

OAKTON LIMITED ANNOUNCES RECOMMENDED CASH OFFER FROM DIMENSION DATA AUSTRALIA PTY LIMITED OF \$1.90 PER SHARE FOR 100% OF OAKTON

- Scheme Implementation Deed entered into with Dimension Data Australia
- Oakton shareholders to receive \$1.90 cash per share subject to Oakton shareholder approval, court approval and all other conditions being satisfied or waived.
- The offer price represents an attractive premium of:
 - 29.7% to last close on 11 August 2014;
 - 35.5% to 1 month volume weighted average price (“VWAP”); and
 - 42.6% to 3 month VWAP
- The Board of Oakton unanimously recommends that all Oakton shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an Independent Expert opining that the Scheme is in the best interests of Oakton shareholders
- The Founding Chairman and CEO, representing 11.3% of the total shares outstanding, intend to vote all of their Oakton shares in favour of the Scheme
- In addition, Oakton may pay a final dividend of up to \$0.04 per share for FY14 without reduction in the \$1.90 cash amount per share

Oakton Limited (ASX: OKN) (“Oakton”) announces today that it has entered into a Scheme Implementation Deed (“SID”) with Dimension Data Australia Pty Limited (a wholly owned subsidiary of Dimension Data Holdings plc, which in turn is a wholly owned subsidiary of Nippon Telegraph and Telephone Corporation) (“Dimension Data Australia”) pursuant to which it is proposed that Dimension Data Australia will acquire all of the shares in Oakton for \$1.90 cash per share (“Proposal”) by way of a Scheme of Arrangement between Oakton and its shareholders (“Scheme”).

Oakton’s Board of Directors (“Board”) has carefully considered the Proposal and unanimously recommends that Oakton shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert opining that the Proposal is in the best interests of Oakton shareholders. Subject to the same qualifications, each Board member, including the Executive Chairman and CEO, who represent 11.3% of the total shares outstanding, intend to unanimously recommend and vote all Oakton shares held by them in favour of the Scheme.

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In recommending the Proposal, the Board notes that the \$1.90 offer price values Oakton at approximately \$171 million and represents a premium of:

- 29.7% to last close on 11 August 2014;
- 35.5% to 1 month VWAP; and
- 42.6% to 3 month VWAP.

Oakton may pay to shareholders registered as such on the record date a fully franked final dividend of up to \$0.04 per share for FY14 ("Dividend") without the Dividend reducing the \$1.90 cash consideration. A record date for and the amount of the Dividend will be the subject of a separate announcement.

Oakton will appoint an Independent Expert to opine on whether the Scheme is in the best interests of Oakton shareholders. The Independent Expert's report will be provided to Oakton shareholders as part of the Explanatory Booklet for the Scheme.

Mr Paul Holyoake, Executive Chairman of Oakton, said: "Through its continued transformation, Oakton has become a leading Australian services integration company. The investments we have made in our operation in India, solution development and service integration partnerships have created a unique platform that is increasingly well aligned with our customers' requirements. This has been recognised by our strategic partners at Dimension Data. While we remain very positive on the outlook for Oakton as an independent company, a primary focus of the Oakton Board is always to maximise shareholder value. Given that the proposal put forward by Dimension Data represents an attractive premium for Oakton shares, it is the unanimous recommendation of the Board that shareholders vote in favour of the Scheme, subject of course to an Independent Expert determining the Scheme is in the best interests of Oakton shareholders and in the absence of a superior proposal."

The Scheme is subject to certain customary conditions precedent including the approval of Oakton shareholders at the Scheme meeting, and the approval of the Supreme Court of Victoria. Oakton has also received a binding, unconditional undertaking from Dimension Data Holdings plc that Dimension Data Australia has sufficient funds to complete the Proposal.

The SID contains certain 'deal protections' in favour of Dimension Data Australia that are customary for a transaction of this nature, including no-shop, no-talk, notification and matching right obligations (subject, in the case of the no-talk and notification right obligations, to standard fiduciary carve-outs). A Break Fee of \$1.8 million (exclusive of GST) is payable by Oakton in certain limited circumstances relating to a successful competing proposal, a member of the Oakton Board changing their recommendation (subject to the qualification noted below) or supporting a competing proposal and termination of the Scheme Implementation Deed by Dimension Data by reason of Oakton's material breach. Payment of the Break Fee by Oakton is not subject to the outcome of the Scheme meeting, and the Break Fee is not payable if the Board withdraws its recommendation for the Scheme as a result of the Independent Expert finding that the Scheme is not in the best interests of Oakton shareholders (other than due to a competing proposal). A copy of the SID (excluding its schedules), which includes among other things the full conditions and full details of these deal protections, is attached.

Indicative Timetable

Oakton's Board currently expects that an Explanatory Booklet containing information relating to the Proposal and the Scheme, the reasons for the Board's unanimous recommendation, the Independent Expert's Report and details of the Scheme Meeting will be sent to Oakton shareholders during October 2014, with the Scheme Meeting to be held and implementation during November 2014.

Advisers

Merrill Lynch Markets (Australia) Pty Limited is acting as financial adviser and Minter Ellison as legal adviser to Oakton.

Contacts

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Execution version

Scheme Implementation Deed

Project Kestrel

Oakton Limited (**Oakton**)

Dimension Data Australia Pty Limited (**Bidder**)

MinterEllison

LAWYERS

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Scheme Implementation Deed

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Details

Date 11 August 2014

Parties

Name **Oakton Limited**
of Level 8, 271 Collins Street, Melbourne, Victoria 3000

ABN 50 007 028 711

Short form name **Oakton**

Name **Dimension Data Australia Pty Limited**
of Ground Floor, 11 – 17 Dorcas Street, South Melbourne 3205

ABN 65 003 371 239

Short form name **Bidder**

Background

- A Oakton and Bidder have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this deed.
- B Oakton and Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

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

Adviser means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

ASIC means the Australian Securities and Investments Commission.

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

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

Authorised Person means, in respect of a person:

- (a) a director, officer, member or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

Bidder Group means Bidder and each of its Subsidiaries (excluding, at any time, Oakton and its Subsidiaries to the extent that Oakton and its Subsidiaries are Subsidiaries of Bidder at that time). A reference to a **member of the Bidder Group** or a **Bidder Group Member** is a reference to Bidder or any such Subsidiary.

Bidder Information means such information regarding the Bidder Group that is provided or approved by Bidder or any of their Advisers to Oakton or the Independent Expert:

- (a) to enable the Explanatory Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Bidder's obligations under clause 6.2(a).

Bidder Parties means the members of the Bidder Group and their respective Authorised Persons.

Bidder Warranties means the representations and warranties of Bidder set out in clause 9.1.

Business Day means a business day as defined in the ASX Listing Rules.

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

Competing Proposal means any offer, proposal or expression of interest (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed, a person or two or more persons who are Associates would:

- (a) acquire an interest in or become the holder of:
 - (i) more than 20% of the Shares; or
 - (ii) the whole or a material part of the business or property of Oakton or the Oakton Group; or
- (b) acquire control of Oakton, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with Oakton.

For the purposes of clause 12.3 only, paragraph (a)(i) of this definition is taken to read 'more than 50% of the Shares'.

