings of the terms used in this Scheme are set out below.

Term	Meaning
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>Business Day</b>	a day in Sydney that is not a Saturday, Sunday or public holiday and on which banks and ASX are open for trading.
<b>Capital 121</b>	Capital 121 Pty Limited (ACN 003 148 187), a wholly owned subsidiary of Commonwealth Bank.
<b>Cash Consideration</b>	A\$1.40 cash for each Scheme Share held by a Scheme Shareholder to receive Cash Consideration in accordance with clauses 4.5 and 4.6 of the Implementation Deed and the terms of the Scheme.
<b>CHESS</b>	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
<b>Commonwealth Bank</b>	Commonwealth Bank of Australia (ABN 48 123 123 124).
<b>Commonwealth Bank Group</b>	Commonwealth Bank and each of its subsidiaries and a reference to a 'Commonwealth Bank Group Member' or a 'member of the Commonwealth Bank Group' is to Commonwealth Bank or any of its subsidiaries.
<b>Commonwealth Bank Share Register</b>	the register of shareholders maintained by Commonwealth Bank or its agent.

Term	Meaning
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Count</b>	Count Financial Limited (ABN 19 001 974 625).
<b>Count Option</b>	an option issued pursuant to the Count Option Plan to acquire one unissued Count Share.
<b>Count Option Plan</b>	the Count Employee Share Option Plan, dated 24 October 2000 and amended 25 September 2006, and Franchisee Incentive Option Plan, dated 24 October 2000 and amended 24 October 2007.
<b>Count Share</b>	a fully paid ordinary share in Count.
<b>Count Shareholder</b>	each person who is registered as the holder of a Count Share.
<b>Count Registry</b>	Computershare Investor Services Pty Limited (ACN 078 279 277).
<b>Court</b>	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Commonwealth Bank and Count.
<b>Deed Poll</b>	the deed poll substantially in the form of Attachment 1 under which Commonwealth Bank and Capital 121 each covenants in favour of the Scheme Shareholders to perform their obligations under this Scheme.
<b>Effective</b>	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 this Scheme.
<b>Effective Date</b>	the date on which this Scheme becomes Effective.
<b>Election</b>	has the meaning in clause 5.2.
<b>Election Form</b>	the election form provided with the Scheme Booklet sent to Count Shareholders (other than Excluded Shareholders) under which each Count Shareholder (other than Excluded Shareholders) is requested to elect to receive either the Scrip Consideration or the Cash Consideration in respect of all of their Count Shares.

Term	Meaning
<b>Election Time</b>	5.00pm on the Record Date, or such other time as Commonwealth Bank and Count agree in writing.
<b>End Date</b>	24 February 2012, or such other date as agreed in writing by the parties.
<b>Excluded Shareholder</b>	any Count Shareholder who is a member of the Commonwealth Bank Group or any Count Shareholder who holds any Count Shares on behalf of, or for the benefit of, any member of the Commonwealth Bank Group, but does not include any Count Shareholder who holds any Count Shares on behalf of, or for the benefit of, any Commonwealth Bank Group Member as a result of a Non-Proprietary Acquisition.
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any other federal, state, provincial, or local government.
<b>Implementation Date</b>	the fourth calendar day after the Record Date, or such other day as Count and Commonwealth Bank agree.
<b>Implementation Deed</b>	the scheme implementation deed dated 30 August 2011 between Count and Commonwealth Bank relating to the implementation of this Scheme.
<b>Ineligible Foreign Shareholder</b>	a Scheme Shareholder whose address shown in the Share Register is a place outside Australia and its external territories and New Zealand, unless Commonwealth Bank determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Commonwealth Bank Shares when the Scheme becomes Effective.
<b>Marketable Parcel</b>	a marketable parcel as defined by the Operating Rules.
<b>New Commonwealth Bank Share</b>	a fully paid ordinary share in Commonwealth Bank to be issued to Scheme Shareholders who validly elect to receive Scrip Consideration under this Scheme.
<b>Non-Proprietary Acquisition</b>	an acquisition by Commonwealth Bank or by a wholly owned subsidiary of it, made on behalf of, or for the benefit of, a Third Party, including on behalf of external investors, unitholders or beneficiaries of funds, managed investment schemes, superannuation funds, trusts, all other trades on behalf of clients and all dealings by life insurance and other insurance funds and companies.
<b>Operating Rules</b>	the official operating rules of ASX.

Term	Meaning
<b>Record Date</b>	5.00pm on the fifth Business Day after the Effective Date.
<b>Registered Address</b>	in relation to a Count Shareholder, the address shown in the Share Register as at the Record Date.
<b>Scheme</b>	this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Count and Commonwealth Bank.
<b>Scheme Booklet</b>	as defined in the Implementation Deed.
<b>Scheme Consideration</b>	the consideration to be provided by Commonwealth Bank to each Scheme Shareholder for the transfer to Capital 121 of each Scheme Share, as determined in accordance with clause 4.3 of the Implementation Deed.
<b>Scheme Meeting</b>	the meeting of Count Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.
<b>Scheme Meeting Date</b>	the first day on which the Scheme Meeting is held (or any later date Count and Commonwealth Bank agree in writing).
<b>Scheme Shares</b>	all Count Shares held by the Scheme Shareholders as at the Record Date.
<b>Scheme Shareholder</b>	a holder of Count Shares recorded in the Share Register as at the Record Date (other than an Excluded Shareholder).
<b>Scheme Transfer</b>	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Capital 121 as transferee, which may be a master transfer of all or part of the Scheme Shares.
<b>Scrip Consideration</b>	<p>such number of New Commonwealth Bank Shares for each Scheme Share held by a Scheme Shareholder electing to receive Scrip Consideration in accordance with clauses 4.5 and 4.6 of the Implementation Deed calculated as follows:</p> $N = \frac{A\$1.40}{W}$ <p>where:</p> <p>N = Number of New Commonwealth Bank Shares.</p>

