

Scheme Implementation Agreement

Dated 9 March 2017

King & Wood Mallesons
QV1 Building
250 St Georges Terrace
Perth WA 6000
Australia
T +61 8 9269 7000
F +61 8 9269 7999
DX 210 Perth
www.kwm.com

Scheme Implementation Agreement

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Scheme Implementation Agreement Details

Parties	Bidder and Cradle	
Bidder	Name	Tremont Investments Limited
	Incorporated in	Mauritius
	Address	C2-202, Level 2, Office Block C, La Croisette, Grand Baie, 30517, Mauritius
	Email	brendon.jones@tremontservices.com
	Attention	Brendon Jones
Cradle	Name	Cradle Resources Limited
	ACN	149 637 016
	Incorporated in	Australia
	Address	Level 7, 1008 Hay Street, Perth WA 6000
	Email	ssmart@equatorialresources.com.au
	Attention	Company Secretary
Recitals	A	Bidder proposes to acquire Cradle Shares pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	B	At the request of Bidder, Cradle intends to propose the Scheme and issue the Scheme Booklet.
	C	Cradle and Bidder have agreed to implement the Transaction on the terms and conditions of this agreement.
Governing law	Western Australia	
Date of agreement	See Signing page	

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears.

Announcement Date means the date on which the public announcement is made in accordance with clause 15.1.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited or Australian Securities Exchange, as appropriate.

Authorised Officer means:

- (a) in respect of Bidder, each of its directors or any other person nominated by Bidder to act as an Authorised Officer under this agreement and notified to Cradle in writing; and
- (b) in respect of Cradle, each of its directors and its company secretary, or any other person nominated by Cradle to act as an Authorised Officer under this agreement and notified to Bidder in writing.

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

Bidder Indemnified Parties means Bidder, its Related Bodies Corporate and the officers, employees and advisers of each of Bidder and its Related Bodies Corporate.

Bidder Information means the information regarding Bidder as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or applicable ASIC Regulatory Guides. For the avoidance of doubt, Bidder Information does not include information about the Cradle Group (except to the extent it relates to any Bidder's statement of intention relating to the Cradle Group following the Effective Date).

Bidder Sole Funded refers to the sole funding to be provided by Bidder to PHT for the implementation by PHT of any matter referred to in clauses 7.3(a)(i) to 7.3(a)(iii) by Bidder providing a loan facility to PHT for the specific purpose of implementing the relevant matter. The terms of the loan facility will include:

- (a) no interest accruing on the outstanding amount under the facility;
- (b) the maturity date for the loan facility being the date that is 90 calendar days after the "Decision to Mine" is made or deemed to be made by PHT under clause 14 of the ISA; and
- (c) the outstanding amount under the facility will be repaid on the maturity date by:
 - (i) PHT making a cash call to PHT shareholders under the terms of the ISA not more than 14 days prior to the maturity date, with payment due on or before the maturity date;

- (ii) PHT using the proceeds from Cradle's proportional share of the cash call to repay the relevant portion of the outstanding amount under the facility;
 - (iii) Bidder will discharge its obligation to pay its proportional share of the cash call by setting it off against the balance of the outstanding amount under the facility (after accounting for Cradle's payment under paragraph (c)(ii) above; and
 - (iv) if Cradle fails to satisfy its proportional share of the cash call, then the outstanding amount under the facility will be converted into PHT shares at an issue price of US\$1.00 per share and upon the issue of shares in PHT, the loan facility to Bidder will be discharged and Bidder will have no further claim against Cradle or PHT in respect of that Bidder Sole Funded amount; and
- (d) the provision that the loan facility may be appropriately restructured or varied at the discretion of Bidder if the Scheme becomes Effective.

Bidder Request List means the due diligence request list provided by Bidder to Cradle on or around 17 November 2016 and the responses provided by Cradle.

Cash Budget means the Cradle Group (excluding PHT) cash budget provided by Cradle to Bidder on 7 March 2017 and initialled by the parties as at the date of this agreement.

