

ASX/media release

3 September 2014

## NONI B RECOMMENDS TAKEOVER OFFER BY ALCEON GROUP

Noni B Limited (“**Noni B**” or the “**Company**”) is pleased to announce that it has entered into an agreement with Alceon Group Pty Ltd (“**Alceon**”), under which Alceon has agreed that it or its nominee will make offers to acquire 100% of the fully paid ordinary shares in Noni B by way of an off-market takeover (the “**Offer**”).

On 28 May 2014, the Board of Noni B announced that it was considering strategic alternatives with respect to the Company’s capital structure and a sub-committee of Noni B’s independent Directors was formed. Since that time, the sub-committee has extensively reviewed the Company’s strategic alternatives with the objective of maximising shareholder value. As a result of the strategic review, the Board has unanimously concluded that the takeover proposal from Alceon is in the best interests of the Company.

### The Offer

The Offer price is **\$0.51** cash per Noni B share (“**Offer Price**”).

The Offer Price values Noni B at approximately **A\$16.4 million** and represents:

- a premium of **32%** to Noni B’s closing share price of \$0.385 on the day prior to the announcement on 28 May 2014 that the Company was conducting a strategic review; and
- a premium of **13%** over the closing price of Noni B’s shares on the trading day prior to the request for a trading halt lodged by the Company with ASX on 1 September 2014 of \$0.45.

The Offer is governed by a Takeover Bid Implementation Deed entered into by Noni B and Alceon on 2 September 2014 (“**Implementation Deed**”) and will be conditional upon the satisfaction of certain customary conditions, including that Alceon acquires a relevant interest in at least 90% of Noni B’s ordinary shares on issue during, or at the end of, the Offer period.

The Offer is also subject to a condition that Noni B’s merchandise sales exceed certain benchmarks set out in the Implementation Deed, for the trading period from September through November 2014.

The Implementation Deed also includes a break fee of \$200,000 (excluding GST) payable to Alceon in certain circumstances, as well as customary exclusivity provisions. A copy of the Implementation Deed is attached to this announcement as Appendix A.

## **Recommendation**

The Directors of Noni B, with the assistance of the Company's advisors, have carefully considered the Offer and **unanimously recommend that Shareholders accept the Offer in the absence of a superior proposal.**

**In addition, each of the Directors who owns or controls shares in Noni B has confirmed that they intend to accept the Offer in respect of any shares in Noni B that they own or control in the absence of a superior proposal.** The Directors collectively have a relevant interest in approximately 42% of Noni B's ordinary shares.

## **Other matters**

Members of the Kindl family have each agreed to grant an option to Alceon over, in aggregate, 19.9% of the ordinary shares in the Company, which comprises part (but not all) of the issued share capital of Noni B held by members of the Kindl family. The remainder of the shares in Noni B which are held by members of the Kindl family are not the subject of the options.

In addition, provided the Offer does not lapse, the Joint Managing Directors of Noni B, Messrs David and James Kindl, have agreed to reduce certain entitlements under their existing employment contracts and amend all notice periods to three months.

## **Comments**

Commenting on the Offer, the Chairman of Noni B, Joycelyn Morton said: "Since announcing the strategic review in May 2014, the Directors have given careful consideration to the way forward for Noni B and have concluded that the proposal from Alceon is in the best interests of the Company. The proposal maximises shareholder value and provides an opportunity for Noni B shareholders to realise a premium to the recent market price for their shares, notwithstanding the current market conditions and recent trading performance of the Company."

Mr Alan Kindl, the founder of Noni B, said: "I am pleased that the Offer will secure the future of Noni B and ensure that the Company remains at the forefront of women's fashion retailing in Australia. Furthermore, I strongly believe that under Alceon's ownership, Noni B will see increased focus on its brand, product and retail presence and that the Company will continue to serve its customers throughout Australia."

Alceon Executive Director, Mr Richard Facioni said: "Alceon believes that this transaction will provide Noni B with the resources and support to ensure a profitable and successful future. While facing recent difficulties, we are confident of the Company's long-term viability as a key player in women's fashion retailing."

## **Timetable**

Noni B understands that Alceon intends to lodge the Bidder's Statement with ASIC on or about 23 September 2014 and despatch it to Noni B shareholders together with the Target Statement shortly thereafter. The Bidder's Statement will outline the full details of the Offer as well as instructions on how to accept the Offer.

Noni B has engaged TC Corporate as financial adviser and Norton Rose Fulbright as legal adviser.

**For further information:**

**Noni B:**

**Joycelyn Morton**  
Chairman

Ph: 0418 404 626

**TC Corporate:**

**Robert Fraser**  
Managing Director

**Christopher Still**  
Executive Director

Ph: 02 9377 1555

**About Noni B**

Noni B Limited, founded in 1977, is one of Australia's leading fashion retailers, with stores nationally and online at [www.nonib.com.au](http://www.nonib.com.au). Noni B differentiates itself by focusing on superior service, style and fit. Our dedicated team is passionate about providing women with an instore experience where personalised advice is the basis of great customer service, and our styles are designed to make our customers look and feel good through day and evening, even when they travel. The exclusive Noni B and Liz Jordan designer collections offer classic and stylish contemporary fashion for today's woman.

**About Alceon**

Alceon is a specialist investment, advisory and capital solutions house and manages investment funds for individuals, family offices, trustees, trusts, superannuation funds and advisers. Alceon was established in 2010 and has a high calibre team, comprising 16 investment professionals across Sydney, Melbourne, Brisbane and Perth supported by 10 finance, administration and compliance professionals.

Alceon invests in private mid-market assets across property, asset-backed and alternative investments, including private equity.

**Attachments**

A. Takeover Bid Implementation Deed

Dated 2 September 2014

## Takeover Bid Implementation Deed

Parties

**Alceon Group Pty Ltd**  
ACN 122 365 986

**Noni B Limited**  
ABN 96 003 321 579

Norton Rose Fulbright Australia  
225 George Street  
Sydney NSW 2000  
Tel: +61 2 9330 8000  
nortonrosefulbright.com  
Our ref: 2813323

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**Deed** dated 2 September 2014

**Parties**

**Alceon Group Pty Ltd** ACN 122 365 986  
of Level 16, 20 Hunter Street, Sydney NSW 2000  
(Bidder)

**Noni B Limited** ABN 96 003 321 579  
of 10 Garling Road, Kings Park NSW 2148  
(Target)

## Introduction

- A** Bidder proposes to make the Bid and Target has been informed the Target Board proposes to recommend that Target Shareholders accept the Offers in respect of their Target Shares subject only to the qualification that no Superior Proposal emerges.
- B** Bidder and Target have agreed to certain matters in relation to the conduct of the Bid as set out in this deed.