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

Confidentiality Deed means the Confidentiality Deed between Oakton and Bidder dated 7 July 2014.

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

Court means Supreme Court of Victoria or such other Court of competent jurisdiction agreed between Oakton and Bidder.

Deed Poll means the deed poll to be executed by Bidder prior to the date the Explanatory Booklet is despatched to Oakton Shareholders, in the form set out in Schedule 2 or in such other form as is agreed in writing between the parties.

Delivery Time in relation to the Second Court Date means not later than 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

Disclosure Letter means the letter so entitled from Oakton provided to Bidder on or before the date of this deed.

Due Diligence Material means:

- (a) all documents and written information disclosed by or on behalf of Oakton and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to the Bidder Parties prior to the date of this deed for the purposes of the Proposed Transaction; and
- (b) all documents and information disclosed by or on behalf of Oakton and its Subsidiaries (including management presentations) contained in the Project Kestrel online data room, the index for which materials have been initialled for identification by Oakton's solicitors on behalf of Oakton and by Bidder's solicitors on behalf of Bidder.

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

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

End Date means:

- (a) 31 December 2014; or
- (b) such other date and time agreed in writing between Bidder and Oakton.

Excluded Shareholder means any Oakton Shareholder who is a member of the Bidder Group.

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

- (a) the End Date;
- (b) the Effective Date of the Scheme; and
- (c) the date this deed is terminated in accordance with its terms.

Explanatory Booklet means the explanatory booklet to be prepared by Oakton in respect of the Proposed Transaction in accordance with the terms of this deed and to be despatched to Oakton Shareholders.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

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

Government Agency means any foreign or Australian 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 State, and any other federal, state, provincial, or local government, whether foreign or Australian.

Implementation Date means the fifth Business Day after the Record Date or such other date after the Record Date agreed to in writing between the parties.

Independent Expert means the independent expert in respect of the Scheme appointed by Oakton.

Independent Expert's Report means a report (including any updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interest of Oakton Shareholders.

Insolvency Event means in relation to a person:

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

- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration:** if the person is a company, the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement:** the person executing a deed of company arrangement;
- (i) **person as trustee or partner:** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction.

Listing Rules means the official listing rules of ASX as amended from time to time.

Material Adverse Change means an event, change, condition, matter, circumstance or thing that becomes known to the Oakton Board or Bidder on or after the date of this deed (an **Event**) which, whether individually or when aggregated with all other such Events, has had or would be considered reasonably likely to have:

- (a) the effect of diminishing the value of the consolidated net assets of the Oakton Group as set out in the balance sheet for the financial year ended 30 June 2014 by \$12.5 million or more; or
- (b) the effect of diminishing the consolidated earnings before interest, tax, depreciation and amortisation of the Oakton Group for the financial year ending on 30 June 2015 by an amount that is equal to or more than \$2.5 million,

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

- (a) required or permitted by this deed, the Scheme or the transactions contemplated by either;
- (b) agreed to in writing by Bidder;
- (c) arising from changes in economic or business conditions that impact Bidder and its competitors in a similar manner;
- (d) that Oakton has Fairly Disclosed in the Due Diligence Material or the Disclosure Letter; or
- (e) that Oakton has Fairly Disclosed in an announcement made by it to ASX, or a document lodged by it with ASIC, in the three year period prior to the date of this deed.

Oakton Board means the board of directors of Oakton as constituted from time to time (or any committee of the board of directors of Oakton constituted from time to time to consider the Proposed Transaction on behalf of Oakton).

Oakton Final Dividend means a cash dividend, not exceeding \$0.04 cents per Share, to be paid by Oakton (in its absolute discretion) with or without declaration between the date of this deed and the Implementation Date in respect of the year ended 30 June 2014 and which is not franked in excess of the then available franking credits of Oakton.

Oakton Group means Oakton and its Subsidiaries.

Oakton Information means information to be included by Oakton in the Explanatory Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Oakton Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of Oakton's directors and has not previously been disclosed to Oakton Shareholders, but does not include the Bidder Information and the Independent Expert's Report.

Oakton Parties means each member of the Oakton Group and their Related Bodies Corporate and Authorised Persons.

Oakton Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed:

- (a) Oakton converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Oakton Group resolves to reduce its share capital in any way;
- (c) any member of the Oakton Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Oakton Group issues shares, or grants a performance right or an option over its shares, or agrees to make such an issue or grant such a right or an option other than pursuant to the exercise of an option or performance right before the Record Date where that option or performance right was on issue immediately before the date of this deed;

- (e) any member of the Oakton Group issues, or agrees to issue, convertible notes or any other security or instrument that is convertible into shares;
- (f) any member of the Oakton Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Oakton Group creates or agrees 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;
- (h) any member of the Oakton Group resolves to be wound up;
- (i) a liquidator or provisional liquidator of any member of the Oakton Group is appointed;
- (j) a court makes an order for the winding up of any member of the Oakton Group;
- (k) an administrator of any member of the Oakton Group is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) any member of the Oakton Group executes a deed of company arrangement;
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Oakton Group; or
- (n) Oakton declares or pays a dividend, other than the Oakton Final Dividend,
provided that an Oakton Prescribed Occurrence will not include any matter:
 - (o) required to be done or procured by Oakton pursuant to this deed or which is otherwise contemplated by this deed or the Scheme;
 - (p) Fairly Disclosed in filings of Oakton with the ASX prior to the date of this deed;
 - (q) to the extent it is Fairly Disclosed in the Due Diligence Materials or the Disclosure Letter;
or
 - (r) the undertaking of which Bidder has approved in writing.

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

Oakton Warranties means the representations and warranties of Oakton set out in clause 9.3.

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

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

Performance Right means a right granted under Oakton's executive performance rights plan to acquire by way of issue a Share subject to the terms of such plan but does not include an Option.

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

Proposed Transaction means:

- (a) the proposed acquisition by Bidder in accordance with the terms and conditions of this deed, of all of the Shares (other than the Shares held by an Excluded Shareholder) through the implementation of the Scheme; and
- (b) all associated transactions and steps contemplated by this deed.

Record Date means 7.00pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between the parties.

Regulatory Approvals means the approval set out in clause 3.1(a).

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

RG 60 means ASIC Regulatory Guide 60.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Oakton and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, \$1.90 per Share.

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

Scheme Share means a Share on issue as at the Record Date other than any Share then held by an Excluded Shareholder (but including any such Share so held on behalf of one or more third parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

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

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

Senior Manager means an employee of any member of the Oakton Group reporting directly to the managing director or chief financial officer of Oakton.

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

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

Superior Proposal means a bona fide Competing Proposal which in the determination of the Oakton Board acting reasonably and in order to satisfy what the Oakton Board reasonably considers to be its fiduciary or statutory duties is more favourable to Oakton Shareholders as a whole than the Proposed Transaction having regard to matters including consideration, conditionality, funding, certainty and timing.

Third Party means any person or entity other than a member of the Bidder Group or a member of the Oakton Group.

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

Treasurer means the Treasurer of the Commonwealth of Australia.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is to Victoria, Australia time;
- (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

- (p) a reference to **Fairly Disclosed** means disclosed in writing to a member of the Bidder Group or their respective Authorised Persons (or, where the context requires, to the ASX) in sufficient detail and with sufficient specificity so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction in the information technology solutions and services industry to identify and understand the nature and scope of the relevant matter, event or circumstance.