Claim means any obligation, debt, cause of action, disability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Competing Transaction means any proposal, agreement, arrangement, reorganisation or transaction which, if completed, would mean a person (other than Bidder or its Related Bodies Corporate) would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in, or become the holder of:
 - (i) 20% or more of the Cradle Shares; or
 - (ii) all or a substantial part or a material part of the business conducted by the Cradle Group,
 including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;
- (b) acquire control of Cradle or any of its material Subsidiaries, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Cradle.

Conditions Precedent means the conditions precedent set out in Schedule 2.

Confidentiality Agreement means the agreement of that name between Cradle and Bidder dated on or about 3 November 2016 and as subsequently amended on or about 3 January 2017 and on 21 February 2017.

Controller has the meaning it has in the Corporations Act.

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

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

Court means the Federal Court of Australia or the Supreme Court of Western Australia, to be agreed by Bidder and Cradle.

Cradle Board means the board of directors of Cradle.

Cradle Clause means any of the following clauses of this agreement:

- (a) clause 14.1(a);
- (b) clause 14.1(b)(i);
- (c) clause 14.1(b)(ii) - provided the material breach relates to the Cradle Group (excluding PHT) and does not relate to any matter relating to PHT (but including breaches of clause 7.3(a) and Cradle's warranties in relation to PHT provided as at the date of this agreement);
- (d) clause 14.1(c);
- (e) clause 14.1(d);
- (f) clause 14.1(e);
- (g) clause 14.1(f) - where, if applicable, the relevant Condition Precedent is item 7 or item 15 of Schedule 2 or items 2, 3, 4, 5, 6, 8, 9 or 10 of Schedule 2 provided in respect to each of items 2, 3, 4, 5, 6, 8, 9 or 10 of Schedule 2 only the event relates to the Cradle Group (excluding PHT) and does not relate to any matter relating to PHT only;
- (h) clause 14.1(g) - provided the event relates to the Cradle Group (excluding PHT) and does not relate to any matter relating to PHT (but including breaches of clause 7.3(a));
- (i) clause 14.1(h); or
- (j) clause 14.1(i).

Cradle Group means Cradle and its Subsidiaries. For the avoidance of doubt, Cradle Group includes PHT.

Cradle Indemnified Parties means Cradle, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Cradle Information means all information contained in the Scheme Booklet other than the Bidder Information and the Independent Expert's report.

Cradle Share means a fully paid ordinary share in the capital of Cradle.

Cradle Shareholder means each person registered in the Register as a holder of Cradle Shares.

Data Room means the documents contained in the virtual data room established by Cradle containing information relating to the Cradle Group and to which Bidder had access to in the period from 29 November 2016 to the date of this agreement, an index of which is in the agreed form.

Deed Poll means a deed poll substantially in the form of Annexure B to this agreement.

Details means the section of this agreement headed “Details”.

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit à prendre, easement or any other security arrangement or any other arrangement having the same effect.

End Date means the date that is 6 months from the date of this agreement or such other date as determined in accordance with clause 3.12 or as agreed in writing by Bidder and Cradle.

EPCM means engineering, procurement, construction and management.

Excluded Share means a Cradle Share held by an Excluded Shareholder as at the Record Date.

Excluded Shareholder means Bidder and its Associates.

Exclusivity Period means the period from and including the date of this agreement to the earliest of:

- (a) the termination of this agreement in accordance with its terms;
- (b) the Effective Date; and
- (c) the End Date.

Fairly Disclosed means disclosed to Bidder in writing prior to the date of this agreement, to the extent that, and in sufficient detail so as to enable, a reasonable and sophisticated buyer such as Bidder to identify the nature and scope of the relevant matter, event or circumstance (including, in each case, that the possible financial effect (if any) of the relevant matter, event or circumstance was reasonably ascertainable from the information disclosed).