Term	Meaning
	W = The VWAP of Commonwealth Bank Shares on ASX in the 5 Business Day period ending on (and including) the Scheme Meeting Date.
<b>Second Court Date</b>	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 any later date Court and Commonwealth Bank agree in writing).
<b>Share Register</b>	the register of members of Count maintained in accordance with the Corporations Act.
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Third Party</b>	a person other than Commonwealth Bank and its Associates.
<b>VWAP</b>	<p>the average of the daily volume weighted average price of Commonwealth Bank Shares traded on ASX during the relevant period or on the relevant days, but excluding:</p> <ol style="list-style-type: none"> <li>1 any "crossing" transacted outside the "Open Session State" or any "Special Crossing" transacted at any time, each as defined in the Operating Rules; and</li> <li>2 any overseas trades or trades pursuant to the exercise of options over Commonwealth Bank Shares,</li> </ol> <p>except that if Commonwealth Bank Shares have gone ex an entitlement to a distribution after the beginning of the relevant period and before New Commonwealth Bank Shares are issued for Scheme Shares, the prices used for this calculation will be reduced by the value of that distribution.</p>

## 2 Interpretation

In this Scheme:

- headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- the singular includes the plural and the plural includes the singular;
- words of any gender include all genders;
- other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;

- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them;
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is a reference to that time in Sydney;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 3 Interpretation of inclusive expressions

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Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 4 Business Day

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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.



## Attachment 1

Deed Poll

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Attached

## Annexure 3

Deed poll

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Attached

### Deed poll

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Date ► 2011

This deed poll is made

by **Commonwealth Bank of Australia** (ABN 48 123 123 124)  
of Ground Level, Tower 1, 201 Sussex Street, Sydney NSW 2000  
**(Commonwealth Bank)**  
and  
**Capital 121 Pty Limited** (ACN 003 148 187)  
a wholly owned subsidiary of Commonwealth Bank  
**(Capital 121)**

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in favour of each person registered as a holder of fully paid ordinary shares in  
Count Financial Limited (ABN 19 001 974 625) (**Count**) in the Count  
Share Register as at the Record Date (other than the Excluded  
Shareholders) (each a **Scheme Shareholder**).

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**Background**

- 1 Count and Commonwealth Bank entered into the Implementation Deed.
- 2 In the Implementation Deed, Commonwealth Bank agreed to enter into this deed poll and to procure that Capital 121 enter into this deed poll.
- 3 Commonwealth Bank and Capital 121 are entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform their obligations under the Implementation Deed and the Scheme.

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This deed poll provides as follows:

## 1 Definitions and interpretation

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### 1.1 Definitions

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

Term	Meaning
<b>First Court Date</b>	the first day on which an application made to the Court for an order under section 411(4)(a) of the Corporations Act convening the Scheme Meeting is heard.
<b>Implementation Deed</b>	the scheme implementation deed entered into between Count and Commonwealth Bank dated 30 August 2011.
<b>Scheme</b>	the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Count and the Scheme Shareholders as contemplated by the Implementation Deed.

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

### 1.2 Interpretation

Section 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to “Scheme” are to be read as references to “deed poll”.

### 1.3 Nature of deed poll

Commonwealth Bank and Capital 121 acknowledge that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Count and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against Commonwealth Bank and Capital 121.

## 2 Conditions to obligations

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### 2.1 Conditions

The obligations of Commonwealth Bank and Capital 121 under this deed poll are subject to the Scheme becoming Effective.

## **2.2 Termination**

The obligations of Commonwealth Bank and Capital 121 under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms prior to the Scheme becoming Effective; or
- (b) the Scheme is not Effective by the End Date.

## **2.3 Consequences of termination**

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Commonwealth Bank and Capital 121 are released from their obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against Commonwealth Bank and Capital 121 in respect of any breach of this deed poll which occurred before it was terminated.

# **3 Scheme obligations**

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## **3.1 Undertaking to pay or issue Scheme Consideration**

Subject to clause 2, each of Commonwealth Bank and Capital 121 undertakes in favour of each Scheme Shareholder:

- (a) who is to receive Cash Consideration in respect of their Scheme Shares in accordance with the terms of the Scheme, to deposit (in cleared funds) by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Cash Consideration payable to such Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Count as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Commonwealth Bank's account;
- (b) who is to receive Scrip Consideration in respect of their Scheme Shares in accordance with the terms of the Scheme, to provide or procure the provision of the Scrip Consideration to each such Scheme Shareholder in accordance with the terms of the Scheme; and
- (c) to undertake all other actions attributed to it under the Scheme, subject to and in accordance with the provisions of the Scheme.

## **3.2 Shares to rank equally**

Commonwealth Bank covenants in favour of each Scheme Shareholder that the New Commonwealth Bank Shares which are issued to each Scheme Shareholder in accordance with the Scheme will:

- (a) rank equally with all existing Commonwealth Bank Shares; and
- (b) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

## 4 Warranties

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Commonwealth Bank and Capital 121 represent and warrant that:

- (a) each is a corporation validly existing under the laws of its place of registration;
- (b) each has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) each has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms;
- (e) this deed poll does not conflict with, or result in the breach of or a default under, any provision of the constitution of Commonwealth Bank or Capital 121, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which either is bound.

## 5 Continuing obligations

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

- (a) Commonwealth Bank and Capital 121 have fully performed their respective obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 Notices

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### 6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to Commonwealth Bank and Capital 121 in accordance with the details set out below (or any alternative details nominated by Commonwealth Bank and Capital 121 by Notice).

<b>Attention</b>	David Lane General Manager, Strategic Development, Wealth Management
<b>Address</b>	Commonwealth Bank Level 29, 52 Martin Place Sydney NSW 2000
<b>Fax no</b>	+61 2 9303 6397
<b>Copy to</b>	Tony Damian, Partner Freehills, Level 32, MLC Centre, Martin Place Sydney NSW 2000 +61 2 9322 4000

## 6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.
- However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By fax to the nominated fax number	At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety.  However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.