## It is agreed

### 1 Definitions and interpretation

#### 1.1 Definitions

- (1) **Agreed Bid Terms** means the terms and conditions set out in Schedule 1;
- (2) **Agreed Public Announcement** means the announcement to be made by Bidder and Target to ASX in the form agreed between Bidder and Target set out in Schedule 3;
- (3) **ASIC** means the Australian Securities and Investments Commission;
- (4) **Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this deed;
- (5) **ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange operated by ASX Limited, as the context requires;
- (6) **ASX Listing Rules** means the official listing rules of ASX;
- (7) **Bid** means an off-market takeover bid by Bidder for all Target Shares under Chapter 6 of the Corporations Act;
- (8) **Bid Consideration** means the consideration specified in clause 1 of Schedule 1;
- (9) **Bidder Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this deed relating to the business, technology or other affairs of Bidder;

- (10) **Bidder Group** means Bidder and each of its Related Bodies Corporate;
- (11) **Bidder Shares** means fully paid ordinary shares issued in the capital of Bidder;
- (12) **Bidder's Statement** means the bidder's statement to be prepared by Bidder in connection with the Bid in accordance with Chapter 6 of the Corporations Act.
- (13) **Bidder Warranties** means the representations and warranties set out in clause 12.3(2);
- (14) **Break Fee** means \$200,000, plus GST (if any);
- (15) **Business Day** means Monday to Friday inclusive except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day that ASX declares is not a business day;
- (16) **Competing Transaction** means any expression of interest, proposal or offer in relation to a takeover bid, scheme of arrangement, joint venture, dual listed company structure, reverse takeover bid, purchase of assets or undertakings, share issue, capital reduction, buy back, partnership or other transaction, which if completed, would mean a person (other than Bidder or one of its Related Bodies Corporate) would:
  - (a) directly or indirectly, acquire an interest in, a relevant interest in, become the holder of, or enter into a cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to:
    - (i) more than 30% of the Target Shares or more than 30% of the shares in any of Target's Subsidiaries; or
    - (ii) the whole or a material part of the business or property of Target or any of its Subsidiaries;
  - (b) acquire "control" of Target, within the meaning of section 50AA of the Corporations Act; or
  - (c) result in the Bid not being able to be implemented on the basis set out in this deed;
- (17) **Conditions** means the conditions set out in clause 3 of Schedule 1;
- (18) **Confidential Information** means the Bidder Confidential Information and the Target Confidential Information;
- (19) **Confidentiality Deed** means the confidentiality deed dated on or about 18 June 2014 between Bidder and Target;
- (20) **Control** means where a person owns beneficially, directly or indirectly, more than 50% of another person's issued voting securities, or a person has the ability to direct or cause the direction of the management and policies of another person, whether through the ownership of voting securities, by contract or otherwise.
- (21) **Diligence Information** has the meaning given in clause 9.4(1);
- (22) **Director** means a member of the Target Board;



- (23) **End Date** means the earlier of:
- (a) the date on which the Offer Period ends; and
  - (b) the date that is 6 months after the date of this deed,
- or such other date as the Bidder and the Target agree in writing;
- (24) **Excluded Information** means Confidential Information which:
- (a) is in or becomes part of the public domain other than through a breach of this deed or an obligation of confidence owed to the party providing the Confidential Information;
  - (b) the recipient of the Confidential Information can prove by contemporaneous written documentation that the Confidential Information was already known to it at the time of disclosure by the party providing the Confidential Information (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
  - (c) the recipient of the Confidential Information acquires from a source other than the party providing the Confidential Information or any Related Body Corporate or Representative of the party providing the Confidential Information, where such source is entitled to disclose it;
- (25) **Exclusivity Period** means the period commencing on the date of this deed and ending on the first to occur of:
- (a) termination of this deed; and
  - (b) the End Date;
- (26) **Finance Facility** means the loan agreement between the Target and Alan Kindl dated on or about 29 August 2014.
- (27) **Fully and Fairly Disclosed** means any information disclosed by one party to this deed to the other party in such manner and in such detail as to enable the party to whom the information is disclosed (acting reasonably) to make an informed assessment or estimation of the matter concerned and its financial, operational or other consequences on the disclosing party;
- (28) **Insolvent** means if an event referred to in clauses (g) to (l) of the definition of Target Prescribed Occurrences occurs as if that definition applied to the Insolvent person;
- (29) **Loss** means any cost, damages, debt, expense, liability or loss of any kind and however arising, including penalties, fines and interest and including any that are prospective or contingent and any the amount of which for the time being is not ascertained or ascertainable;
- (30) **Material Adverse Change** means, in respect of a specified period, if the merchandise sales (excluding GST) for the Target Group for such period (based on the management accounts for the Target Group prepared on a consistent basis to the management accounts for the Target Group prepared in the 12 months prior to the date of this deed) is less than the Merchandise Sales Benchmark in respect of that period;

- (31) **Merchandise Sales Benchmark** means, in respect of a specified period, the benchmark merchandise sales for the Target Group for that period specified in the second column of the table below:

Period	Merchandise Sales Benchmark (excluding GST)
25 August 2014 – 28 September 2014	\$8,500,000
25 August 2014 – 26 October 2014	\$15,750,000
25 August 2014 – 23 November 2014	\$23,500,000

- (32) **Offer** means each offer by Bidder for Target Shares under the Bid and **Offers** means all such offers;
- (33) **Offer Period** means the period the Offer is open for acceptance;
- (34) **Register** means the register of Target Shareholders kept by Target;
- (35) **Regulatory Approval** means any approval from Regulatory Authorities in Australia or any other place and any other formal or informal approval of a Regulatory Authority to the Transaction or any aspect of it which Bidder, acting reasonably, determines is necessary to implement the Transaction;
- (36) **Regulatory Authority** includes:
- (a) ASX, ACCC, ATO, ASIC and regulatory bodies performing similar functions in other countries;
  - (b) a government or governmental, semi-governmental or judicial entity, body or authority;
  - (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government;
  - (d) any regulatory organisation established under statute;
  - (e) any similar entities that a government controls or owns, including any state-owned or state-operated companies or enterprises;
  - (f) any international organisations such as the United Nations or the World Bank;
  - (g) any self-regulatory organisation;
  - (h) any court, arbitrator or expert (public or private),
- whether in Australia or in any other jurisdiction;
- (37) **Related Body Corporate** has the meaning it has in the Corporations Act;
- (38) **Related Person** means
- (a) a Related Body Corporate of Target;

- (b) an adviser of Target or an adviser of a Related Body Corporate of Target;  
or
  - (c) an officer or employee of any entity referred to in items a or b of this definition;
- (39) **Relevant Interest** has the meaning it has in the Corporations Act;
- (40) **Representative** of a person means an employee, agent, officer, director, adviser or financier of the person and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable);
- (41) **Schedule** means a schedule to this deed;
- (42) **Security Interest** has the meaning given to it in section 12 of the *Personal Property Securities Act 2009* (Cth).
- (43) **Subsidiary** has the meaning it has in the Corporations Act;
- (44) **Superior Proposal** means a publicly announced Competing Transaction or proposed Competing Transaction which, if completed substantially in accordance with its terms, would mean a person (other than Bidder or one of its Related Bodies Corporate) would become the holder of:
- (a) more than 50% of the Target Shares; or
  - (b) the whole or substantially the whole of the business, assets and undertakings of the Target Group,
- provided that the Directors unanimously determine, acting in good faith after receipt of advice from Target's financial and legal advisers and in order to satisfy what the Directors consider to be their fiduciary and statutory duties, that the Competing Transaction or proposed Competing Transaction is capable of being valued and completed, taking into account all aspects of the transaction or proposed transaction (including its conditions precedent and the person or persons making it) and is superior overall for Target Shareholders as compared to the Offers;
- (45) **Target Board** means the board of directors of Target from time to time;
- (46) **Target Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this deed relating to the business, technology or other affairs of Target;
- (47) **Target Group** means Target and each of its Related Bodies Corporate;
- (48) **Target Prescribed Occurrence** means the occurrence of any of the following where that occurrence was not consented to by Bidder or is not the result of Target taking or procuring any action required to be taken or procured by it under this deed:
- (a) Target converting all or any of its shares into a larger or smaller number of shares under section 254H of the Corporations Act;
  - (b) a member of the Target Group resolving to reduce its share capital in any way;