1.3 Headings

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

1.4 Business Day

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

1.5 Consents or approvals

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

1.6 Listing requirements included as law

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

1.7 Reasonable and best endeavours

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

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
 - (b) to commence any legal action or proceeding against any person,
- except where that provision expressly specifies otherwise.

2. Agreement to propose Scheme

- (a) Oakton agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed, and substantially in accordance with the Timetable.
- (b) Bidder agrees to assist Oakton to propose and implement the Scheme on and subject to the terms of this deed.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(FIRB)** before the Delivery Time on the Second Court Date, Bidder has received written notice under the FATA or Australia's Foreign Investment Policy, by or on behalf of the Treasurer of the Commonwealth of Australia, stating that the Commonwealth Government does not object to Bidder acquiring the Scheme Shares pursuant to this Scheme;
- (b) **(No Oakton Prescribed Occurrence)** no Oakton Prescribed Occurrence occurs between the date of this deed and the Delivery Time on the Second Court Date;
- (c) **(No Material Adverse Change)** no Material Adverse Change occurs between the date of this deed and the Delivery Time on the Second Court Date;
- (d) **(Restraints)** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or Government Agency, or other material legal restraint or prohibition, preventing or delaying the Proposed Transaction is in effect at the Delivery Time on the Second Court Date;
- (e) **(Oakton Warranties)** the Oakton Warranties being true and correct in all material respects on the date of this deed and at the Delivery Time on the Second Court Date;
- (f) **(Bidder Warranties)** the Bidder Warranties being true and correct in all material respects on the date of this deed and at the Delivery Time on the Second Court Date;
- (g) **(Shareholder approval)** the Scheme is approved by Oakton Shareholders (other than Excluded Shareholders) at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act; and
- (h) **(Oakton Options and Performance Rights)** Oakton has at the Delivery Time:
 - (i) complied with its obligations under clause 5.1(a); and
 - (ii) taken all necessary steps to effect the amendments to the Performance Rights Plan Rules contemplated by clause 5.2; and
- (i) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably).

3.2 Benefit and waiver of Conditions

- (a) The Conditions in clauses 3.1(b) (No Oakton Prescribed Occurrence), 3.1(c) (No Material Adverse Change), 3.1(e) (Oakton Warranties) and 3.1(h) (Oakton Options and Performance Rights) are for the sole benefit of Bidder and any breach or non-fulfilment of them may only be waived by Bidder giving its written consent.
- (b) The Condition in clauses 3.1(f) (Bidder Warranties) is for the sole benefit of Oakton and any breach or non-fulfilment of it may only be waived by Oakton giving its written consent.

- (c) A party entitled to waive a Condition pursuant to this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date.
- (d) The Conditions in clauses 3.1(a) (FIRB), 3.1(d) (Restraints), 3.1(g) (Shareholder approval) and 3.1(i) (Court approval) cannot be waived.
- (e) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this deed including without limitation a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

- (a) Oakton and Bidder will use their respective reasonable endeavours to procure that each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).
- (b) Without limiting clauses 3.4 and 3.5 below, each of Oakton and Bidder must:
 - (i) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and all material communications with Regulatory Authorities in relation to Regulatory Approvals;
 - (ii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iii) provide the other party with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals; and
 - (iv) consult with the other party in advance in relation to the progress of obtaining the Regulatory Approvals.

3.4 Notifications

Each of Bidder and Oakton must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

Before the Delivery Time on the Second Court Date:

- (a) Bidder and Oakton will provide a joint certificate to the Court confirming whether or not the Condition set out in clause 3.1(d) (Restraints) has been satisfied or waived in accordance with the terms of this deed;
- (b) Oakton will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(b) (No Oakton Prescribed Occurrence), 3.1(c) (No Material Adverse

Change), 3.1(e) (Oakton Warranties), 3.1(g) (Shareholder approval) and 3.1(h) (Oakton Options and Performance Rights) have been satisfied or waived in accordance with the terms of this deed;

- (c) Bidder will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a) (FIRB) and 3.1(f) (Bidder Warranties) have been satisfied or waived in accordance with the terms of this deed;
- (d) Oakton will provide a certificate to Bidder confirming whether or not it has breached any of its obligations under this deed (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
- (e) Bidder will provide a certificate to Oakton confirming whether or not it has breached any of its obligations under this deed (including a breach of a representation or warranty), and if it has, giving details of such breaches.

3.6 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition is not satisfied or (where capable of waiver) waived by the date specified in this deed for its satisfaction (or an event occurs which would or is likely to prevent a condition precedent being satisfied by the date specified in this deed);
 - (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2, the party does not waive the Condition within seven Business Days after the occurrence of the circumstance; or
 - (iii) the Scheme does not become Effective by the End Date,
 and neither of the following has occurred:
 - (i) the Independent Expert opines to the effect that the Scheme is not in the best interest of Oakton Shareholders; or
 - (ii) a Superior Proposal has been publicly recommended by a majority of the Oakton Board,
 then Oakton and Bidder must consult reasonably with a view to determining whether:
 - (iii) the Scheme may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition;
 - (v) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (vi) to extend the End Date.
- (b) Subject to clause 3.6(c), if a Condition becomes incapable of being satisfied before the End Date and Oakton and Bidder are unable to reach agreement under clause 3.6(a) within five Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:

- (i) in relation to the Condition in clauses 3.1(a) (FIRB), 3.1(d) (Restraints) or 3.1(g) (Shareholder approval) either Bidder or Oakton may terminate this deed by giving the other notice without any liability to any party by reason of that termination alone;
 - (ii) in relation to the Conditions in clauses 3.1(b) (No Oakton Prescribed Occurrence), 3.1(c) (No Material Adverse Change), 3.1(e) (Oakton Warranties) and 3.1(h) (Oakton Options and Performance Rights), Bidder may terminate this deed by giving Oakton notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the Condition in clause 3.1(f) (Bidder Warranties), Oakton may terminate this deed by giving Bidder notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this deed pursuant to clause 3.6(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this deed by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.7 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of a Condition relating a Regulatory Approval – the relevant Government Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this deed).

4. Transaction Steps

4.1 Scheme

Oakton must, as soon as reasonably practicable after the date of this deed and substantially in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.

4.2 Scheme Consideration

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

- (a) accept that transfer; and
- (b) provide each Scheme Shareholder the Scheme Consideration,
in accordance with the Scheme.

4.3 Deed Poll

Bidder covenants in favour of Oakton (in Oakton's own right and separately as trustee for each of the Scheme Shareholders) to execute, deliver and perform the Deed Poll prior to the despatch of the Explanatory Booklet.