### 6.3 Notice must not be given by email or other electronic communication

A Notice must not be given by email or other electronic means of communication (other than fax as permitted in clause 6.2).

## 7 General

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### 7.1 Stamp duty

Commonwealth Bank and Capital 121 will pay all stamp duty payable in connection with the transfer of Count Shares to Capital 121.

### 7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) Commonwealth Bank and Capital 121 irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. Commonwealth Bank and Capital 121 irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 7.3 Waiver

- (a) Commonwealth Bank and Capital 121 may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of Commonwealth Bank or Capital 121 as a waiver of any right unless the waiver is in writing and signed by Commonwealth Bank or Capital 121, as appropriate.
- (c) The meanings of the terms used in this clause 7.3 are set out below:

Term	Meaning
Conduct	includes delay in the exercise of a right.
Right	any right arising under or in connection with this deed and includes the right to rely on this clause.
Waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.



**7.4 Variation**

A provision of this deed poll may not be varied unless:

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

in which event Commonwealth Bank and Capital 121 will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

**7.5 Cumulative rights**

The rights, powers and remedies of Commonwealth Bank and Capital 121 and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

**7.6 Assignment**

- (a) The rights created by this deed poll are personal to Commonwealth Bank and Capital 121 and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Commonwealth Bank.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

**7.7 Joint and several obligations**

Commonwealth Bank and Capital 121 are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

**7.8 Further action**

Commonwealth Bank and Capital 121 must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

## Signing page

Executed as a deed poll

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Signed, sealed and delivered for  
**Commonwealth Bank of Australia**  
By its attorney

*sign here ►* \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here ►* \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

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Signed, sealed and delivered for  
**Capital 121 Pty Limited**  
By its attorney

*sign here ►* \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here ►* \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

Option scheme of arrangement

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Attached

# Option scheme of arrangement

This option scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

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Between the parties

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**Count Financial Limited** (ABN 19 001 974 625)  
of Gold Fields House, Level 19, 1 Alfred Street, Sydney NSW 2000  
(**Count**)

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Each person registered as a holder of Count Options in the Count  
Option Register as at the Option Scheme Record Date  
(**Option Scheme Participants**)

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## 1 Definitions, interpretation and Option Scheme components

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### 1.1 Definitions

Schedule 1 contains definitions used in this Option Scheme.

### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Option Scheme.

### 1.3 Option Scheme components

This Option Scheme includes any schedule.

## 2 Preliminary matters

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- (a) Count is a public company limited by shares, registered in New South Wales, Australia, and has been admitted to the official list of the ASX. Count Shares are quoted for trading on the ASX.
- (b) As at 29 August 2011:

- (1) 262,247,830 Count Shares were on issue and before the record date Count proposes to issue up to 2,909,866 Count Shares in respect of its loan funded share plan; and
- (2) 35,187,104 Count Options were on issue.
- (c) Commonwealth Bank is a listed company limited by shares incorporated in the Australian Capital Territory, Australia. Capital 121 is a wholly-owned subsidiary of Commonwealth Bank, registered in New South Wales, Australia.
- (d) If this Option Scheme becomes Effective:
  - (1) Commonwealth Bank will provide or procure the provision of the Option Scheme Consideration to Option Scheme Participants in accordance with this Option Scheme and the Option Scheme Deed Poll; and
  - (2) all the Scheme Options, and all the rights, entitlements and obligations attaching to them as at the Implementation Date, will be cancelled.
- (e) Count and Commonwealth Bank have agreed, by executing the Implementation Deed, to implement this Option Scheme.
- (f) This Option Scheme attributes actions to Commonwealth Bank and Capital 121 but does not itself impose an obligation on them to perform those actions. Commonwealth Bank and Capital 121 have agreed, by executing the Option Scheme Deed Poll, to perform the actions attributed to them under this Option Scheme, including the providing or procuring the provision of the Option Scheme Consideration to the Option Scheme Participants.

### 3 Conditions

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#### 3.1 Conditions precedent

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

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of the Share Scheme) having been satisfied or waived by 8.00am on the Second Court Date;
- (b) none of the Implementation Deed, the Deed Poll, nor the Option Scheme Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) the Option Scheme having been approved in accordance with section 411(4)(a)(i) of the Corporations Act at the Option Scheme Meeting;
- (d) approval of this Option Scheme by the Court under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Commonwealth Bank and Count;
- (e) approval of the Share Scheme by the Court pursuant to paragraph 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under

section 411(6) of the Corporations Act as are acceptable to Commonwealth Bank and Count;

- (f) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Option Scheme coming into effect, pursuant to section 411(10) of the Corporations Act; and
- (g) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Share Scheme coming into effect, pursuant to section 411(10) of the Corporations Act.

### 3.2 Certificate

- (a) Count and Commonwealth Bank will provide to the Court at the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

## 4 Implementation of the Option Scheme

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### 4.1 Lodgement of Court orders with ASIC

Count will inform ASX on the day on which the Court approves the Option Scheme that it will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving the Option Scheme by 5.00pm on the first Business Day after the day on which the Court approves the Option Scheme (or such later date as ASX require).

### 4.2 Cancellation of Scheme Options

On the Implementation Date:

- (a) subject to the provision of the Option Scheme Consideration in the manner contemplated by clause 5, all of the Scheme Options, together with all rights, obligations and entitlements attaching to them as at the Implementation Date, will be cancelled and extinguished, without the need for any further act by any Option Scheme Participant (other than acts performed by Count as attorney and agent for Option Scheme Participants under clause 7.4), and each Option Scheme Participant:
  - (1) releases Count from all obligations in relation to those Scheme Options;
  - (2) releases and waives any and all rights it may have had (including to be issued Count Shares) in relation to those Scheme Options (including under the relevant option plan or under the terms of the relevant Scheme Options);
  - (3) authorises Count to update the Count Option Register recording the cancellation of the Count Options that constitute the Scheme Options; and

- (b) in consideration for the cancellation of their Scheme Options, each Option Scheme Participant will be entitled to receive the Option Scheme Consideration in accordance with clause 5.