- (c) a member of the Target Group entering into a buy-back agreement or resolving to approve the terms of such an agreement under section 257C(1) or 257D(1) of the Corporations Act;
  - (d) a member of the Target Group making an issue of its shares or granting an option over its shares or agreeing to make such an issue or grant such an option;
  - (e) a member of the Target Group issuing, or agreeing to issue, convertible notes;
  - (f) a member of the Target Group disposes, or agrees to dispose, of the whole or a substantial part of its business or property;
  - (g) a member of the Target Group grants, or agrees to grant a Security Interest in the whole or a substantial part of its business or property;
  - (h) a member of the Target Group resolving that it be wound up;
  - (i) the appointment of a liquidator or provisional liquidator of a member of the Target Group;
  - (j) the making of an order by a court for the winding up of a member of the Target Group;
  - (k) an administrator of a member of the Target Group being appointed under section 436A, 436B or 436C of the Corporations Act;
  - (l) a member of the Target Group executing a deed of company arrangement; or
  - (m) the appointment of a receiver or a receiver and manager in relation to the whole, or a substantial part, of the property of a member of the Target Group;
- (49) **Target Shares** means fully paid ordinary shares issued in the capital of Target;
  - (50) **Target Shareholders** means each person who is registered in the Register as the holder of Target Shares from time to time;
  - (51) **Target's Statement** means the target's statement to be issued by Target under section 638 of the Corporations Act in response to the Bid;
  - (52) **Target Warranties** means the representations and warranties set out in clause 12.2(2) and Target Warranty means any of them;
  - (53) **Timetable** means the timetable set out in Schedule 2;
  - (54) **Transaction** means the acquisition by Bidder of all Target Shares under the Bid;
  - (55) **Voting Power** has the meaning it has in the Corporations Act.

## 1.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the other;

- (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
    - (i) that Statutory Provision as amended or re-enacted;
    - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
  - (f) money (including "\$" and "AUD") is to Australian dollars, unless otherwise stated.
- (2) **Including** and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this deed or affect its interpretation.
- (5) A provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## **2 Agreed public announcement**

Immediately after the execution of this deed, Bidder and Target must each issue the Agreed Public Announcement to ASX.

## **3 Facilitating the Bid**

### **3.1 Agreement to make the Bid**

- (1) Bidder agrees to make the Bid and the Offers on terms consistent with and no less favourable than the Agreed Bid Terms and in compliance with the terms and conditions of this deed.
- (2) Bidder and Target each agree to use their respective reasonable commercial endeavours to implement the Transaction as soon as reasonably practicable, and in accordance with the Timetable (or as otherwise agreed between the parties).

### **3.2 Bidder may elect a subsidiary**

The Bidder may, by giving notice to the Target on or before the date of the Bidder's Statement, nominate a subsidiary of the Bidder or a company or trust controlled (within the

meaning of section 50AA of the *Corporations Act (Cth) 2001*) by the Bidder to make the Bid on its behalf, provided that where the nominee is a trust, it has the power to make the Bid.

### 3.3 Bidder's Statement

As soon as practicable after the date of this deed, Bidder must prepare the Bidder's Statement.

### 3.4 Target's Statement

- (1) As soon as practicable after the date of this deed, Target must prepare the Target's Statement.
- (2) Target must ensure that the Target's Statement prominently displays the recommendation of the Target Board referred to in clause 5.1(1) (including, without limitation, on the cover of the Target's Statement).
- (3) Target acknowledges that the recommendation referred to above is not dependent on the opinion of an independent expert and that Target does not intend to obtain (and is not required by section 640 of the *Corporations Act* to obtain) an independent expert's report for inclusion in the Target's Statement or otherwise in respect of the Transaction.

### 3.5 Review of Bidder's Statement and Target's Statement

- (1) Bidder agrees to:
  - (a) give Target a reasonable opportunity to review an advanced draft of the Bidder's Statement (and in any event, will provide such draft to the Target at least 3 Business Days before Bidder is required to lodge the Bidder's Statement with ASIC); and
  - (b) consult in good faith with Target with respect to any comments Target may have, which comments Target agrees to provide as promptly as reasonably possible.
- (2) Target agrees to:
  - (a) give Bidder a reasonable opportunity to review an advanced draft of the Target's Statement (and in any event, will provide such draft to the Bidder at least 3 Business Days before Target is required to lodge the Target's Statement with ASIC); and
  - (b) consult in good faith with Bidder in relation to any comments Bidder may have, which comments Bidder agrees to provide as promptly as reasonably possible.

### 3.6 Access to information

- (1) Each party agrees to provide the other party, on a timely basis, with assistance and information that may be reasonably required to assist in the preparation of the Bidder's Statement or the Target's Statement (as applicable).
- (2) Target agrees to provide to Bidder on the Business Day after the date of this deed and thereafter until the end of the Offer Period, at no cost to Bidder, such information about Target Shareholders as reasonably requested by Bidder to make the Offers and solicit acceptances, including the Register and any updates to it.

### **3.7 Joint Despatch**

To the extent permitted under the Corporations Act and provided that a Superior Proposal has not emerged, each party agrees that it will take prompt action to ensure that the Bidder's Statement and Target Statement can be mailed together to Target Shareholders as soon as reasonably practicable.

### **3.8 Consent to early dispatch of Bidder's Statement**

Target agrees (by authority of its Directors) that the Offers and accompanying documents to be sent by Bidder under the Bid under item 6 of section 633(1) of the Corporations Act may be sent earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act.

### **3.9 Conditions**

- (1) Each party must, to the extent within its power, use its reasonable commercial endeavours to ensure that the Conditions are satisfied as soon as practicable after the date of this deed and that no Condition is breached or is not satisfied.
- (2) Target and Bidder agree not to do, or omit to do, anything which will, or is likely to, result in any Condition being breached or not being satisfied.
- (3) If any event occurs or becomes apparent which would cause any Condition to be breached or become (either immediately or at some future point in time) incapable of satisfaction, or which would cause satisfaction of a Condition to be unreasonably delayed, Target and Bidder must, to the extent that they are aware of such information, immediately notify the other party of that event.

## **4 Variation and waiver of Offers**

### **4.1 Variation and waiver**

- (1) Subject to clauses 3.1 and 4.1(2), Bidder may vary the terms of the Offers in any manner which is permitted by the Corporations Act and the Bidder must consult with the Target in good faith prior to varying the terms of the minimum acceptance condition.
- (2) Subject to the Corporations Act, Bidder may declare the Offers to be free from any Condition or extend the Offer Period at any time.