5. Treatment of Options and Performance Rights

5.1 Options

- (a) As soon as reasonably practicable after the date of this deed, Oakton must use all reasonable endeavours to obtain the written agreement of each person who is a holder of Oakton Options to have their Options cancelled, subject to all other holders of Options agreeing to have their Options cancelled and to the Scheme becoming Effective and with effect from the Effective Date, under private treaty agreement between Bidder, Oakton and each Option holder. The form of agreement to be used for this purpose must be agreed to by Bidder and must reflect the consideration set out in clause 5.1(b). Oakton agrees to seek a waiver as soon as reasonably practicable after the date of this deed from ASX Listing Rule 6.23.2 to allow for the cancellation of up to all Oakton Options.
- (b) Oakton agrees that:
 - (i) the consideration to be paid to a holder of an Oakton Option with an exercise price less than the Scheme Consideration, is the difference between the Scheme Consideration and the exercise price; and
 - (ii) the consideration to be paid to a holder of an Oakton Option with an exercise price equal to or greater than the Scheme Consideration, is the greater of a \$1 aggregate payment for all such Oakton Options held by that holder and such other amount specified by Bidder.
- (c) If, within 20 Business Days of the date of this deed, Oakton has not obtained the agreement of each person who is a holder of Oakton Options to have their options cancelled in accordance with clause 5.1(a):
 - (i) Oakton agrees, if directed to do so by Bidder:
 - (A) to propose a creditors' scheme of arrangement under Part 5.1 of the Corporations Act between Oakton and all holders of Oakton Options (including, for the avoidance of doubt, any holder of Oakton Options who provides a written agreement within the terms contemplated by clause 5.1(a)), the purpose of which is to cancel all of the Oakton Options on issue for the consideration to be determined in accordance with clause 5.1(c); and
 - (B) to use its reasonable endeavours to procure that ASX grants a waiver from ASX Listing Rule 6.23.2 in respect of that creditors' scheme of arrangement;
 - (ii) the creditors' scheme of arrangement contemplated by clause 5.1(c)(i), if required, will be in a form to be agreed between the parties acting reasonably; and

- (iii) the approval and implementation of the Scheme will not be conditional on the approval and implementation of the creditors' scheme of arrangement contemplated by clause 5.1(c)(i), if that scheme is required.
- (d) Before Bidder gives Oakton a direction under clause 5.1(c)(i), Bidder agrees to give due and reasonable consideration to the alternative of Bidder initiating after the Implementation Date the compulsory acquisition of any Oakton Options that remain on issue as at that date, under Part 6A.2 (Division 2) of the Corporations Act.

5.2 Performance Rights

- (a) Prior to the reconstitution of the Oakton Board under clause 8.1, Oakton must take all necessary steps to amend the terms and conditions of each Performance Right with effect from the Implementation Date such that:
 - (i) any performance hurdles or vesting conditions that relate to earnings per share and/or total shareholder return are removed; and
 - (ii) the vesting of a Performance Right, in lieu of an entitlement to a Share, will entitle the holder to receive a cash payment equal to the Scheme Consideration for each such Performance Right plus payment of:
 - (A) 5% of that amount for any Performance Rights exercisable in 2016; and
 - (B) 10% of that amount for any Performance Rights exercisable in 2017.
- (b) Oakton must not make any changes to the terms and conditions of the Performance Rights that are not contemplated by clause 5.2(a) and, for the avoidance of doubt, under no circumstances will implementation of the Scheme result in vesting of the Performance Rights.
- (c) Oakton must provide to Bidder a copy of any document prepared for the purpose of taking the steps contemplated by clause 5.2(a) at least five Business Days before the document is to be finalised and must consider, acting reasonably and in good faith, any comments from Bidder on that document.

6. Implementation

6.1 Oakton's obligations

Oakton must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 6.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Booklet;
- (c) **(approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the Oakton Board, or of a committee of the Oakton Board appointed for the

purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;

- (d) **(draft to ASIC)** as soon as reasonably practicable after the date of this deed:
 - (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 6.1(c) and 6.2(e), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Explanatory Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (e) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the Oakton Board, or of a committee of the Oakton Board appointed for the purpose, is held to consider approving the Explanatory Booklet for despatch to the Oakton Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (f) **(section 411(17)(b) statements)** apply to ASIC for the production of:
 - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (g) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 6.1(e) and 6.2(f) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Oakton to convene the Scheme Meeting;
- (h) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (i) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Oakton Shareholders and convening and holding the Scheme Meeting;
- (j) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act, and if the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the remaining Conditions will be satisfied or waived prior to the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (k) **(appeal process)** if the Court refuses to make any orders directing Oakton to convene the Scheme Meeting or approving the Scheme, Oakton and Bidder must:
 - (i) consult with each other, each acting reasonably, as to whether to appeal the Court's decision; and

- (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel instructed by Oakton opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (l) **(implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (m) **(regulatory notifications)** in relation to the Regulatory Approvals, lodge with any Government Agency within the relevant time periods all documentation and filings required by law to be so lodged by Oakton in relation to the Proposed Transaction;
- (n) **(Bidder Information)** without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme;
- (o) **(Documents)** consult with Bidder in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider, for the purpose of amending drafts of those documents, comments from Bidder on those documents;
- (p) **(Shareholder support)** promote to its Shareholders the merits of the Scheme, including soliciting proxy votes in favour of the Scheme; and
- (q) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

6.2 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Oakton to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including taking each of the following steps:

- (a) **(Bidder Information)** provide to Oakton, in a form appropriate for inclusion in the Explanatory Booklet, all information regarding Bidder, the arrangements Bidder has in place to fund the Scheme Consideration, and Bidder's intentions with respect to the assets, business and employees of Oakton if the Scheme is approved and implemented that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Explanatory Booklet, which information must (without limiting the foregoing):
 - (i) contain all information necessary to enable Oakton to ensure that the Explanatory Booklet complies with the requirements of RG 60;

- (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(regulatory notifications)** in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by Bidder in relation to the Proposed Transaction;
 - (c) **(assist Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Explanatory Booklet;
 - (d) **(review drafts of Explanatory Booklet)** as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Oakton and provide comments on those drafts;
 - (e) **(approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the appropriate decision-making organ of Bidder is held to consider approving those sections of that draft that relate to Bidder as being in a form appropriate for provision to ASIC for review;
 - (f) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the appropriate decision-making organ of Bidder is held to consider approving those sections of the Explanatory Booklet that relate to Bidder as being in a form appropriate for despatch to Oakton Shareholders, subject to approval of the Court;
 - (g) **(Representation)** procure that, if requested by Bidder or Oakton, Bidder is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;
 - (h) **(Oakton Information)** without the prior written consent of Oakton, not use Oakton Information for any purposes other than those expressly contemplated by this deed or the Scheme;
 - (i) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations; and
 - (j) **(No denigration)** from the date of this deed until the date the Independent Expert's Report is received, Bidder will ensure that Bidder and its Authorised Persons do not publicly (or otherwise to third parties) denigrate the Proposed Transaction or Oakton in any way.