## 5 Option Scheme Consideration

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### 5.1 Provision of Option Scheme Consideration

- (a) Capital 121 or Commonwealth Bank (on behalf of Capital 121) must, and Count must use its best endeavours to procure that Capital 121 or Commonwealth Bank (on behalf of Capital 121) shall, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Option Scheme Consideration payable to Option Scheme Participants, in an Australian dollar denominated trust account operated by Count as trustee for the Option Scheme Participants, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Commonwealth Bank or Capital 121's account (as applicable)).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Count must pay or procure the payment of the Option Scheme Consideration to each Option Scheme Participant from the trust account referred to in clause 5.1(a).
- (c) The obligations of Count under clause 5.1(a) will be satisfied by Count dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Option Scheme Participant by prepaid post to their Registered Address (as at the Option Scheme Record Date), such cheque being drawn in the name of the Option Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (d) To the extent that there is a surplus in the amount held by Count as trustee for the Option Scheme Participants in the trust account referred to in clause 5.1(a), that surplus may be paid by Count to Commonwealth Bank or Capital 121 following satisfaction of Count's obligations under this clause 5.1.

### 5.2 Joint holders

In the case of Scheme Options held in joint names:

- (a) any Option Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Option Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Count Option Register as at the Option Scheme Record Date; and
- (b) any other document required to be sent under this Option Scheme, will be forwarded to the holder whose name appears first in the Count Option Register as at the Option Scheme Record Date.

### 5.3 Unclaimed monies

- (a) Count may cancel a cheque issued under this clause 5.3 if the cheque:
- (1) is returned to Count; or
  - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request from an Option Scheme Participant, Count must reissue a cheque that was previously cancelled under this clause.

### 5.4 Orders of a court

If written notice is given to Count (or the Count Registry) of an order made by a court of competent jurisdiction that:

- (a) requires payment to a third party of a sum in respect of Scheme Options held by a particular Option Scheme Participant, which would otherwise be payable to that Option Scheme Participant by Count in accordance with this clause 5.4, then Count shall be entitled to procure that payment is made in accordance with that order; or
- (b) prevents Count from making a payment by Count to any particular Option Scheme Participant in accordance with clause 5.1(c), or such payment is otherwise prohibited by applicable law, Count shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Options held by that Option Scheme Participant multiplied by the Option Scheme Consideration in respect of those Scheme Options until such time as payment in accordance with this clause 5.4 is permitted by that order or otherwise by law.

## 6 Dealings in Count Options

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### 6.1 Exercise prior to Share Scheme Record Date

To establish the identity of the Option Scheme Participants, Count will not accept as valid, nor recognise for any purpose, any notice of exercise of a Count Option registered in the name of a Count Optionholder:

- (a) received after 5.00pm on the day which is the Business Day immediately before the Share Scheme Record Date; or
- (b) which is not in accordance with the terms of grant of the Count Options.

### 6.2 Registration as holder of ordinary shares

Count will issue, and register the Count Optionholder as the holder of, a Count Share in respect of the exercise of a Count Option registered in the name of the Count Optionholder permitted by clause 6.1 and in accordance with the terms of grant of the Count Options, and the Count Optionholder acknowledges and agrees that, if the Share Scheme becomes Effective, the Count Optionholder will be bound by the terms of the



Share Scheme in respect of each such Count Share and, accordingly, each such Count Share will be transferred to Capital 121 in accordance with the Share Scheme on the Implementation Date.

### **6.3 Count Option Register**

- (a) For the purpose of determining entitlements to the Option Scheme Consideration, Count will maintain the Count Option Register in accordance with the provisions of this clause 6 until the Option Scheme Consideration has been provided and the Count Option Register in this form will solely determine entitlements to the Option Scheme Consideration.
- (b) Count must procure that, on or before 9.00 am on the Business Day following the Share Scheme Record Date, details of the names, Registered Addresses and holdings of Count Options of every Option Scheme Participant as shown in the Count Option Register at the Option Scheme Record Date are available to Commonwealth Bank in such form as Commonwealth Bank may reasonable require.
- (c) As from the Option Scheme Record Date, all Count Option certificates will cease to have effect and each entry on the Count Option Register at that date will cease to have any effect other than as evidence of entitlement to the Option Scheme Consideration.

## **7 General Option Scheme provisions**

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### **7.1 Consent to amendments to the Options Scheme**

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

- (a) Count may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Commonwealth Bank has consented; and
- (b) each Option Scheme Participant agrees to any such alterations or conditions which counsel for Count has consented to.

### **7.2 Option Scheme Participants' agreements and warranties**

- (a) Each Option Scheme Participant:
  - (1) agrees to the cancellation of their Count Options, together with all rights, obligations and entitlements attaching to those Count Options in accordance with this Option Scheme; and
  - (2) acknowledges that the Option Scheme binds Count and all Option Scheme Participants (including those who do not attend the Option Scheme Meeting or those who do not vote, or vote against the Option Scheme, at the Option Scheme Meeting).
- (b) Each Option Scheme Participant is taken to have warranted to Count and Capital 121, and appointed and authorised Count as its attorney and agent to warrant to Capital 121, that all their Count Options (including any rights and entitlements attaching to those

options) which are cancelled under the Option Scheme will, at the date of cancellation, be free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and, subject only to the relevant option terms, restrictions on transfer of any kind, and that, subject only to the relevant option terms, they have full power and capacity to deal with their Count Options together with any rights attaching to those options. Count undertakes that it will provide such warranty to Capital 121 as agent and attorney of each Option Scheme Participant.