## **5 Recommendation**

### **5.1 Recommendation and acceptance of Offers by the Directors**

Target represents and warrants to Bidder that:

- (1) the Target Board has met and considered the possibility of Bidder agreeing to make the Bid and that each Director has informed Target that he or she:
  - (a) will recommend that Target Shareholders accept the Offer in respect of their Target Shares, in the absence of a Superior Proposal; and
  - (b) does not propose to recommend a Competing Transaction;
- (2) each Director has approved the Agreed Public Announcement;

- (3) each Director will not withdraw, revise, revoke or qualify, or make any public statement inconsistent with, the recommendation in paragraph 5.1(1) unless:
  - (a) a Superior Proposal emerges (that was not procured or obtained by Target through a breach of clause 9 of this deed); and
  - (b) in the opinion of the Director, formed in good faith and after receipt of advice from Target's financial and legal advisers, their fiduciary or statutory duties require them to take the action which is proposed to be taken under this paragraph; and
- (4) each Director intends to accept the Offer in respect of all Target Shares held or controlled by them, in the absence of a Superior Proposal.

## 5.2 Promotion of Offers

Unless a majority of the Directors withdraw their recommendation of the Offers in accordance with clause 5.1(3), Target must ensure that each Director and such other senior executives of Target as reasonably requested by Bidder participate in efforts to promote the merits of the Offers, including meeting with key Target Shareholders, analysts, media and other stakeholders of Target.

## 6 Financing

### 6.1 Notification of drawdowns

The Target must notify the Bidder of any drawdown under the Finance Facility within 3 Business Days of such drawdown.

### 6.2 Repayment of Finance Facility

No later than 5 Business Days after a notice from Alan Kindl pursuant to clause 5.2(2) of the Finance Facility is received by the Target, Bidder must (or must procure that Target):

- (1) provide alternative financing to replace the Finance Facility; and
- (2) repay any amounts outstanding under the Finance Facility (including interest).

### 6.3 No amendment

The Target must procure that the Finance Facility is not amended, except with the prior written consent of the Bidder (such consent not to be unreasonably withheld or delayed).

## 7 Termination rights

### 7.1 Termination events

- (1) Bidder may terminate this deed at any time by notice in writing to Target:
  - (a) **(Material Adverse Change or Target Prescribed Occurrence)** if:
    - (i) a Material Adverse Change or Target Prescribed Occurrence occurs;
    - (ii) Bidder has given notice to Target setting out the relevant circumstances and stating an intention to terminate this deed; and



- (iii) the relevant circumstances have not been rectified (if capable of being rectified), and/or the activity that caused them has not ceased to the reasonable satisfaction of Bidder, within ten Business Days from the time such notice is given;
  - (b) **(Competing Transaction)** if a Competing Transaction is publicly proposed by a person other than Bidder (or one of its Related Bodies Corporate) and is recommended by a majority of Target Directors; or
  - (c) **(recommendation)** if a majority of Target Directors fail to make or withdraw, change, revise, revoke or qualify, or make a public statement inconsistent with, the recommendations referred to in clauses 5.1(1)(a) or 5.1(1)(b) or make a public statement indicating that they no longer recommend that Target Shareholders accept or that they intend to accept the Offer in respect of their own Target Shares.
- (2) Bidder may only terminate this deed under clause 7.1(1)(a)(i) in respect of a Material Adverse Change if the Bidder has notified Target of its intention to terminate in accordance with clause 7.1(1)(a)(ii) by the date specified for the relevant period set out in the second column in the table below:

Period	Notification Date
25 August 2014 – 28 September 2014	24 October 2014
25 August 2014 – 26 October 2014	21 November 2014
25 August 2014 – 23 November 2014	12 December 2014

- (3) Target may terminate this deed at any time by notice in writing to Bidder if a majority of Target Directors withdraw their recommendation of the Offers in accordance with clause 5.1(3).
- (4) This deed automatically terminates on the End Date.

## 7.2 Effect of termination

In the event of termination of this deed by either Bidder or Target pursuant to clause 7.1, the deed will have no further effect, other than in respect of any liability for any antecedent breach of this deed and provided that this clause 6 and clauses 1, 10, 12, 13, 14, 15 and 16 survive termination.

## 8 Public announcements

### 8.1 Proposed announcements

Other than in circumstances where the majority of the Directors have withdrawn their recommendation of the Offers at the relevant time in accordance with clause 5.1(3), each party must obtain the other party's prior written consent (not to be unreasonably withheld or delayed) to the terms of any proposed public announcement (including, without limitation, to ASX) in relation to the subject matter of this deed.

## 8.2 Required announcements

If Target is required to make an announcement by any applicable law or the ASX Listing Rules in respect of any matter other than in respect of the Bid or the subject matter of this deed, Target must, to the extent practicable, without breaching any applicable law or rule, give to Bidder such notice as is reasonable in the circumstances of its intention to make the announcement and of the content of such announcement.

## 9 Exclusivity

### 9.1 No existing discussion

Target represents and warrants to Bidder that as at the date of this deed it is not involved in any discussions or negotiations with any person about a Competing Transaction and has ceased any such discussions or negotiations to the extent that they were on foot prior to the date of this deed and:

- (1) Target has taken reasonable steps to request any documents given to that person in the course of such discussions and negotiations have been dealt with in accordance with the obligations contained in the relevant Confidentiality Deed entered into with that person; and
- (2) to the extent a party (other than Bidder and its Representatives) had access to any electronic data rooms which contain Target information, that access has ceased.

### 9.2 No shop

During the Exclusivity Period, Target must ensure that neither it nor any other member of the Target Group or their respective Representatives, directly or indirectly solicits, invites, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any person in relation to a Competing Transaction.

### 9.3 No talk

Subject to clause 9.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, enters into, continues or participates in negotiations or discussions with any other person regarding, or that could reasonably be expected to lead to, a Competing Transaction, even if:

- (1) those negotiations or discussions were not directly or indirectly encouraged, solicited, invited or initiated by Target or any of its Representatives; or
- (2) that person has publicly announced their Competing Transaction.

### 9.4 No due diligence

- (1) Subject to clause 9.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, makes available to any other person or permits any other person to receive any non-public information relating to the Target Group, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Transaction (**Diligence Information**).
- (2) Before Target provides a third party with Diligence Information during the Exclusivity Period in reliance on clause 9.6, it must first enter into a binding confidentiality deed with that party on customary terms and, in any event and taken as a whole, is no less favourable to the Target than the Confidentiality Deed.

- (3) If Target provides a third party with Diligence Information during the Exclusivity Period in reliance on clause 9.6, it must provide a copy of the Diligence Information not already made available to Bidder at the same time as it is provided to the third party.

#### 9.5 Notification of approaches

- (1) Subject to clause 9.6, during the Exclusivity Period, Target must immediately (and, in any event, within one Business Day) notify Bidder in writing if:
  - (a) it or any other Target Group member proposes to take, or is approached by any person to take, any action of a kind that is set out in clauses 9.3 or 9.4; or
  - (b) it or any of its Representatives receives any approach, inquiry or proposal (whether written or verbal) from any person regarding, or that could reasonably be expected to lead to, a Competing Transaction.
- (2) A notice given under this clause 9.5 must be accompanied by all material details of the relevant event, including the person's identity and all material terms of the Competing Transaction.