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

First Court Date means the first day on which an application made to the Court, in accordance with item 10 of Schedule 4, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Cradle Shareholders eligible to vote at the Scheme Meeting and who are present and voting, either in person or by proxy.

Implementation Date means the fifth Business Day following the Record Date or such other date agreed in writing by Cradle and Bidder.

Independent Expert means the independent expert appointed by Cradle under item 3 of Schedule 4.

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

ISA means the Investment and Shareholders Agreement between Bidder, Cradle and others dated 6 June 2014.

Listing Rules means the listing rules of ASX.

Losses means all Claims, demands, damages, losses, costs, expenses and liabilities.

Material Adverse Change means Specified Events which, individually or when aggregated with all Specified Events, would be reasonably expected:

- (a) to result in the value of consolidated net assets of the Cradle Group being reduced by at least A\$2,000,000; or
- (b) to result in cash and cash equivalents of the Cradle Group (excluding PHT) being less than the amount of cash or cash equivalents provided for in the Cash Budget for any one or more periods in the Cash Budget by A\$100,000 or more (except as a result of any emergency expenditure the amount of which is not reasonably ascertainable prior to the date of this agreement and that is approved in writing by Bidder); or
- (c) to have a materially adverse effect on the status or terms of (or rights attaching to) the Mineral Rights or the ability of the owner of those rights to exploit them,

but does not include:

- (d) any matter, event or circumstance Fairly Disclosed including in the Data Room, responses to the Bidder Request List, a document lodged with ASIC or ASX lodged by Cradle in the 12 months prior to the date of this agreement, or actually known by Bidder (other than matters, events or circumstances known by representatives of professional advisers to the extent those representatives are not involved with the Transaction) on or before the date of this agreement (including as a result of disclosures made to ASX);
- (e) any change in accounting policy required by law;
- (f) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them;
- (g) a change resulting directly from a general deterioration in world Niobium prices, equity markets, interest rates, exchange rates or credit spreads, that impacts the Cradle Group and its competitors in a similar manner; or
- (h) any costs incurred directly in relation to the Transaction which exceed the amounts provided for in the Cash Budget.

Without limiting the generality of paragraphs (a), (b) and (c) above, Material Adverse Change includes, at any time before 5.00pm on the day immediately before the Second Court Date, a change or proposed change of laws (including mining, taxation, customs, export, health and safety, environmental or any other law) of Tanzania adversely affecting the development, operation, exploitation or economic benefits to PHT, Bidder or Cradle of the Project and the Mineral Rights being announced or made (whether through amendment of existing laws or enactment of new laws, or a change having the force of law in the interpretation or application thereof by any judicial, arbitral or administrative body).

Material Contract means a contract listed in Schedule 8.

Mineral Rights means:

- (a) the following mineral rights located in Panda Hill, Mbeya District, Tanzania:
 - (i) Mining Licence 237/2006;
 - (ii) Mining Licence 238/2006; and
 - (iii) Mining Licence 239/2006;
- (b) any other mineral right or mineral rights which may be granted in lieu of or relate to the same ground as the mineral rights referred to in paragraph (a); and
- (c) includes all rights to mine and other privileges appurtenant to the mineral rights referred to in paragraph (a) and (b) as conferred by law.

Mining Act means the mining acts under which the Mineral Rights are granted and administered in Tanzania and includes the regulations to those acts, including the Mining Act 2010 (Act No 14 of 2010) (and any associated or related acts post or prior in time).

Option means any option issued by Cradle in respect of Cradle Shares, whether vested or unvested.

Option Cancellation Offer means the offer to Optionholders in accordance with clause 5.1.

Optionholder means each person who is a holder of an Option.

Optionholder Deed means the deed (in the form acceptable to Bidder) between each Optionholder that accepts the Option Cancellation Offer and Cradle pursuant to which the Optionholder agrees, subject to the Scheme becoming Effective and any necessary ASX waivers being obtained, to the cancellation of each Option held in return for the Option Consideration.