### **7.3 Appointment of sole proxy**

On the Implementation Date, and until all Scheme Options are cancelled, each Option Scheme Participant:

- (a) is deemed to have appointed Capital 121 as attorney and agent (and directed Commonwealth Bank in each such capacity) to appoint any director, officer, secretary or agent nominated by Capital 121 as its sole proxy and, where applicable or appropriate, corporate representative to attend Count meetings, exercise the votes attaching to the Scheme Options (if any) registered in their name and sign any resolution or document;
- (b) no Option Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 7.3(a)); and
- (c) must take all other actions in the capacity of a registered holder of Scheme Options as Commonwealth Bank or Capital 121 reasonably directs.

### **7.4 Authority given to Count**

Each Option Scheme Participant, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints Count and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Option Scheme Deed Poll against Commonwealth Bank and Capital 121, and Count undertakes in favour of each Option Scheme Participant that it will enforce the Option Scheme Deed Poll against Commonwealth Bank and Capital 121 on behalf of and as agent and attorney for Option Scheme Participants; and
  - (b) on the Implementation Date, irrevocably appoints Count and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Option Scheme and the transactions contemplated by it, including (without limitation) the cancellation of the Scheme Options,
- and Count accepts each such appointment. Count as attorney and agent of each Option Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 7.4 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

### **7.5 Binding effect of Option Scheme**

This Option Scheme binds Count and all of the Option Scheme Participants (including those who did not attend the Option Scheme Meeting, did not vote at that meeting, or voted against the Option Scheme) and, to the extent of any inconsistency, overrides the constitution of Count.

## 8 General

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### 8.1 Stamp duty

Commonwealth Bank will pay all stamp duty payable in connection with the cancellation of the Count Options.

### 8.2 Consent

Each Option Scheme Participant consents to Count doing all things necessary or incidental to the implementation of this Option Scheme.

### 8.3 Notices

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

### 8.4 Governing law

- (a) The Option Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Option Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 8.5 Further action

Count must do all things and execute all documents necessary to give full effect to this Option Scheme and the transactions contemplated by it.

### 8.6 No liability when acting in good faith

Neither Count nor Commonwealth Bank nor any director, officer or secretary of any of those companies will be liable for anything done or omitted to be done in the performance of this Option Scheme or the Option Scheme Deed Poll in good faith.

# Schedule 1

## Definitions and interpretation

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### 1 Definitions

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#### 1.1 Definitions

The meanings of the terms used in this Option Scheme are set out below.

Term	Meaning
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.
<b>Business Day</b>	a day in Sydney that is not a Saturday, Sunday or public holiday and on which banks and ASX are open for trading.
<b>Capital 121</b>	Capital 121 Pty Limited (ACN 003 148 187), a wholly owned subsidiary of Commonwealth Bank.
<b>Commonwealth Bank</b>	Commonwealth Bank of Australia (ABN 48 123 123 124).
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Count</b>	Count Financial Limited (ABN 19 001 974 625).
<b>Count Option</b>	an option issued pursuant to the Count Option Plan to acquire one unissued Count Share.
<b>Count Optionholder</b>	each person who is registered as the holder of a Count Option.

<b>Count Option Plan</b>	the Count Employee Share Option Plan, dated 24 October 2000 and amended 25 September 2006, and Franchisee Incentive Option Plan, dated 24 October 2000 and amended 24 October 2007.
<b>Count Option Register</b>	the register of Count Options maintained by Count or its agent.
<b>Count Registry</b>	Computershare Investor Services Pty Limited (ACN 078 279 277).
<b>Count Share</b>	a fully paid ordinary share in Count.
<b>Count Shareholder</b>	a person who is registered as the holder of a Count Share.
<b>Court</b>	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Commonwealth Bank and Count.
<b>Effective</b>	when used in relation to the Option Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to this Option Scheme.
<b>Effective Date</b>	the date on which this Option Scheme becomes Effective.
<b>End Date</b>	24 February 2012, or such other date as agreed in writing by the parties.
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any other federal, state, provincial or local government.
<b>Implementation Date</b>	the fourth calendar day after the Option Scheme Record Date, or such other day as Count and Commonwealth Bank agree.
<b>Implementation Deed</b>	the scheme implementation deed dated 30 August 2011 between Count and Commonwealth Bank relating to the implementation of this Option Scheme.
<b>Option Scheme</b>	this scheme of arrangement, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Count and Commonwealth Bank.

<b>Option Scheme Consideration</b>	the consideration payable to Option Scheme Participants as determined in accordance with Schedule 2.
<b>Option Scheme Deed Poll</b>	the deed poll substantially in the form of Annexure 1 under which Commonwealth Bank and Capital 121 each covenants in favour of the Option Scheme Participants to perform their obligations under this Option Scheme.
<b>Option Scheme Meeting</b>	the meeting of Count Optionholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act.
<b>Option Scheme Participants</b>	the holders of Count Options recorded on the Count Option Register as at the Option Scheme Record Date.
<b>Option Scheme Record Date</b>	5.00pm on the fifth Business Day after the Effective Date.
<b>Registered Address</b>	the address shown in the Count Option Register as at the Option Scheme Record Date.
<b>Scheme Booklet</b>	as defined in the Implementation Deed.
<b>Scheme Options</b>	a Count Option held by an Option Scheme Participant as at the Option Scheme Record Date.
<b>Scheme Shareholder</b>	a holder of fully paid ordinary shares in Count recorded in the register of members of Count as at the Share Scheme Record Date.
<b>Second Court Date</b>	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 Option Scheme is heard (or any later date Count and Commonwealth Bank agree in writing).
<b>Share Scheme</b>	the scheme of arrangement between Count and the Scheme Shareholders, the form of which is contained in the Scheme Booklet, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Commonwealth Bank and Count.
<b>Share Scheme Record Date</b>	the 'Record Date' as defined in the Share Scheme.