#### 9.6 Exceptions to no talk and no due diligence

The restrictions in clauses 9.3, 9.4 and 9.5 do not apply to the extent that they restrict Target or a Director from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not encouraged, solicited, invited or initiated in contravention of clause 9.2) provided that in the opinion of each Director, formed in good faith and after receipt of advice from Target's financial and legal advisers:

- (1) the Competing Transaction is made in writing by or on behalf of a person that the Directors consider is of reputable commercial standing;
- (2) the Competing Transaction would be, or could reasonably be expected to lead to a transaction which is, more favourable to Target Shareholders than the Bid, after taking into account all aspects of the Competing Transaction including:
  - (a) the value of the consideration payable to Target Shareholders and the tax consequences for Target Shareholders relating to the payment of that consideration;
  - (b) the conditions of the Competing Transaction and the likelihood of those conditions being satisfied;
  - (c) the likely timing required to implement the Competing Transaction; and
  - (d) taking or failing to take the action with respect to the Competing Transaction would, or would be likely to, involve a breach of the fiduciary or statutory obligations of the Directors.

## 10 Break Fee

### 10.1 Rationale

- (1) Target and Bidder acknowledge and agree, for the purposes of this clause 9 as follows:

- (a) Bidder has required the inclusion of clause 10.3, in the absence of which it would not have entered into this deed or otherwise agreed to implement the Bid.
- (b) Target and the Target Board believe that the Bid will provide significant benefits to it and its members and that it is reasonable and appropriate that it agrees to the inclusion of clause 10.3, in order to secure Bidder's execution of this deed and its agreement to implement the Bid.
- (c) The amount payable by Target pursuant to clause 10.3 is an amount to compensate Bidder for the following:
  - (i) reasonable advisory costs (including costs of advisers other than success fees) relating to the Bid;
  - (ii) cost of management and directors' time;
  - (iii) any and all Loss incurred by the Bidder Group in connection with the Bid and any breach of this deed, including any breach of a Target Warranty; and
  - (iv) reasonable out-of-pocket expenses relating to the Bid.

## 10.2 Acknowledgment

- (1) Target acknowledges that, if Bidder enters into this deed and the Bid does not succeed, Bidder will have incurred significant costs and losses, including significant opportunity costs.
- (2) Target acknowledges and agrees that the costs and losses actually incurred by the Bidder Group under clause 10.1 will be of such nature that they cannot accurately be ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the costs and losses that would actually be suffered by the Bidder Group in such circumstances and has been calculated to reimburse the Bidder Group for such costs and Losses.
- (3) Target represents and warrants that:
  - (a) it has received legal advice on this deed and the operation of this clause 10; and
  - (b) it considers this clause 10 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 10 in order to secure the significant benefits to it (and Target Shareholders) resulting from the Bid.

## 10.3 Payment of Break Fee by Target

Subject to clause 10.4, Target must pay Bidder the Break Fee (plus any GST, only once and without set-off or withholding), within 5 Business Days after receiving a written demand from Bidder, if at any time after the date of this deed any of the following occur:

- (1) a Competing Transaction is implemented;
- (2) a person (other than Bidder or a Related Body Corporate of it) with its Associates acquires the whole or a substantial part of the Target Group's assets, business or property;

- (3) during the Exclusivity Period, a majority of the Directors, or a single Director who is a member of the Kindl family, publicly endorse or otherwise publicly support a Competing Transaction;
- (4) any Director fails to make, or makes and then withdraws, revises, revokes or qualifies, a recommendation to Target Shareholders to accept the Offer (whether or not that failure, withdrawal, revocation, qualification or revision is otherwise in breach of this deed);
- (5) Bidder validly terminates this deed under clause 7.1(1)(a) (other than where there is a Material Adverse Change);
- (6) Target breaches clause 9 in any material manner and fails to remedy the breach within a period of 2 Business Days of receiving written notice of the breach from the Bidder;
- (7) a Director does any of the things contemplated in clause 5.1(3) in reliance or purported reliance on that clause; or
- (8) Target or any of its Directors does (or omits to do) anything (whether or not permitted by this deed) that results in any of the Conditions being breached or becoming incapable of being satisfied, and Bidder does not waive that Condition.

#### **10.4 Circumstances where Break Fee not payable by Target**

The Break Fee:

- (1) is not required to be paid by Target under this clause 10 where the Bidder acquires a Relevant Interest in 50.1% or more of the Target Shares or its offer is declared free from defeating conditions; or
- (2) is refundable, to the extent that such reimbursement is found by the Takeovers Panel or a Court to be unacceptable or unlawful and the time period for lodging an application for review or a notice of appeal (as applicable) has expired without such an application or notice having been lodged.

#### **10.5 No other claims**

Following receipt by Bidder of any payment under this clause 10, Bidder will not have any other claim in respect of the matter that gave rise to such payment, whether under this deed or otherwise.

### **11 Conduct of business**

#### **11.1 Conduct of business**

From the date of this deed until the expiry of the Exclusivity Period, Target must ensure that the Target Group conducts its business and operations and maintains its assets only in, and does not take any action except in, the ordinary course and consistent with past practice or as contemplated by this deed or otherwise agreed by Bidder and must:

- (1) when reasonably requested by Bidder to do so, consult with Bidder in relation to the conduct of the Target Group's business and operations (including promptly responding to any reasonable questions asked by Bidder in relation to such matters) including by consulting with the oversight committee established under clause 11.2(2) of this deed;
- (2) operate the Target Group's businesses in accordance with current business plans;

- (3) take reasonable steps to preserve the value of the Target Group's business and assets;
- (4) take reasonable steps to preserve the Target Group's relationships with customers, suppliers, licensors and others with whom the Target Group has business dealings;
- (5) take reasonable steps to retain the services of all key employees and contractors of the Target Group;
- (6) comply with all laws, regulations, rules, requirements, authorisations, licenses, permits, consents and approvals that are material to the conduct of the businesses of the Target Group;
- (7) not incur capital expenditure from the date of this deed other than materially in accordance with a forward-looking budget in a form previously agreed with Bidder;
- (8) not deliberately do or cause to be done, or fail to do or deliberately cause not to be done, anything that would or may result in the Transaction not being implemented or being implemented otherwise than as soon as reasonably practicable and in accordance with the terms of this deed; and
- (9) not deliberately take or fail to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, a Target Prescribed Occurrence.