Option Consideration means, in respect of the Options, the consideration payable for the cancellation of the Options, being the amount equal to the Scheme Consideration less the exercise price of the Option being cancelled.

Performance Rights means any performance right issued by Cradle in respect of Cradle Shares, whether vested or unvested.

PHT means Panda Hill Tanzania Limited.

PPSR means the register maintained for the purposes of the Personal Property Securities Act 2009 (Cth).

Prescribed Event means, except to the extent publicly disclosed prior to the date of this agreement or contemplated by this agreement or the Scheme, any of the events listed in Schedule 1 provided that a Prescribed Event listed in items 1 to 14 of Schedule 1 will not occur where Cradle has first consulted with Bidder in relation to the event and Bidder has approved the proposed event or has not objected to the proposed event within 5 Business Days of having being so consulted.

Project means the Panda Hill niobium project in Tanzania owned by PHT.

Record Date means 5.00pm on the fifth Business Day following the Effective Date or such other date as Cradle and Bidder agree in writing.

Register means the share register of Cradle and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval of a Regulatory Authority to the Transaction or any aspect of it which is necessary or desirable for the implementation of the Transaction.

Regulatory Authority means:

- (a) ASX and ASIC;
- (b) the Takeovers Panel;
- (c) the Tanzanian Fair Competition Commission;
- (d) a government or governmental, semi-governmental or judicial entity or authority;
- (e) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(f) any regulatory organisation established under statute,
including, in Australia, Mauritius or Tanzania.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representative means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional advisor of a party or its Related Body Corporate.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act under which all of the Scheme Shares will be transferred to Bidder substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Cradle Shareholders which must:

- (a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, notices of meeting and proxy forms; and
- (b) comply with the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides and the Listing Rules.

Scheme Consideration means \$0.33 per Scheme Share.

Scheme Meeting means the meeting to be convened by the Court at which Cradle Shareholders will vote on the Scheme.

Scheme Participant means a person registered as a Cradle Shareholder at the Record Date, other than an Excluded Shareholder.

Scheme Shares means all Cradle Shares on issue as at the Record Date other than Excluded Shares.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Specified Event means an event, occurrence or matter that:

- (a) occurs after the date of this agreement;
- (b) occurs before the date of this agreement but is only announced or publicly disclosed after the date of this agreement; or
- (c) will or is likely to occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement,

including, to avoid doubt:

- (d) termination of a Material Contract; and

- (e) commencement of hostilities not presently existing (whether war has been declared or not) or a major escalation in existing hostilities occurring (whether war has been declared or not) involving Tanzania, or a terrorist act being perpetrated in Tanzania.

Subsidiaries has the meaning it has in the Corporations Act.

Superior Proposal means a publicly announced Competing Transaction which the Cradle Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) more favourable to Cradle Shareholders than the Scheme, taking into account all terms and conditions of the Competing Transaction.

Superior Proposal Period means the period commencing on the date a Superior Proposal comes into existence and ending on the date that the Superior Proposal is withdrawn, terminated, rejected, expires or is otherwise concluded.

Takeovers Panel means the review body continuing in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) and given powers under Part 6.10 of the Corporations Act.

Tax Invoice has the meaning it has in the GST Act.

Timetable means the indicative timetable set out in Schedule 3.

Transaction means the acquisition by Bidder of all Cradle Shares other than the Excluded Shares through the implementation of the Scheme and other transactions contemplated by this agreement.

Treasurer means the Treasurer of Australia.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;

- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to time in Perth, Western Australia.

1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 10.00pm on that day, it is taken to be done on the next day.

1.4 Next Business Day

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

2 Agreement to propose and implement Scheme

2.1 Cradle to propose Scheme

Cradle agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

2.2 Agreement to implement Transaction

The parties agree to implement the Transaction on the terms and conditions of this agreement.