## 1.2 Interpretation

In this Option Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Option Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Option Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Option Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Option Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is a reference to that time in Sydney;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Option Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Option Scheme will be construed adversely to a party because that party was responsible for the preparation of this Option Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) a reference to a body, other than a party to this Option Scheme (including an institute, association or authority), whether statutory or not:

- (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this Option Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **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.



## Schedule 2

## Option Scheme Consideration

Option Tranche	Number of Options	Value Per Option A\$	Premium A\$	Total Offer Value Per Option A\$	Total Value A\$
ESOP 2006	1,141,619	\$0.00	\$0.02	\$0.02	\$22,832
ESOP 2006 – Director	398,500	\$0.00	\$0.02	\$0.02	\$7,970
ESOP 2007	1,359,400	\$0.00	\$0.02	\$0.02	\$27,370
ESOP 2007 – Director	66,000	\$0.00	\$0.02	\$0.02	\$1,329
ESOP 2008	1,785,152	\$0.06	\$0.02	\$0.08	\$145,332
ESOP 2008 – Director	66,000	\$0.06	\$0.02	\$0.08	\$5,373
FIOP 2006	8,085,633	\$0.00	\$0.02	\$0.02	\$161,713
FIOP 2007	9,009,000	\$0.00	\$0.02	\$0.02	\$183,315
FIOP 2008	13,275,800	\$0.08	\$0.02	\$0.10	\$1,379,811
				<b>Total</b>	<b>\$ 1,935,045</b>

## Annexure 1

### Option scheme deed poll

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Attached

## Annexure 5

Option deed poll

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Attached

### Deed poll

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Date ► 2011

This deed poll is made

by **Commonwealth Bank of Australia** (ABN 48 123 123 124)  
of Ground Level, Tower 1, 201 Sussex Street, Sydney NSW 2000  
(**Commonwealth Bank**)  
and  
**Capital 121 Pty Limited** (ACN 003 148 187)  
a wholly owned subsidiary of Commonwealth Bank  
(**Capital 121**)

---

in favour of each person registered as a holder of Count Options recorded in  
the Count Option Register as at the Record Date (each an **Option  
Scheme Participant**).

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Recitals

- 1 Count and Commonwealth Bank entered into the Implementation Deed.
- 2 In the Implementation Deed, Commonwealth Bank agreed to enter into this deed poll and to procure that Capital 121 enter into this deed poll.
- 3 Commonwealth Bank and Capital 121 are entering into this deed poll for the purpose of covenanting in favour of the Option Scheme Participants to perform their obligations under the Implementation Deed and the Option Scheme.

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This deed poll provides as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

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

Term	Meaning
<b>First Court Date</b>	as defined in the Implementation Deed.
<b>Implementation Deed</b>	the scheme implementation deed entered into between Count and Commonwealth Bank dated 30 August 2011.
<b>Option Scheme</b>	the proposed option scheme of arrangement under Part 5.1 of the Corporations Act between Count and the Option Scheme Participants as contemplated by the Implementation Deed.

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

## 1.2 Interpretation

Section 2 of Schedule 1 of the Option Scheme applies to the interpretation of this deed poll, except that references to "Option Scheme" are to be read as references to 'deed poll'.

## 1.3 Nature of deed poll

Commonwealth Bank and Capital 121 acknowledge that:

- (a) this deed poll may be relied on and enforced by any Option Scheme Participant in accordance with its terms even though the Option Scheme Participants are not party to it; and
- (b) under the Option Scheme, each Option Scheme Participant irrevocably appoints Count and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against Commonwealth Bank and Capital 121.

# 2 Conditions to obligations

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## 2.1 Conditions

The obligations of Commonwealth Bank and Capital 121 under this deed poll are subject to the Option Scheme becoming Effective.

## 2.2 Termination

The obligations of Commonwealth Bank and Capital 121 under this deed poll to the Option Scheme Participants will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms, prior to the Option Scheme becoming Effective; or
- (b) the Option Scheme is not Effective by the End Date.

## 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Commonwealth Bank and Capital 121 are released from their obligations to further perform this deed poll; and
- (b) each Option Scheme Participant retains the rights they have against Commonwealth Bank and Capital 121 in respect of any breach of this deed poll which occurs before it was terminated.

## 3 Scheme obligations

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Subject to clause 2, each of Commonwealth Bank and Capital 121 undertakes in favour of each Option Scheme Participant to:

- (a) deposit (in cleared funds) by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Option Scheme Consideration payable to all Option Scheme Participants under the Option Scheme into an Australian dollar denominated trust account operated by Count as trustee for the Options Scheme Participants, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Commonwealth Bank's account; and
- (b) undertake all other actions attributed to it under the Option Scheme, subject to and in accordance with the provisions of the Option Scheme.

## 4 Warranties

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Commonwealth Bank and Capital 121 represent and warrant that:

- (a) each is a corporation validly existing under the laws of its place of registration;
- (b) each has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) each has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;

- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or a default under, any provision of the constitution of Commonwealth Bank or Capital 121, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which either is bound.

## 5 Continuing obligations

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

- (a) Commonwealth Bank and Capital 121 have fully performed their respective obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 Notices

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### 6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to Commonwealth Bank and Capital 121 in accordance with the details set out below (or any alternative details nominated by Commonwealth Bank and Capital 121 by Notice).

**Attention**

David Lane  
General Manager, Strategic Development, Wealth  
Management

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**Address**

Commonwealth Bank  
Level 29, 52 Martin Place  
Sydney NSW 2000

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**Fax no**

+61 2 9303 6397

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**Copy to**

Tony Damian, Partner  
Freehills, Level 32, MLC Centre, Martin Place  
Sydney NSW 2000  
+61 2 9322 4000

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## 6.2 How Notice must be given and when Notice is received

(a) A Notice must be given by one of the methods set out in the table below.

(b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By fax to the nominated fax number	<p>At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety.</p> <p>However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.</p>

## 6.3 Notice must not be given by email or other electronic communication

A Notice must not be given by email or other electronic means of communication (other than fax as permitted in clause 6.2).