6.3 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, Oakton must prepare the Explanatory Booklet in compliance with:

- (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) this clause 6.3.
- (b) The Explanatory Booklet will include:
- (i) the terms of the Scheme;
 - (ii) the notice of Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;
 - (iii) the Oakton Information;
 - (iv) the Bidder Information;
 - (v) a copy of this deed (without the schedules or annexures) or a summary of it;
 - (vi) a copy of the executed Deed Poll; and
 - (vii) a copy of the Independent Expert's Report.
- (c) The Explanatory Booklet must include a statement that:
- (i) other than the Bidder Information and the Independent Expert's Report, the Explanatory Booklet has been prepared by Oakton and is the responsibility of Oakton, and that Bidder assumes no responsibility for the accuracy or completeness of the Explanatory Booklet (other than the Bidder Information); and
 - (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and Oakton assumes no responsibility for the accuracy or completeness of the Bidder Information.
- (d) Oakton must make available to Bidder drafts of the Explanatory Booklet (excluding any draft of the Independent Expert's Report), consult with Bidder in relation to the content of those drafts (other than the Bidder Information), and consider acting reasonably and in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts. Bidder acknowledges and agrees that Oakton has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as expressly provided in this deed with respect to the Bidder Information.
- (e) Oakton must seek approval from Bidder for the form and context in which the Bidder Information appears in the Explanatory Booklet, which approval Bidder must not unreasonably withhold or delay, and Oakton must not lodge the Explanatory Booklet with ASIC until such approval is obtained from Bidder.
- (f) Oakton must take all reasonable steps to ensure that the Explanatory Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Oakton Shareholders.
- (g) Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is despatched to Oakton Shareholders.
- (h) Oakton must provide to Bidder all such further or new information of which Oakton becomes aware that arises after the Explanatory Booklet has been despatched until the

date of the Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.

- (i) Bidder must provide to Oakton all such further or new information of which Bidder becomes aware that arises after the Explanatory Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Bidder Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (j) Oakton and Bidder each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of Oakton Shareholders and Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 6.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

6.4 Oakton Board recommendation

- (a) Subject to clause 6.4(b), each member of the Oakton Board must:
 - (i) unanimously recommend (in Oakton's public announcements and the Explanatory Booklet) that Oakton Shareholders vote in favour of the Scheme, including that each Oakton Director states (in Oakton's public announcements and in the Explanatory Booklet) that he or she intends to vote all Shares held or controlled by him or her in favour of the Scheme (qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Explanatory Booklet or any document issued after the issue of the Explanatory Booklet, 'subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interest of Oakton Shareholders'); and
 - (ii) not subsequently change or withdraw its recommendation or statement.
- (b) Clause 6.4(a) will cease to apply in either of the following circumstances:
 - (i) the Independent Expert opines either prior to the despatch of the Explanatory Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interest of Oakton Shareholders; or
 - (ii) a Competing Proposal is made and the Oakton Board determines it is a Superior Proposal.

7. Conduct of business before the Implementation Date

7.1 Conduct of Oakton business

- (a) Subject to clause 7.2(a), from the date of this deed up to and including the Implementation Date, Oakton must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
 - (i) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;

- (ii) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
 - (iii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
 - (iv) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Oakton Group is a party, and with laws, authorisations and licenses applicable to each member of the Oakton Group; and
 - (v) not take any action or fail to take any action where the action or failure (as the case may be) constitutes or would lead to the occurrence of an Oakton Prescribed Occurrence or that could reasonably be expected to result in an Oakton Prescribed Occurrence.
- (b) Without limiting clause 7.1(a) but subject to clause 7.2(a), Oakton must not, and must procure that its Subsidiaries do not, from the date of this deed up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) other than as Fairly Disclosed in the Due Diligence Material or the Disclosure Letter before the execution of this deed, incur any additional financial indebtedness (except for draw-downs on existing banking facilities to satisfy the Oakton Group's ordinary course business obligations) or guarantee or indemnify the obligations of any person other than a member of the Oakton Group;
 - (ii) except as required by law, make any material change to the terms of employment of (including, except as required under an existing contract in place as at the date of this deed, increasing the remuneration or compensation of) any director, executive or Senior Manager of any member of the Oakton Group;
 - (iii) except as required by law or as required under an existing contract in place as at the date of this deed, grant or pay any bonus, retention, severance or termination payment to, any director, executive or Senior Manager of any member of the Oakton Group;
 - (iv) except as required under any contractual arrangements in effect on the date of this deed, enter into any enterprise bargaining agreement or similar collective employment agreement;
 - (v) engage any new permanent employee with an annual remuneration in excess of \$275,000 per annum (inclusive of superannuation) for that employee;
 - (vi) terminate or encourage the resignation of an employee, except in accordance with current personnel practices or for good cause;
 - (vii) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, asset, entity or undertaking, the value of which exceeds \$1.0 million, individually or when aggregated with all such businesses, real property, assets, entities or undertakings the subject of the transaction or series of related or similar transactions;

- (viii) incur or enter into commitments involving capital expenditure of more than \$1.0 million whether in one transaction or a series of related transactions;
- (ix) enter into, vary or terminate any contract, joint venture, partnership or commitment involving total expenditure (excluding salary and wages) greater than \$2.0 million per annum, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;
- (x) enter into any contract, joint venture, partnership or commitment involving total revenue greater than \$1.0 million per annum on an individual basis;
- (xi) cancel any existing insurance policy in the name of or for the benefit of an Oakton Group company unless a replacement policy (on terms no less favourable to the Oakton Group company, if available in the market place) has been put in place;
- (xii) settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds \$200,000;
- (xiii) dispose of, cancel, relinquish or materially amend any regulatory licence or other approval necessary for its operations or material software licence;
- (xiv) take any action in respect of its information technology systems which would have a material adverse impact on those systems; or
- (xv) amend its constitution.

7.2 Permitted activities

- (a) The obligations of Oakton under clause 7.1 do not apply in respect of any matter:
 - (i) required to be done or procured by Oakton pursuant to this deed or the Scheme;
 - (ii) subject to clause 7.2(b), Fairly Disclosed in the Due Diligence Material or the Disclosure Letter as being actions that the Oakton Group may carry out between the date of this deed and the Implementation Date;
 - (iii) comprising or relating directly or indirectly to the declaration of, setting a record or payment date for or paying or facilitating the payment (with or without declaration) of, the Oakton Final Dividend where the record date to determine entitlements to the Oakton Final Dividend occurs on or before the Record Date; or
 - (iv) the undertaking of which Bidder has approved in writing (which approval must not be unreasonably withheld).
- (b) Oakton must, in respect of any matter referred to in clause (ii) above that it proposes to undertake:
 - (i) if the Disclosure Letter permits the carrying out of the action only in accordance with certain conditions, ensure those conditions are met;
 - (ii) not undertake that matter (or commit to undertake that matter) without first having consulted with Bidder; and
 - (iii) promptly provide Bidder with any information regarding the matter reasonably requested by Bidder.

For the avoidance of doubt, clause 7.2(b) does not operate to provide Bidder with a veto right in respect of any matter referred to in clause (ii).