3 Conditions precedent

3.1 Conditions precedent

Subject to this clause 3, the obligations of Bidder under clause 4.2 are conditional on the satisfaction (or waiver, if applicable) of each of the Conditions Precedent contained in Schedule 2 to the extent and in the manner set out in clauses 3.2 and 3.4 and the Scheme will not become Effective unless and until all such Conditions Precedent are satisfied or waived.

3.2 Benefit of certain Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 2 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

3.3 Waiver of Conditions Precedent

If either Cradle or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to subclause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.3(a); or
 - (ii) does not accept the condition, the Condition Precedent has not been waived.

3.4 Reasonable endeavours

Each of Cradle and Bidder agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent:
 - (i) is satisfied as soon as is reasonably practicable after the date of this agreement; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Conditions Precedent being satisfied.

3.5 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information from the relevant Regulatory Authority at the earliest practicable time;
- (b) **(representation)** subject to the requirements of the relevant Regulatory Authority, has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) and, without limitation:
 - (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
 - (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied;
- (c) **(notice of waiver)** upon receipt of a notice given under paragraph (b), give written notice to the other party as soon as reasonably possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(certificates)** give to:
 - (i) the other (in draft) by 5.00pm on the day immediately prior to the Second Court Date; and
 - (ii) the other (in final form) by 8:00am on the Second Court Date,

a certificate signed by an Authorised Officer (in respect of the Conditions Precedent relating to it, other than the Conditions Precedent in item 6 of Schedule 2 whether or not those Conditions Precedent have been satisfied or waived.

3.7 Effect of waiver or non-fulfilment

A waiver of breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.8 Consultation on failure of Conditions Precedent

Subject to clause 3.11, if:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this agreement for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) if the Scheme has not become Effective by the End Date,

then the parties must consult in good faith with a view to determining whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 10.00pm on the day before the Second Court Date):

- (a) subject to subclause 3.9(b), either party may terminate this agreement (and such termination will be in accordance with clause 14.1(f)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination will be in accordance with clause 14.1(f)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this agreement pursuant to this clause 3.9 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:

- (c) a breach of this agreement by that party; or
- (d) a deliberate act or omission of that party.

3.10 Regulatory Approval

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition or those conditions (as the case may be) are reasonably satisfactory to Cradle and Bidder.

3.11 Scheme voted down

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

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as Counsel engaged by Cradle to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

3.12 Option to extend End Date

If a party is not in breach of this agreement, that party has the option to issue a written notice to the other party in the one month period prior to the date which is 6 months from the date of this agreement to extend the End Date under this agreement to the date which is 7 months from the date of this agreement.

4 Outline of Scheme

4.1 Scheme

Subject to clause 3.1, on the Implementation Date:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration in accordance with the terms of the Scheme.

4.2 Scheme Consideration

Bidder covenants in favour of Cradle (in its own right and on behalf of each Scheme Participant) that in consideration of the transfer to Bidder of each Scheme Share, on the Implementation Date, Bidder will pay to Cradle (as agent for each Scheme Participant) the Scheme Consideration for each Scheme Share in accordance with the terms of the Scheme.

4.3 Undertakings held as agent

Cradle acknowledges that the undertakings by Bidder in clause 4.2 are given to Cradle in its capacity as agent for each Scheme Participant.

4.4 Payment to Scheme Participants

Cradle must:

- (a) receive in a trust account in accordance with the Scheme and this agreement and as agent for each Scheme Participant, the Scheme Consideration;
- (b) pay to each Scheme Participant such moneys as each Scheme Participant is entitled to receive in accordance with the Scheme; and
- (c) otherwise comply with its obligations under the Scheme.

5 Treatment of Options and Performance Rights

5.1 Options

Cradle must make an offer to each Optionholder to enter into, and ensure that such Optionholders enter into an Optionholder Deed prior to the Second Court Date.

5.2 Option Consideration

Bidder covenants in favour of Cradle (in its own right and as trustee for each Optionholder) that in consideration of the cancellation of each Option held by an Optionholder, Bidder will, on the Implementation Date, provide Cradle with sufficient funds to pay, or at the direction of Cradle pay, to each Optionholder the Option Consideration payable under the terms of each Optionholder Deed.