# 7 General

## 7.1 Stamp duty

Commonwealth Bank and Capital 121 will pay all stamp duty payable in connection with the cancellation of the Scheme Options.

## 7.2 Governing law and jurisdiction

(a) This deed poll is governed by the law in force in New South Wales, Australia.

(b) Commonwealth Bank and Capital 121 irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.



Commonwealth Bank and Capital 121 irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 7.3 Waiver

- (a) Commonwealth Bank and Capital 121 may not rely on the words or conduct of any Option Scheme Participant as a waiver of any right unless the waiver is in writing and signed by the Option Scheme Participant granting the waiver.
- (b) No Option Scheme Participant may rely on words or conduct of Commonwealth Bank or Capital 121 as a waiver of any right unless the waiver is in writing and signed by Commonwealth Bank or Capital 121, as appropriate.
- (c) The meanings of the terms used in this clause 7.3 are set out below:

Term	Meaning
<b>Conduct</b>	includes delay in the exercise of a right.
<b>Right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>Waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 7.4 Variation

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by Count; or
- (b) if on or after the First Court Date the variation is agreed to by Count and the Court indicates that the variation would not of itself preclude approval of the Option Scheme, in which event Commonwealth Bank and Capital 121 will enter into a further deed poll in favour of the Option Scheme Participants giving effect to the variation.

### 7.5 Cumulative rights

The rights, powers and remedies of Commonwealth Bank and Capital 121 and the Option Scheme Participants under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### 7.6 Assignment

- (a) The rights created by this deed poll are personal to Commonwealth Bank and Capital 121 and each Option Scheme Participant and must not be dealt with at law or in equity without the prior written consent of Commonwealth Bank.

- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

## **7.7 Joint and several obligations**

Commonwealth Bank and Capital 121 are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

## **7.8 Further action**

Commonwealth Bank and Capital 121 must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

# Signing page

Executed as a deed poll

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Signed, sealed and delivered for  
**Commonwealth Bank of Australia**  
By its attorney

*sign here ▶* \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here ▶* \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

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Signed, sealed and delivered for  
**Capital 121 Pty Limited**  
By its attorney

*sign here ▶* \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here ▶* \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

Public announcements

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Attached

## Commonwealth Bank of Australia to acquire Count Financial Limited

**Sydney, 30 August 2011:** The Commonwealth Bank of Australia Group (CBA) and Count Financial Limited (Count) today announced they have entered into a Scheme Implementation Deed (the "Deed") under which CBA proposes to acquire all the shares of Count via a Scheme of Arrangement (the "Scheme").

Under the terms of the Deed, CBA has agreed to pay \$1.40 per Count share (in addition shareholders will receive the \$0.04 per share dividend previously announced by Count<sup>1</sup>), representing total consideration of \$373m<sup>2</sup> for the shares (the "Offer"). Count shareholders will be able to elect to receive the consideration wholly in cash or CBA shares on the terms set out in the Deed.

The Offer equates to 14.6 x FY2011 normalised Net Profit After Tax of \$25.6m.

Commonwealth Bank Group Executive, Wealth Management, Grahame Petersen said an acquisition of Count by the Bank's Wealth Management business represented an opportunity to invest in a well run business which provided quality financial advice.

"Our intention is to run the business on a standalone basis, supporting its business strategy, current open architecture platform philosophy and providing a platform for growth. It provides us further access to the important and growing self managed super fund sector through a highly regarded network of accountant-based financial advisers," Mr Petersen said.

"We believe an acquisition of Count is an excellent strategic and cultural fit. As an accounting-based dealer group, the acquisition is complementary to Colonial First State's advice businesses," Mr Petersen said.

The acquisition is expected to increase CBA's number of advisers from approximately 1,220 to more than 1,850, ranking it second by total number of advisers nationally.

The Board of Directors of Count has unanimously recommended shareholders vote in favour of the Scheme subject to no superior proposal emerging and the Independent Expert concluding that the Scheme is in the best interests of Scheme shareholders.

All Count Directors also intend to vote their shares in favour of the Scheme, subject to no superior offer and the Independent Expert concluding that the Scheme is in the best interests of Scheme shareholders.

Mr. Barry Lambert, Executive Chairman and the largest Count shareholder, has entered into a call option deed with CBA over approximately 17.74% of the issued shares in Count ("Option Deed")<sup>3</sup>. The details of the Option Deed will be disclosed in a substantial holder notice to be lodged with the ASX by CBA.

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<sup>1</sup> On 15 August 2011, Count announced a final dividend of \$0.04 per share with a payment date of 14 October 2011.

<sup>2</sup> Based on 262.2m fully diluted shares outstanding as at 29 August 2011 plus additional 2.9m shares to be issued under Count's loan funded share scheme and approximately \$1.9m in value of share options.

<sup>3</sup> The Option Deed is for 19.9% of Count's total shares on issue less the number of shares in Count currently held by the CBA Group in its funds management business and other non proprietary businesses (currently approximately 2.16%).

# ASX Announcement



CommonwealthBank

## Details of the Scheme

Under the Scheme, Count shareholders will receive as consideration for each Count share held the amount of \$1.40 (in addition shareholders will receive the \$0.04 per share dividend previously announced by Count<sup>1</sup>). Count shareholders can elect to take the consideration wholly in cash or as CBA shares on the terms set out in the Deed.

The transaction is subject to a number of conditions precedent, including no material adverse change, no prescribed occurrences, Count shareholder and Court approval and other customary conditions (including ACCC informal clearance).

The cash component of the acquisition will be funded by CBA from internal resources.

A scheme booklet with full details of the transaction, including an Independent Expert's report, is expected to be dispatched to Count shareholders in October 2011. The shareholder meeting to approve the Scheme is expected to be held in November 2011.

CBA's financial advisor is Goldman Sachs and legal advisor is Freehills.