7.3 Access

- (a) In the period from the date of this deed to the Implementation Date and for so long as the Oakton Board continues to publicly recommend that Oakton Shareholders vote in favour of the resolution to be proposed at the Scheme Meeting to approve the Scheme, Oakton must:
- (i) procure that the Oakton CEO meets with representatives of Bidder on a fortnightly basis to assist with providing Bidder with access to information and people it may request under clause 7.3(a)(ii);
 - (ii) provide to Bidder any management, financial and operational reports provided to the Oakton Board on the same day that that report is provided to the Oakton Board;
 - (iii) promptly following a request by Bidder, provide Bidder (and its Authorised Persons) with reasonable access to:
 - (A) documents and information relating to the Oakton Group; and
 - (B) executives and Senior Managers of the Oakton Group,
 to the extent reasonably required for the purpose of:
 - (C) planning the transition of the Oakton Group and other matters relating to the conduct of the Oakton Group following the Implementation Date; and
 - (D) otherwise facilitating the Proposed Transaction.
- (b) Nothing in this clause 7.3 obliges Oakton to provide to Bidder or its Authorised Persons any information:
- (i) concerning the Oakton Directors' or Senior Managers' consideration of the Scheme; or
 - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) Oakton will provide reasonable assistance to Bidder for the purpose of satisfying Oakton's obligations under this clause 7.3 but nothing in this clause 7.3 requires Oakton to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Due Diligence Material or which would disrupt the usual and ordinary course of Oakton's businesses and operations.
- (d) For the avoidance of doubt, the parties agree and acknowledge that nothing in this clause 7.3 requires Oakton to provide any information that is materially different from or materially in addition to, the documentation that Oakton prepares or generates in the usual and ordinary course of its business.
- (e) Bidder is entitled to have two observers (being Rodd Cunico and Peter Lees) present at any Oakton board meeting after the Scheme becomes Effective.

7.4 Change of control rights

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

- (a) Oakton and Bidder will agree a proposed course of action and then jointly initiate contact with the relevant counter-parties and request that they provide any consents required. None of Bidder or any of its Authorised Persons may contact any counter-parties without Oakton's prior written consent (which is not to be unreasonably withheld or delayed);
- (b) Oakton must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents as expeditiously as possible, including by:
 - (i) promptly providing any information reasonably required by counterparties; and
 - (ii) making representatives available, where necessary, to meet with counterparties to deal with issues arising in relation to the change of control of Oakton.
- (c) A failure by a member of the Oakton Group to obtain any third party consent will not constitute a breach of this deed by Oakton.

7.5 Collaboration regime for key customers of the Oakton Group

As soon as practicable after the date of this deed, Oakton and Bidder must:

- (a) make all reasonable efforts to jointly meet with representatives of each counterparty to the material customer contracts identified in the side letter entered into by Oakton and Bidder on or about the date of this deed; and
- (b) use reasonable endeavours to preserve ongoing business relationships with these material customers.

8. Actions on and following Implementation Date

8.1 Reconstitution of the board of each member of the Oakton Group

- (a) On the Implementation Date, but subject to the Scheme Consideration having been paid in full by Bidder to Oakton and receipt by Oakton of signed consents to act, Oakton must take all actions necessary (and in accordance with the constitution of the Oakton Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by Bidder as new Oakton Directors and new directors of each Subsidiary.
- (b) Without limiting clause 8.1(a)), on the Implementation Date, but subject to receipt by Oakton of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the Oakton Group, Oakton must procure that:
 - (i) all outgoing Oakton Directors resign from the Oakton Board; and
 - (ii) all outgoing directors of each Subsidiary of Oakton resign from their office.

8.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme and the ancillary transactions contemplated by this deed will be implemented in the following sequence:

- (a) Bidder will provide the Scheme Consideration to Oakton in accordance with the Scheme;

- (b) Oakton will disburse the Scheme Consideration to Scheme Shareholders in accordance with the Scheme;
- (c) the Oakton Board will take the steps contemplated by clause 5.2 to accelerate the vesting of Performance Rights and to make the cash payments to which holders of Performance Rights are entitled under that clause;
- (d) the Oakton Board and the board of each Subsidiary of Oakton will be reconstituted in accordance with clause 8.1;
- (e) Bidder will acquire all of the Scheme Shares in accordance with the Scheme;
- (f) subject to any alternative course of action agreed under clause 5, all Oakton Options will be cancelled; and
- (g) Bidder will provide the consideration to those holders of Oakton Options with whom Bidder has entered into private treaty arrangements for the cancellation of their Options.

9. Representations and warranties

9.1 Bidder representations

- (a) Bidder represents and warrants to Oakton (on its own behalf and separately as trustee for each of the other Oakton Parties) each of the matters set out in clause 9.1(b) as at the date of this deed and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Bidder represents and warrants that:
 - (i) Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this deed has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Bidder is a party or is bound;
 - (iv) the Bidder Information provided to Oakton in accordance with clause 6.2(a) for inclusion in the Explanatory Booklet will:
 - (A) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (B) be provided on the understanding that each of the Oakton Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
 - (v) all information provided by or on behalf of the Bidder Group to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in a timely and diligent

manner and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet;

- (vi) as at the date the Explanatory Booklet is despatched to Oakton Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (vii) Bidder will, as a continuing obligation, provide to Oakton all such further or new information which may arise after the Explanatory Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (viii) all factual information Bidder has provided to Oakton prior to this deed is, to the best of Bidder's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information;
- (ix) as at the date of this deed Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (x) by the Delivery Time on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (xi) Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll; and
- (xii) between the date of this Deed and the Record Date, Bidder will not, and will procure that each other member of the Bidder Group does not, enter into any arrangement under which it obtains the beneficial interest in any Oakton Shares, unless the shares are registered in the name of Bidder.

9.2 Bidder's indemnity

Bidder agrees with Oakton (on Oakton's own behalf and separately as trustee or nominee for each of the other Oakton Parties) to indemnify and keep indemnified the Oakton Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Oakton Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.1(a) or 9.1(b).

9.3 Oakton representations

- (a) Oakton represents and warrants to Bidder each of the matters set out in clause 9.3(b) as at the date of this deed and on each subsequent day until on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Oakton represents and warrants that:
- (i) Oakton is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this deed by Oakton has been properly authorised by all necessary corporate action and Oakton has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes legal, valid and binding obligations on Oakton and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Oakton or any of its Subsidiaries is a party or to which they are bound;
 - (iv) the Oakton Information contained in the Explanatory Booklet will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
 - (v) as at the date the Explanatory Booklet is despatched to Oakton Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise and with any statement of belief or opinion having been formed on a reasonable basis);
 - (vi) as at the date of this deed, and so far as the Oakton Board and senior management are aware:
 - (A) all information which has been disclosed by Oakton under its continuous disclosure obligations under the Listing Rules was true and correct in all material respects at the time it was disclosed; and
 - (B) Oakton has complied with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Proposed Transaction and in relation to the preparation or audit of financial statements for the year ended 30 June 2014, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;

(vii) as at the date of this deed, the total issued capital of Oakton is:

- (A) 89,990,235 Shares;
- (B) 692,500 Options; and
- (C) 2,012,807 Performance Rights,

and there are no other Oakton options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing); and

(viii) so far as the Oakton Board and senior management are aware, no information specifically requested by Bidder for inclusion in the Due Diligence Material was knowingly withheld from the Due Diligence Material that would render that material misleading in any material respect as at the date of this deed

9.4 Oakton's indemnity

Oakton agrees with Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Parties) to indemnify and keep indemnified the Bidder Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Bidder Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.3(a) or 9.3(b).

9.5 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

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

9.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

10. Confidentiality and Public Announcement

10.1 Confidentiality

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

10.2 Public Announcements on execution

Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them.

10.3 Further public announcements

Subject to clause 10.4, any further public announcements by Oakton or Bidder in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme.

10.4 Required announcement

Where a party is required by applicable law, the ASX Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practical.

10.5 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 10.3 and 10.4 apply to any such statements or disclosures.