5.3 Treatment of Performance Rights

The Cradle Board must take all steps in accordance with the plan rules governing the Performance Rights to give notice to the holders of the Performance Rights before the Second Court Date that their Performance Rights have become vested (on such terms and conditions as the Cradle Board may determine, after obtaining Bidder's consent, such consent not to be unreasonably withheld), and issue Cradle Shares to those holders by no later than the Record Date.

5.4 Treatment of Thurwan Limited Options

Cradle must use its best endeavours to ensure that prior to the Second Court Date Thurwan Limited gives notice under the Consulting Agreement between Thurwan Limited and Cradle dated on or about 10 August 2016 to elect that Cradle pay Thurwan Limited the net cash value of 1,000,000 unissued Options (exercise price A\$0.25 and expiring on 31 October 2018) pursuant to and in accordance with that Consulting Agreement, such net cash value being equal to the Scheme Consideration less A\$0.25 per Option.

5.5 ASX waiver

Cradle will apply for, and use its best endeavours to procure, any ASX waiver necessary to give effect to the treatment of the Options and the Performance Rights contemplated in this clause 5.

5.6 Escrowed Cradle Shares

As soon as practicable after the date of this agreement, Cradle must use its best endeavours to ensure that it agrees with RECB Limited and PHT, and takes necessary steps, to release the 3,100,000 Cradle Shares held by RECB Limited from escrow with effect prior to the Second Court Date.

6 Co-operation and timing

6.1 General obligations

The parties must each:

- (a) use all reasonable endeavours and commit all reasonably necessary resources (including reasonably necessary management and corporate relations resources and the resources of external advisers); and

- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending such meetings and by providing such information as in each case may reasonably be required),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

6.2 Access to people and information

Between the date of this agreement and the earlier of 5.00pm on the Business Day immediately before the Second Court Date and the date this agreement is terminated, Cradle must:

- (a) as soon as reasonably practicable provide Bidder and its Representatives with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Bidder and its Representatives with reasonable access to Cradle's officers, advisers and properties which Bidder reasonably requires for the purposes of:
 - (i) understanding Cradle's financial position (including its cashflow and working capital position), trading performance and management control systems;
 - (ii) applying for all relevant Regulatory Approvals;
 - (iii) implementing the Scheme;
 - (iv) preparing for carrying on the business of Cradle following implementation of the Scheme; and
 - (v) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and does not place an unreasonable burden on the ability of Cradle to run its business.

6.3 Right to separate representation

Bidder is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this agreement is to be taken to give Cradle any right or power to make or give undertakings to the Court for or on behalf of Bidder.

7 Implementation obligations of the parties

7.1 Cradle's obligations

Cradle must comply with the obligations of Cradle set out in Schedule 4 and take all reasonable steps to implement the Scheme as soon as is reasonably practicable having regard to the Timetable and in any event prior to the End Date.

7.2 Bidder's obligations

Bidder must comply with the obligations of Bidder set out in Schedule 5 and take all reasonable steps to assist Cradle to implement the Scheme as soon as reasonably practicable having regard to the Timetable and in any event prior to the End Date.