## For more information contact:

Matthew Coleman  
Executive Manager Communications  
Wealth Management  
02 9303 2995  
0439 295 712

# ASX ANNOUNCEMENT: COU

30 August 2011

## Commonwealth Bank of Australia to acquire Count Financial



Count Financial Ltd ("Count") announces that it has entered into a Scheme Implementation Deed ("SID") with Commonwealth Bank of Australia ("CBA"), under which CBA would acquire all of the ordinary shares in Count by a Scheme of Arrangement ("Scheme"), subject to shareholder approval and in the absence of a superior proposal.

Barry Lambert, Count Founder and Executive Chairman, and the other members of the Board of Count unanimously recommend that Count shareholders vote in favour of the Scheme, in the absence of a superior proposal emerging and subject to an Independent Expert concluding that the offer is in the best interests of Count shareholders. Subject to these conditions, each Director of Count who holds Count shares intends to vote their shares in favour of the Scheme.

Other Lambert Family members who in aggregate hold approximately 20% of Count shares have also indicated to Count that they will vote in favour of the Scheme, subject to no superior proposal being recommended by the Count Board.

Under the terms of the Scheme, Count shareholders will have the choice of receiving **A\$1.40 cash** per Count share, or **A\$1.40 in CBA shares**, based on the volume weighted average price ("VWAP") of CBA shares on the ASX in the 5 Business Day period ending on the day before the Scheme Meeting date which is presently expected to be in November 2011.

In addition, Count shareholders will receive the fully franked dividend of A\$0.04 per Count share declared on 15 August 2011, in relation to Count's second half 2011 results, before the Scheme becomes effective.

The offer consideration of A\$1.40 per share to Count shareholders represents:

- a premium of 32.1% to the unadjusted closing price of A\$1.060 on 29 August 2011;
- a premium of 46.3% to the unadjusted one month VWAP prior to 29 August 2011 of A\$0.957; and
- a premium of 40.4% to the unadjusted three month VWAP prior to 29 August 2011 of A\$0.997
- a premium of 52.2% to the adjusted<sup>1</sup> closing price of A\$0.651 on 29 August 2011;
- a premium of 73.0% to the adjusted<sup>1</sup> one month VWAP prior to 29 August 2011 of A\$0.573; and
- a premium of 64.6% to the adjusted<sup>1</sup> three month VWAP prior to 29 August 2011 of A\$0.602

The offer consideration implies an equity value for Count of A\$373 million<sup>2</sup> and compares favourably with recent precedent transaction multiples, representing a valuation multiple of 14.6x Count's normalised net profit after tax of A\$25.6 million for the twelve month period ended 30 June 2011.

Barry Lambert, Executive Chairman and the largest Count shareholder, has entered into a call option deed with CBA over approximately 17.74% of the issued shares in Count ("Option Deed")<sup>3</sup>. A copy of the Option Deed will be attached to a substantial holder notice to be lodged with the ASX by CBA.

<sup>1</sup> For the purposes of calculating the adjusted premia both the offer price and Count share prices have been adjusted to exclude the value of the listed equity investments held by Count dollar for dollar at their market value over the respective periods, primarily being Mortgage Choice, Centrepont Alliance, Countplus and DKN Holdings. The adjusted offer price is A\$0.991.

<sup>2</sup> Based on 262.2 million shares outstanding as at 29 August 2011 plus additional 2.9 million shares issued under LFSS and approximately A\$1.9 million in value of share options.

<sup>3</sup> The Option Deed is for 19.9% of Count's total shares on issue less the number of shares in Count currently held by the CBA Group in its funds management business and other non proprietary businesses (currently approximately 2.16%).

The transaction is subject to certain conditions precedent including Count shareholder and Court approval of the Scheme, a merger clearance from the Australian Competition and Consumer Commission ("ACCC") and no material adverse change (as defined) occurring. A copy of the executed SID entered into by Count and CBA is attached to this announcement, which includes the full conditions precedent for the Scheme.

A Scheme booklet containing information relating to the proposed transaction, reasons for the Directors' unanimous recommendation, details of the Scheme meeting and an Independent Expert's report is expected to be sent to Count shareholders in October 2011, with a Count shareholder meeting to vote on the proposed Scheme expected to be held in November 2011. Subject to the approval of the Scheme by shareholders and the Court, ACCC informal clearance and the timely satisfaction of conditions, Count expects the transaction to be completed in December 2011.

Count Chairman, Barry Lambert said the Future of Financial Advice (FOFA) reforms inspired consolidation had already started and, while Count considered being an acquirer itself, it was not in a position to act without more certainty about the legislation.

"While the offer from CBA was unsolicited, in light of the regulatory uncertainty and our goal to see Count continue to prosper as a champion of accountant-based advisers, the directors and I believed we should put this offer to shareholders for their approval.

"Key to our recommendation is our belief that CBA understands the Count business and intends to maintain it as a standalone business in its wealth management division. CBA will also maintain and invest in Count's highly respected brand and franchise, including retention arrangements for Count franchisees and staff.

"Count is home to a highly qualified accountant financial planner network which provides valued and trusted services to the Small to Medium Sized Business sector and the high growth Self Managed Super Fund sector. We believe CBA will provide Count with the capital and financial clout to realise its growth ambitions in these sectors.

"In the current environment, this transaction is a logical next step as it builds on Count's longstanding relationship with CBA, which is already a platform provider and corporate lender to Count. CBA is also well-positioned to assist Count franchisees to prosper in a more challenging post-FOFA environment" Mr Lambert said.

Mr Lambert said he was pleased and honoured to become Non-Executive Chairman of Count as part of the deal.

Count is being advised by J.P. Morgan Australia Limited as its exclusive financial advisor and Minter Ellison as its legal advisor.

**For media interviews or inquiries please contact:**

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[Analysts.Media@count.com.au](mailto:Analysts.Media@count.com.au)