11. Termination

11.1 Termination by notice

- (a) Bidder or Oakton may, by notice in writing to the other, terminate this deed at any time prior to the Second Court Date:
 - (i) if the other is in material breach of any of its obligations under this deed (including a material breach of a representation or warranty and in the case of Bidder includes any failure by it to pay an amount when due (including an amount of damages or amounts due under an indemnity) and the other party has failed to remedy that breach within five Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.6;

- (iii) if the Court refuses to make any order directing Oakton to convene the Scheme Meeting, provided that both Oakton and Bidder have met and consulted and agreed that they do not wish to proceed with the Scheme; or
 - (iv) if the Effective Date for the Scheme has not occurred on or before the End Date.
- (b) Oakton may, by notice in writing to Bidder, terminate this deed at any time prior to the Delivery Time on the Second Court Date if at any time before then:
- (i) each of that number of Oakton Directors as constitutes a majority of the Oakton Board publicly recommend a Superior Proposal and do not, within three Business Days, reinstate their recommendation of the Proposed Transaction; or
 - (ii) Bidder materially breaches a representation or warranty contained in clause 9.1(b) (for this purpose any breach of clauses (x) to (xi) (inclusive) is deemed to be a material breach) and Bidder fails to remedy that breach within five Business Days of receipt by it of a notice in writing from Oakton setting out details of the relevant circumstance and requesting Bidder to remedy the breach or the breach cannot be remedied by subsequent action on the part of Bidder before the Delivery Time on the Second Court Date.
- (c) Bidder may, by notice in writing to Oakton, terminate this deed at any time prior to the Delivery Time on the Second Court Date if at any time before then any director of Oakton withdraws or adversely modifies their recommendation of the Proposed Transaction or recommends or supports a Competing Proposal.

11.2 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if the Scheme is not approved by the necessary majorities at the Scheme Meeting.

11.3 Effect of termination

- (a) In the event of termination of this deed under clause 3.6, 11.1 or 11.2, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 10, 12 and 16.3 to 16.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination or in respect of right to payment of a fee under clause 12.

12. Oakton Break Fee

12.1 Background

- (a) Oakton and Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs including those described in clause 12.2.
- (b) In the circumstances referred to in clause 12.1(a), Bidder has requested that provision be made for the payments outlined in clause 12.3, without which Bidder would not have entered into this deed.
- (c) The Oakton Board believes that the Scheme will provide benefit to Oakton and Oakton Shareholders and that it is appropriate for Oakton to agree to the payments referred to in this clause 12 in order to secure Bidder's participation in the Proposed Transaction.

12.2 Costs incurred by Bidder

- (a) The fee payable under clause 12.3 has been calculated to reimburse Bidder for the following:
- (i) fees for legal and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction; and
 - (v) costs associated with the financing arrangements in respect of the Proposed Transaction;

in each case, incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction.

- (b) The parties acknowledge that:
- (i) the amount of fees, costs and losses referred to in this clause 12.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 12.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

12.3 Payment by Oakton to Bidder

- (a) Oakton agrees to pay to Bidder \$1.80 million (exclusive of GST) (**Oakton Break Fee**) if:
- (i) both of the following occur:
 - (A) a Competing Proposal is publicly announced during the period commencing on the date of this deed and ending on:
 - (I) if this deed is terminated by Oakton, the End Date; or
 - (II) if this deed is terminated by Bidder, the earlier of the End Date and the date of termination of this deed by Bidder; and
 - (B) within nine months from the date of the public announcement of such Competing Proposal:
 - (I) the Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or
 - (II) without limiting clause 12.3(a)(A)(I), the proponent of that Competing Proposal acquires a relevant interest in at least 50% of Oakton Shares; or
 - (ii) during the period commencing on the date of this deed and ending on the End Date, any member of the Oakton Board:

- (A) withdraws or adversely modifies their recommendation of the Proposed Transaction except where the Independent Expert has opined that the Scheme is not in the best interests of Oakton Shareholders other than for the reason of the existence of a Competing Proposal; or
- (B) recommends or supports a Competing Proposal; or
- (iii) Bidder terminates this deed under clause 11.1(a)(i).
- (b) Oakton must pay Bidder the Oakton Break Fee within five Business Days of receipt by Oakton of a demand for payment from Bidder made after the occurrence of the event referred to in clause 12.3(a).
- (c) For the avoidance of doubt, the Oakton Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (d) The Oakton Break Fee is only payable once and the maximum amount payable by Oakton under this clause 12.3 is \$1.80 million (exclusive of GST).
- (e) Where the Oakton Break Fee becomes payable to Bidder under this clause 12.3 and is actually paid to Bidder, Bidder (for itself and as agent of every member of the Bidder Group):
 - (i) releases all rights against and agrees with Oakton that Bidder will not make a Claim against any Oakton Party (other than a claim under this clause 12.3) in connection with:
 - (A) the event that gave rise to the right to or the right to demand the payment of the Oakton Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Oakton Break Fee or that constitutes or may constitute a breach of this deed; and
 - (ii) indemnifies any Oakton Party against a Claim that is made contrary to the release under clause 12.3(e)(i),

with the effect that the payment of the Oakton Break Fee represents the sole and exclusive remedy of any Bidder Group Member.

12.4 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the Oakton Break Fee (**Oakton Impugned Amount**):

- (a) is unlawful;
 - (b) involves a breach of directors' duties; or
 - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
- then:
- (d) the requirement to pay the Oakton Break Fee does not apply to the extent of the Oakton Impugned Amount; and

- (e) if Bidder has received the Oakton Impugned Amount, it must refund it within five Business Days of the final determination being made.

Oakton must not seek any such determination and must use all reasonable endeavours to ensure that no such determination is made.

13. Exclusivity

13.1 No shop restriction

During the Exclusivity Period, Oakton must not, and must ensure that none of the other Oakton Parties, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

13.2 No talk restriction

During the Exclusivity Period, Oakton must not, and must ensure that none of the other Oakton Parties, (whether directly or indirectly) enter into, continue or participate in negotiations or discussions with, or enter into any agreement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Oakton; or
- (b) the Competing Proposal has been publicly announced,

unless:

- (c) the Oakton Board, acting reasonably (including taking advice from its Adviser which is a legal adviser), determines that, where there is a Competing Proposal, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the Oakton Board proposes to take; and
- (d) the Oakton Board, acting reasonably (including taking advice from Adviser which is a legal adviser), determines that failing to respond to that Competing Proposal would constitute or would be likely to constitute a breach of the Oakton Board's fiduciary or statutory duties,

but only if that Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Oakton or any of its Representatives in a manner that would breach its obligations under this clause 13.2 or clauses 13.1 or 13.3.