#### 11.2 Access

- (1) From the date of this deed until the first to occur of the date the Offers close and the date when this deed is terminated (both inclusive), Target will, and will cause the members and senior management of the Target Group to, provide Bidder and its Representatives with reasonable access during normal business hours to such officers, documents, records, premises, sites, locations and other information which Bidder reasonably requires for the purposes of:
  - (a) implementing the Bid; or
  - (b) preparing for controlling the conduct of the business of the Target Group following implementation of the Bid,provided that such access does not place an unreasonable burden on the ability of Target or any member of the Target Group to operate their business or would be a breach of law or regulation (including the ASX Listing Rules).
- (2) As soon as practicable after the date of this deed, the Target agrees to establish an oversight committee that includes two representatives of the Bidder. The Target agrees to consult in good faith with the oversight committee on all material management decisions to be made by the Target and to reasonably consider the views of the members of the oversight committee in making its decisions.
- (3) The Target acknowledges and agrees that:
  - (a) one representative of the Bidder nominated by the Bidder to join the oversight committee (**Bidder Representative**) is entitled to attend any product buying trip contemplated by the Target (at the Bidder's cost);
  - (b) the next product buying trip will not occur earlier than 7 September 2014; and

- (c) the Bidder Representative must be given reasonable notice of any future product buying trip of which it has not already been given notice.
- (4) Nothing in this clause requires a party to act at the direction of another party. The business of each party will continue to operate independently to that of the other party until the date the Transaction is implemented.

The parties agree that nothing in this deed shall constitute the relationship of a partnership or a joint venture between them.

### 11.3 Change of control rights

As soon as practicable after the date of this deed:

- (1) the parties must seek to identify any change of control or similar provisions in any contracts, leases or other relevant deeds, arrangements or understandings to which Target or a member of the Target Group is a party which may be triggered by the Bid;
- (2) the parties must work together to agree a proposed strategy to initiate with the relevant counterparties to such deeds, arrangements or understandings to request that they provide any consents or waivers required; and
- (3) Target must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or waivers as expeditiously as possible.

### 11.4 Appointment of Directors to Target Board

Target represents and warrants to Bidder that each Director has confirmed to it that he or she will, and Target must procure that the Target Board will:

- (1) take all actions necessary to ensure the nominees of Bidder are lawfully appointed as Directors and all Directors nominated by Bidder resign (other than two of the current independent non-executive directors and the founding director, Alan Kindl) who will continue in office from the time of appointment of the Bidder nominees on terms of remuneration as nominated by Bidder), such that the Bidder nominees represent a majority of the Target Board once Bidder acquires a Relevant Interest in excess of 50% of the Target Shares and the Offers have become or are declared unconditional; and
- (2) as soon as practicable after the earlier of:
  - (a) Target de-listing from ASX; or
  - (b) Bidder acquiring a Relevant Interest in 90% of the Target Shares and the Offers becoming or being declared unconditional,

ensure that all of the non-Bidder nominees on the Target Board resign,

provided that a proper board is constituted at all times and that Bidder procures that its appointees to the Target Board do not participate in decisions of Target in relation to the Offers until after the End Date.

### 11.5 Financial accommodation to Target

Target must not, without the Bidder's consent (not to be unreasonably withheld or delayed) accept any financial accommodation from any party.

## 11.6 Provision of merchandise sales

The Target must, within 5 Business Days of the end of each period for which there is a Merchandise Sales Benchmark, provide the Bidder with the actual merchandise sales for that period. The Target must provide to the Bidder, on the Bidder's reasonable request, information as may be reasonably necessary to enable the Bidder to confirm the accuracy of the actual merchandise sales (excluding GST) for the applicable period.

## 12 Representations and warranties

### 12.1 Warranties limited by Disclosure

- (1) The Target Warranties are given subject to and are qualified by, and the Bidder is not entitled to claim that any fact, matter or circumstance causes any of the Target Warranties to be breached if and to the extent, but only to the extent, that the fact, matter or circumstance is Fully and Fairly Disclosed in the information and material included in the electronic dataroom to which the Bidder was granted access (an index of the contents of the electronic dataroom which was provided by Target to Bidder before the date of this deed), or in all other written correspondence between the Target and the Bidder, or in any announcement on the ASX made by Target prior to the date of this deed.
- (2) The Bidder Warranties are given subject to and are qualified by, and the Target is not entitled to claim that any fact, matter or circumstance causes any of the Bidder Warranties to be breached if and to the extent, but only to the extent, that the fact, matter or circumstance is Fully and Fairly Disclosed in writing by Bidder to Target prior to execution of this deed.

### 12.2 Target Warranties

- (1) Target represents and warrants to Bidder that each of the Target Warranties is true and correct as at the date of this deed and at all times on each subsequent day of the Exclusivity Period (including the last day of that period).
- (2) Target represents and warrants that:
  - (a) it is a corporation validly existing under the laws of its place of incorporation and each member of the Target Group that is a corporation is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the corporate power to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
  - (d) this deed is valid and binding upon it and the execution and performance of this deed will not result in a breach or default under Target's constitution (or the constitution of any of its Related Bodies Corporate) or any deed or deed or any writ, order or injunction, rule or regulation to which Target or any of its Related Bodies Corporate is a party or to which any of them are bound;
  - (e) each member of the Target Group is solvent and no resolution has been passed nor has any other step been taken or legal proceedings commenced or threatened against any of them for their winding up or



dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of their assets;

- (f) Target is in material compliance with its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules, and, following the release of the Agreed Public Announcement, is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure;
- (g) as at the date of this deed, it has 32,090,136 fully-paid ordinary shares on issue and has no other issued securities;
- (h) as at the date of this deed, Target is not aware of any act, omission, event or fact that would result in any of the Conditions being breached or not being satisfied; and
- (i) to the best of the Target's knowledge, there is no litigation, mediation or arbitration current or pending which may materially affect the value of Target or the assets of the Target Group.

### 12.3 Bidder Warranties

- (1) Bidder represents and warrants to Target that each of the Bidder Warranties is true and correct as at the date of this deed and on each day from the date of this deed until the end of the Offer Period.
- (2) Bidder represents and warrants that:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the corporate power to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
  - (d) this deed is valid and binding upon it and the execution and performance of this deed will not result in a breach or default under Bidder's constitution or any deed or deed or any writ, order or injunction, rule or regulation to which Bidder is a party or to which any of them are bound;
  - (e) Bidder is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets; and
  - (f) no regulatory action of any nature has been taken as at the date of this deed which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed.

### 12.4 Reliance on Warranties

- (1) 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 and inducements expressly set out in this deed.

- (2) 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.

#### **12.5 Survival**

Each Target Warranty and each Bidder Warranty:

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

### **13 Confidential Information obligations**

#### **13.1 Confidentiality Deed terminated**

The parties agree that the Confidentiality Deed is terminated upon execution of this deed.

#### **13.2 Disclosure of Bidder Confidential Information**

No Bidder Confidential Information may be disclosed by Target to any person except:

- (1) Representatives of Target or its Related Bodies Corporate requiring the information for the purposes of this deed or the Bid;
- (2) with the written consent of Bidder;
- (3) if Target is required to do so by law or by a stock exchange; or
- (4) if Target is required to do so in connection with legal proceedings relating to this deed.

#### **13.3 Use of Bidder Confidential Information**

Target must use the Bidder Confidential Information exclusively for the purpose of preparing the Target's Statement or matters in relation to the Bid and for no other purpose (and must not make any use of any Bidder's Confidential Information to the competitive disadvantage of Bidder or any of its Related Bodies Corporate).

#### **13.4 Disclosure of Target Confidential Information**

No Target Confidential Information may be disclosed by Bidder to any person except:

- (1) Representatives of Bidder or its Related Bodies Corporate requiring the information for the purposes of this deed or the Bid;
- (2) with the written consent of Target;
- (3) if the information is required by law to be contained in the Bidder's Statement;
- (4) if Bidder is required to do so by law or by a stock exchange; or
- (5) if Bidder is required to do so in connection with legal proceedings relating to this deed.