7.3 ISA

- (a) From the date of this agreement until the earlier of the Implementation Date and the date on which this agreement is terminated, if recommended by the PHT directors nominated by Bidder, Cradle agrees to promptly instruct its nominee PHT directors to act and vote on any resolution proposed at meetings of the board of PHT under the ISA to approve the matters referred to in this clause 7.3(a) in accordance with the recommendations of the PHT directors nominated by Bidder:
- (i) the approval, appointment and selection of a preferred EPCM contractor (which, for the avoidance of doubt, does not include execution of any binding EPCM contract with the preferred EPCM contractor) provided the appointment of the EPCM contractor can be terminated (without penalty) upon reasonable notice and all costs incurred by PHT pursuant to the appointment (but not the performance of the EPCM contract) are Bidder Sole Funded;
 - (ii) undertaking preliminary works for the Project, provided all costs incurred by PHT are Bidder Sole Funded; and
 - (iii) the purchase of long lead time items for the Project, provided all costs incurred by PHT are Bidder Sole Funded.
- (b) If this agreement is terminated pursuant to a Cradle Clause and the termination is not as a result of a breach or repudiation of this agreement by Bidder, then:
- (i) at Bidder's request, Cradle must promptly instruct its nominee PHT directors to act or vote on any PHT board resolution as recommended by the PHT directors nominated by Bidder to approve a termination or non-termination (as the case may be) of the agreements or arrangements referred to in clause 7.3(a)(i) to 7.3(a)(iii); and
 - (ii) Cradle (and the Cradle nominee directors of PHT) are deemed to agree that the definitive feasibility study produced by PHT and previously provided to the PHT Board on or about 25 June 2016 is a completed DFS within the meaning of clause 14.1 of the ISA and has been provided to the shareholders of PHT pursuant to clause 14.1(a) of the ISA effective from the date of termination of this agreement.
- (c) If this agreement is terminated for any other reason (other than termination due to the circumstances described in clause 7.3(b)), then at Cradle's request PHT must terminate some or all of the agreements or arrangements referred to in clause 7.3(a)(i) and Bidder will instruct its nominee PHT directors to act and vote on any resolution proposed at meetings of the board of PHT to give effect to the termination of these agreements or arrangements.
- (d) From the date of this agreement until the earlier of the Implementation Date and the date on which this agreement is terminated, Cradle and Bidder agree that:

- (i) no "Decision to Mine" will be made or proposed by PHT under clause 14 of the ISA; and
 - (ii) other than cash calls on Cradle up to US\$375,000 made in accordance with the PHT budget as of the date of this agreement, PHT will not make any cash calls on Cradle.
- (e) Nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.
- (f) Subject to clause 7.3(b)(ii), nothing in this agreement affects the rights, obligations or claims of the parties under or in connection with the ISA arising out of events or circumstances which occurred prior to the date of this agreement.

7.4 Appointment/retirement of Cradle directors

As soon as practicable after:

- (a) the Second Court Date, Cradle must use its reasonable endeavours to cause the appointment to the Cradle Board of a maximum of four persons as Bidder may nominate (if any), subject to those persons providing a consent to act as a director of Cradle; and
- (b) the Implementation Date, procure:
 - (i) the retirement of such Cradle Directors and directors and officers of any member of Cradle Group as Bidder may nominate (if any); and
 - (ii) the provision of written resignation notices by retiring directors and officers of Cradle Group members including to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against any member of the Cradle Group.

8 Scheme Booklet

8.1 Preparation

Without limiting clauses 7.1 or 7.2:

- (a) **(preparation)**: Cradle is generally responsible for the preparation of the Scheme Booklet (other than the Bidder Information and the Independent Expert's report) but will provide drafts to and consult with Bidder in accordance with clause 8.2; and
- (b) **(compliance)** Bidder and Cradle must take all necessary steps to endeavour to ensure that the Scheme Booklet:
 - (i) complies with the requirements of:
 - (A) the Corporations Act and the Corporations Regulations;
 - (B) applicable ASIC Regulatory Guides;
 - (C) the Listing Rules; and

- (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

8.2 Content of the Scheme Booklet

Cradle must:

- (a) **(consult Bidder):**
 - (i) provide to Bidder a draft of the Scheme Booklet for the purpose of enabling Bidder to review and comment on that draft document;
 - (ii) take the comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet; and
 - (iii) provide to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft at least 5 Business Days before its submission;
- (b) **(amend the Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to Bidder which are provided in accordance with clause 8.2(a) as reasonably requested by Bidder and prior to finalising the Regulator's Draft;
- (c) **(Regulatory Review Period)** during the Regulatory Review Period:
 - (i) promptly provide to Bidder, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides or the Listing Rules to be included in the Scheme Booklet; and
 - (ii) keep Bidder informed of any matters raised by ASIC in relation to the Scheme Booklet and provide Bidder with copies of material correspondence received from ASIC in respect of the Scheme as soon as practicable following receipt and use all reasonable endeavours, in co-operation with Bidder, to resolve any such matters;
- (d) **(Bidder Information)** obtain approval from Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet.