13.3 No due diligence

- (a) Without limiting the general nature of clause 13.2, during the Exclusivity Period Oakton must not, and must ensure that the other Oakton Parties do not, make available to any Third Party, or permit any Third Party, to receive any non public information relating to any member of the Oakton Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:
 - (i) the Competing Proposal has not been directly or indirectly solicited, invited, encouraged or initiated by Oakton or any of its Representatives in a manner that would breach its obligations under this clause or clause 13.1 or 13.2; and

- (ii) the Oakton Board, acting reasonably (including taking advice from its Adviser which is a legal adviser), determines that:
 - (A) the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the Oakton Board proposes to take; and
 - (B) failing to provide any non-public information to a Third Party would constitute or would be likely to constitute a breach of the Oakton Board's fiduciary or statutory duties.
- (b) If Oakton proposes that any non-public information be provided to a Third Party, then:
 - (i) before Oakton provides such information, the Third Party must enter into a confidentiality agreement which contains obligations on the recipient of that information which are no less onerous in any material respect than the obligations of Bidder and Oakton under the Confidentiality Deed; and
 - (ii) any non-public information provided to that Third Party must also be provided to Bidder (unless the information has already been provided to Bidder or an Authorised Person).

13.4 Notice of Competing Proposal

- (a) During the Exclusivity Period, Oakton must promptly notify Bidder if it or any of the other Oakton Parties receive any Competing Proposal in writing and must provide Bidder with the price and material terms and conditions of the Competing Proposal (excluding the identity of the party making the Competing Proposal) (a **Competing Proposal Notice**).
- (b) If Oakton gives Bidder a Competing Proposal Notice, Bidder agrees that the notice will be Confidential Information of Oakton (as defined in the Confidentiality Deed).

13.5 Response to Competing Proposal

- (a) During the Exclusivity Period, Oakton must not recommend a Competing Proposal or enter into a relevant agreement to implement a Competing Proposal unless it has first notified Bidder in writing of the material terms of the Competing Proposal and the identity of the person proposing the Competing Proposal. Bidder will have the right, but not the obligation, at any time until the expiration of three Business Days following receipt of the notice to:
 - (i) offer to amend the terms of the Scheme; or
 - (ii) to propose any other transaction,
 which must be submitted to Oakton in writing (each a **Bidder Counterproposal**), and if Bidder does so, the Oakton Board must review the Bidder Counterproposal in a manner that the Oakton Board considers is required to comply with its fiduciary and statutory duties, to determine whether the Bidder Counterproposal is more favourable to Oakton Shareholders than the Competing Proposal.
- (b) If the Oakton Board determines, acting reasonably and in order to satisfy what the Oakton Board considers to be its fiduciary and statutory duties, that the Bidder Counterproposal is equal to or more favourable to Oakton Shareholders than the Competing Proposal, then:

- (i) if the Bidder Counterproposal contemplates an amendment to the Scheme, the parties must enter into a deed amending this deed in relation to the Scheme and reflecting the Bidder Counterproposal; and
- (ii) if the Bidder Counterproposal contemplates any other transaction, Oakton must make an announcement as soon as reasonably practicable recommending the Bidder Counterproposal, in the absence of a more favourable proposal, and the parties must diligently pursue implementation of the Bidder Counterproposal.

13.6 Fiduciary carve out to notification right

The obligations of Oakton under clause 13.4 do not apply to the extent:

- (a) it restricts the Oakton Board from taking or refusing to take any action with respect to a Competing Proposal which is or may reasonably be expected to lead to a Superior Proposal (which was not solicited, invited, encouraged or initiated (whether directly or indirectly) by Oakton or any of its Authorised Persons in contravention of clause 13.1); and
- (b) the Oakton Board, acting reasonably (including taking advice from its Adviser which is a legal adviser), determines that complying with such obligation would be likely to involve a breach of the Oakton Board's fiduciary or statutory duties.

14. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Oakton

Address: Level 8, 271 Collins Street, Melbourne, Victoria, 3000

Facsimile: +613 9621 1951

Email: Neil Wilson neil.wilson@oakton.com

For the attention of: Managing Director

with a copy to: John Phillips, email, john.phillips@oakton.com

Bidder

Address: Ground Floor, 11 – 17 Dorcas Street, South Melbourne 3205
 Facsimile: +61 3 9696 0913
 Email: rodd.cunico@dimensiondata.com
 For the attention of: Rodd Cunico

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

- (c) must be signed or sent by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered to the address, or sent by fax or email to the number or email address, of the addressee, in accordance with clause 14(b); and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of email)** four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered;
 - (ii) **(in the case of 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, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 14(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

15. Releases

15.1 Oakton Parties

- (a) Without limiting Bidder's rights under clause 11, Bidder (for itself and as agent of every member of the Bidder Group) releases all rights against and agrees with Oakton that it will not make a Claim against, any Oakton Party (other than Oakton) in connection with:
 - (i) Oakton's execution or delivery of this deed;
 - (ii) any breach of any representation, covenant and warranty of Oakton in this deed;
 - (iii) the implementation of the Scheme; or
 - (iv) any disclosure made by any Oakton Party including in the Due Diligence Material or the Disclosure Letter that contains any statement which is false or misleading whether in content or by omission,
 - (v) except to the extent the relevant Oakton Party has not acted in good faith or has engaged in wilful misconduct or to the extent the Claim is actually covered under

an insurance policy that is paid for by the Oakton Group where the relevant insurer accepts liability for the Claim.

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

15.2 Bidder Parties

- (a) Without limiting Oakton's rights under clause 11, Oakton releases its rights against, and agrees with Bidder that it will not make a Claim against, any Bidder Party (other than Bidder) in connection with:

- (i) Bidder's execution or delivery of this deed;
- (ii) any breach of any representation, covenant and warranty of Bidder in this deed;
- (iii) the implementation of the Scheme; or
- (iv) any disclosure made by any Bidder Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant Bidder 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 (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

15.3 Directors' and officers' insurance

Bidder acknowledges that Oakton will:

- (a) prior to the Effective Date, arrange for the cover currently provided under its directors' and officers' insurance policy (**Policy**) to be extended for a further period of 12 months; and
- (b) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

15.4 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Oakton must not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of Oakton under the Policy as extended under clause 15.3(b) above.

Nothing in clauses 15.3 or 15.4 shall require Bidder or Oakton to incur any additional premium after the Implementation Date or require Oakton to not fulfil its contractual obligations under the Policy.

16. General

16.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

16.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

16.3 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

16.4 GST

- (a) Any reference in this clause 16.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 16.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 16.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 16.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

16.5 Stamp duty

Bidder must pay all stamp duties (if any) 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

(including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme).

16.6 Expenses

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

16.7 Amendments

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

16.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

16.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

16.10 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number of the other party specified in clause 13.6, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

16.11 Entire agreement

- (a) This deed:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and

- (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 16.11(a), the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

16.12 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.
- (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.

16.13 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

16.14 Governing law

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

Schedule 1 - Indicative Timetable

Not reproduced here (await Explanatory Booklet for timetable)

Schedule 2 - Deed Poll

Not reproduced here (await Explanatory Booklet for executed Deed Poll)

Schedule 3 – Scheme

Not reproduced here (await Explanatory Booklet for form of Scheme)

Signing page

EXECUTED as a deed.

Executed by Oakton Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

POUL HOLYOAKE

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

NEIL WILSON
Name of director/company secretary (print)

Executed by Dimension Data Australia Pty Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Signing page

EXECUTED as a deed.

**Executed by Oakton Limited in accordance
with Section 127 of the Corporations Act
2001**

Signature of director

Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)



**Executed by Dimension Data Australia Pty
Limited in accordance with Section 127 of
the Corporations Act 2001**

Signature of director

RODD CUNICO
Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

PETER LEES
Name of director/company secretary (print)