### 13.5 Use of Target Confidential Information

Bidder must use the Target Confidential Information exclusively for the purpose of preparing the Bidder's Statement or matters in relation to the Bid and for no other purpose (and must not make any use of any Target Confidential Information to the competitive disadvantage of Target or any of its Related Bodies Corporate).

### 13.6 Disclosure by recipient of Confidential Information

Any party disclosing information under clauses 13.2(1) or 13.2(2) or 13.4(1) or 13.4(2) must use all reasonable commercial endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 13.2 or 13.4.

### 13.7 Excluded Information

Clauses 13.2 to 13.6 (inclusive) do not apply to the Excluded Information.

### 13.8 Return of Confidential Information

A party who has received Confidential Information from another under this deed must, on the request of the other party, immediately deliver to that party or destroy all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clauses 13.2(1) or 13.2(2) or 13.4(1) or 13.4(2). This clause 13.8 does not apply to any Confidential Information to the extent that such Confidential Information forms part of the minutes of the board of directors, a committee of the board of directors or an investment committee of the recipient party or a Related Body Corporate of that party containing a level of detail consistent with the normal practices of that party or that Related Body Corporate.

### 13.9 Termination

This clause 13 will survive termination (for whatever reason) of this deed.

## 14 Goods and services tax

### 14.1 Definitions and interpretation

In this clause 14:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and

- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

**14.2 GST not included**

- (1) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Deed for any supply made under or in connection with this Deed does not include GST.
- (2) To the extent that any supply made under or in connection with this Deed is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- (3) A party's right to payment under clause 14.2(2) is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.
- (4) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

**15 Notices**

- (1) A notice, consent, request or any other communication under this deed must be in writing and must be left at the address of the addressee or sent by email to the address specified below or any other address or email address the addressee requests.

**Target**

Attention: Joycelyn Morton  
C/- Ann Phillips  
Address: 10 Garling Road  
Kings Park  
NSW 2148  
Email: joycelyn.morton@bigpond.com

**Bidder:**

Attention: Richard Facioni  
Address: C/- Alceon Group Pty Ltd  
Level 16  
20 Hunter Street  
Sydney  
NSW 2000  
Email: richard.facioni@alceon.com.au

- (2) A notice, consent, request or any other communication is taken to be received:
- (a) if by delivery, when it is delivered unless it is delivered on a day other than a Business Day in which case it is taken to be received at 9.00 am on the next Business Day in the place where it is delivered;

- (b) if sent by email:
  - (i) when the Sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the Sender sent the email), provided that the Sender does not receive an automated message that the email has not been delivered,

whichever happens first.

## **16 General**

### **16.1 Cumulative rights**

The rights, powers and remedies of a party under this deed are cumulative with the rights, powers or remedies provided by law independently of this deed.

### **16.2 Waiver and variation**

A provision or a right under this deed may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

### **16.3 Approvals and consents**

A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this deed states otherwise. Any approval or consent or deed required pursuant to this deed must be in writing.

### **16.4 Specific performance**

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this deed and that specific performance of that obligation is an appropriate remedy.

### **16.5 Effect of deed**

This deed constitutes the entire agreement between the parties in relation to the subject matter and supersedes any previous understandings or agreements between the parties concerning the subject matter of this deed.

### **16.6 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

### **16.7 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this deed and other related documentation except for stamp duty.

**16.8 Stamp duty**

Bidder agrees to pay all stamp duty (including fines and penalties) payable and assessed on this deed or in respect of a transaction evidenced by this deed.

**16.9 Mutual further assurances**

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this deed.

**16.10 Counterparts**

This deed may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.

**16.11 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdictions of the courts of New South Wales and the Commonwealth of Australia.

**16.12 Assignment**

The rights and obligations of each party under this deed are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other party.

## Schedule 1 – Agreed Bid Terms

### 1 Bid Consideration

The consideration offered under the Bid will be \$0.51 per Target Share, subject to any amendment permitted by the Corporations Act.

### 2 Offer Period

The Offers will remain open for a minimum of one month from the date of the Offers, subject to Bidder's right to extend the period under the Corporations Act.

### 3 Conditions

Each Offer, and any contract resulting from its acceptance, is subject to the conditions set out below.

#### (1) Minimum acceptance condition

At the end of the Offer Period, Bidder and its Associates have a Relevant Interest in more than 90% (by number) of all of the Target Shares both on an undiluted and on a fully-diluted basis.

#### (2) No Target Prescribed Occurrences

No Target Prescribed Occurrence happens in the period between the date of this deed and the End Date (both inclusive).

#### (3) No Other Regulatory Approval

No Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the consummation of the Transaction or has refused to do anything necessary to permit the Transaction and no such order, decree, ruling, other action or refusal is in effect.

#### (4) No Material Adverse Change

No Material Adverse Change occurs between the date of this deed and the end of the Offer Period.

#### (5) No distributions

Target does not declare, determine as payable or pay a distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) between the date of this document and the end of the Offer Period.

#### (6) No issue of equity

Target does not issue shares or rights convertible into shares under any employee incentive plan between the date of this deed and the end of the Offer Period.

#### (7) No related party agreements

Target does not enter into any agreements with a related party without the consent of the Bidder between the date of this deed and the end of the Offer Period.



The above conditions are conditions subsequent and do not prevent a contract resulting from acceptance of an Offer from coming into effect but any breach or non-fulfilment of them entitles Bidder to rescind any contract resulting from acceptance of the Offer. Upon acceptance of an Offer, the Bidder will acquire all rights accrued on or attaching to the Target Shares to which that acceptance relates.



**Schedule 2 – Timetable**

This deed signed	3 September 2014 (before open of trade)
Agreed Public Announcement made	3 September 2014 (before open of trade)
Finalise Bidder's Statement and Target's Statement (Word version)	19 September 2014
Finalise Bidder's Statement and Target's Statement (typeset)	23 September 2014
Bidder's Statement lodged with ASIC, ASX and Target	23 September 2014
Target's Statement sent to the ASIC, ASX and Bidder	23 September 2014
Despatch of Bidder's Statement to Target Shareholders	27 September 2014
Despatch of Target's Statement to shareholders of Bidder	Contemporaneously with the Bidder's Statement, and in accordance with the Corporations Act.
Offer period under the Bidder's Statement	1 month after the first Offer is made. However, Bidder reserves the right to extend that period in accordance with the Bidder's Statement and Corporations Act.

**Schedule 3 – Agreed Public Announcement**

ASX/media release

3 September 2014

## NONI B RECOMMENDS TAKEOVER OFFER BY ALCEON GROUP

Noni B Limited ("**Noni B**" or the "**Company**") is pleased to announce that it has entered into an agreement with Alceon Group Pty Ltd ("**Alceon**"), under which Alceon has agreed that it or its nominee will make offers to acquire 100% of the fully paid ordinary shares in Noni B by way of an off-market takeover (the "**Offer**").

On 28 May 2014, the Board of Noni B announced that it was considering strategic alternatives with respect to the Company's capital structure and a sub-committee of Noni B's independent Directors was formed. Since that time, the sub-committee has extensively reviewed the Company's strategic alternatives with the objective of maximising shareholder value. As a result of the strategic review, the Board has unanimously concluded that the takeover proposal from Alceon is in the best interests of the Company.

### The Offer

The Offer price is **\$0.51** cash per Noni B share ("**Offer Price**").

The Offer Price values Noni B at approximately **A\$16.4 million** and represents:

- a premium of **32%** to Noni B's closing share price of \$0.385 on the day prior to the announcement on 28 May 2014 that the Company was conducting a strategic review; and
- a premium of **13%** over the closing price of Noni B's shares on the trading day prior to the request for a trading halt lodged by the Company with ASX on 1 September 2014 of \$0.45.

The Offer is governed by a Takeover Bid Implementation Deed entered into by Noni B and Alceon on 2 September 2014 ("**Implementation Deed**") and will be conditional upon the satisfaction of certain customary conditions, including that Alceon acquires a relevant interest in at least 90% of Noni B's ordinary shares on issue during, or at the end of, the Offer period.

The Offer is also subject to a condition that Noni B's merchandise sales exceed certain benchmarks set out in the Implementation Deed, for the trading period from September through November 2014.

The Implementation Deed also includes a break fee of \$200,000 (excluding GST) payable to Alceon in certain circumstances, as well as customary exclusivity provisions. A copy of the Implementation Deed is attached to this announcement as Appendix A.

## **Recommendation**

The Directors of Noni B, with the assistance of the Company's advisors, have carefully considered the Offer and **unanimously recommend that Shareholders accept the Offer in the absence of a superior proposal.**

**In addition, each of the Directors who owns or controls shares in Noni B has confirmed that they intend to accept the Offer in respect of any shares in Noni B that they own or control in the absence of a superior proposal.** The Directors collectively have a relevant interest in approximately 42% of Noni B's ordinary shares.

## **Other matters**

Members of the Kindl family have each agreed to grant an option to Alceon over, in aggregate, 19.9% of the ordinary shares in the Company, which comprises part (but not all) of the issued share capital of Noni B held by members of the Kindl family. The remainder of the shares in Noni B which are held by members of the Kindl family are not the subject of the options.

In addition, provided the Offer does not lapse, the Joint Managing Directors of Noni B, Messrs David and James Kindl, have agreed to reduce certain entitlements under their existing employment contracts and amend all notice periods to three months.

## **Comments**

Commenting on the Offer, the Chairman of Noni B, Joycelyn Morton said: "Since announcing the strategic review in May 2014, the Directors have given careful consideration to the way forward for Noni B and have concluded that the proposal from Alceon is in the best interests of the Company. The proposal maximises shareholder value and provides an opportunity for Noni B shareholders to realise a premium to the recent market price for their shares, notwithstanding the current market conditions and recent trading performance of the Company."

Mr Alan Kindl, the founder of Noni B, said: "I am pleased that the Offer will secure the future of Noni B and ensure that the Company remains at the forefront of women's fashion retailing in Australia. Furthermore, I strongly believe that under Alceon's ownership, Noni B will see increased focus on its brand, product and retail presence and that the Company will continue to serve its customers throughout Australia."

Alceon Executive Director, Mr Richard Facioni said: "Alceon believes that this transaction will provide Noni B with the resources and support to ensure a profitable and successful future. While facing recent difficulties, we are confident of the Company's long-term viability as a key player in women's fashion retailing."

## **Timetable**

Noni B understands that Alceon intends to lodge the Bidder's Statement with ASIC on or about 23 September 2014 and despatch it to Noni B shareholders together with the Target Statement shortly thereafter. The Bidder's Statement will outline the full details of the Offer as well as instructions on how to accept the Offer.

Noni B has engaged TC Corporate as financial adviser and Norton Rose Fulbright as legal adviser.

**For further information:**

**Noni B:**

**Joycelyn Morton**  
Chairman

Ph: 0418 404 626

**TC Corporate:**

**Robert Fraser**  
Managing Director

**Christopher Still**  
Executive Director

Ph: 02 9377 1555

**About Noni B**

Noni B Limited, founded in 1977, is one of Australia's leading fashion retailers, with stores nationally and online at [www.nonib.com.au](http://www.nonib.com.au). Noni B differentiates itself by focusing on superior service, style and fit. Our dedicated team is passionate about providing women with an instore experience where personalised advice is the basis of great customer service, and our styles are designed to make our customers look and feel good through day and evening, even when they travel. The exclusive Noni B and Liz Jordan designer collections offer classic and stylish contemporary fashion for today's woman.

**About Alceon**

Alceon is a specialist investment, advisory and capital solutions house and manages investment funds for individuals, family offices, trustees, trusts, superannuation funds and advisers. Alceon was established in 2010 and has a high calibre team, comprising 16 investment professionals across Sydney, Melbourne, Brisbane and Perth supported by 10 finance, administration and compliance professionals.

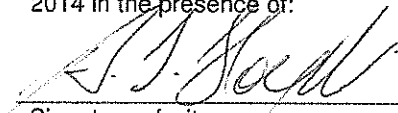
Alceon invests in private mid-market assets across property, asset-backed and alternative investments, including private equity.

**Attachments**

A. Takeover Bid Implementation Deed

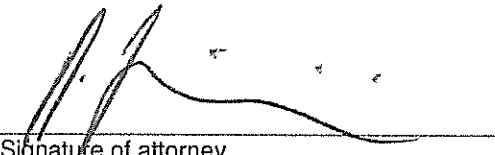
**Executed** as a deed and delivered on the date shown on the first page.

Signed for and on behalf of **Alceon Group Pty Ltd** ACN 122 365 986 by its attorney under power of attorney dated 2 September 2014 in the presence of:

  
\_\_\_\_\_  
Signature of witness

A. L. LLOYD  
\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

321 Kent St, Sydney  
\_\_\_\_\_  
Address of witness

  
\_\_\_\_\_  
Signature of attorney

RICHARD FACIONI  
\_\_\_\_\_  
Name of attorney (BLOCK LETTERS)

Executed by **Noni B Limited**  
ABN 96 003 321 579 in accordance with  
section 127 of the *Corporations Act 2001*:

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

\_\_\_\_\_  
Name of director (BLOCK LETTERS)

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

\_\_\_\_\_  
Name of director (BLOCK LETTERS)



Executed as a deed and delivered on the date shown on the first page.

Signed for and on behalf of Alceon Group  
Pty Ltd ACN 122 365 986 by its attorney  
under power of attorney dated 2 September  
2014 in the presence of:

\_\_\_\_\_  
Signature of witness

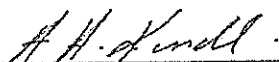
\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

\_\_\_\_\_  
Name of attorney (BLOCK LETTERS)

\_\_\_\_\_  
Address of witness

Executed by Noni B Limited  
ABN 96 003 321 579 in accordance with  
section 127 of the *Corporations Act 2001*:

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

ALAN ALEC KINDL  
Name of director (BLOCK LETTERS)

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

JOYCELYN CHERYL MORTON  
Name of director (BLOCK LETTERS)