8.3 Bidder information

- (a) Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet in a form acceptable to Bidder acting reasonably.
- (b) Bidder acknowledges that:
 - (i) it is responsible for ensuring that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Cradle will not verify or edit that information in the Scheme Booklet; and
 - (ii) the Scheme Booklet will state that Bidder is responsible for the Bidder Information.

8.4 Disagreement on content

If Bidder and Cradle disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, Cradle will make such amendments as Bidder reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Cradle Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

8.5 Verification

- (a) Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.
- (b) Each party must make available to the other party on request their verification material in relation the parts of the Scheme Booklet the party is responsible for under this agreement.

9 Conduct of business

9.1 Overview

From the date of this agreement up to and including the Implementation Date, Cradle must conduct, and must procure that each member of the Cradle Group conducts, its business:

- (a) in the usual, ordinary and proper course and materially in accordance with applicable laws;
- (b) consistent with the most recent business plans and budgets made public or disclosed to Bidder prior to the date of this agreement; and
- (c) in substantially the same manner as previously conducted and must regularly consult with Bidder on the manner of conduct of the business,

except:

- (d) as required to give effect to this agreement;
- (e) as approved otherwise in advance by Bidder in writing; or
- (f) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property).

9.2 Specific obligations

Without limiting clause 9.1 and other than with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed) or as required by this agreement, Cradle must, during the period contemplated by clause 9.1, use all reasonable endeavours to:

- (a) **(business and assets)** maintain the condition of its business and assets materially in the manner maintained prior to the date of this agreement;

- (b) **(officers and employees)** keep available the services of its officers and employees;
- (c) **(relationships)** preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings, including using reasonable endeavours to obtain consents from third parties to the completion of the Scheme and any related transactions which Bidder reasonably requests;
- (d) **(property rights)** maintain all of its Mineral Rights, surface rights and other property rights in force;
- (e) **(standstill agreements)** enforce all standstill obligations under any agreements to which any member of the Cradle Group is a party (and not waive compliance with any of those standstill obligations);
- (f) **(change of control provisions):**
 - (i) ensure that any material contracts entered into by a member of the Cradle Group after the date of this agreement do not contain any change of control or similar provisions or, where they do contain such provisions, that consent to the change of control that will result from the Transaction is provided by the counterparty concurrently with the relevant contract being entered into;
 - (ii) identify any change of control or similar provisions in any Material Contracts entered into after the date of this agreement or any joint venture documentation; and
 - (iii) request the consents of relevant persons who have rights in respect of those material contracts as requested by Bidder to the transactions contemplated by the Transaction;
- (g) **(cash)** ensure there is no material decrease in the amount of cash in Cradle other than as used in the ordinary course of business and consistent with the Cash Budget;
- (h) **(proxies)** advise Bidder on at least a daily basis on each of the 10 Business Days preceding the Scheme Meeting as to the aggregate tally of the proxies received in respect of the approval of the Scheme;
- (i) **(consultation)** consult with Bidder with respect to any material decisions regarding its business and operations or concerning the Project, other than decisions in the normal course of business consistent with past practice, and no material decisions with respect to the development of the Project shall be made without first having obtained the prior written authorisation of Bidder; and
- (j) **(insurance)** maintain the insurance policies and indemnities provided to the directors and officers of the Cradle Group in accordance with clause 9.4.

9.3 Prohibited actions

Other than with the prior approval of Bidder or as required by this agreement Cradle must not, and must procure that each member of the Cradle Group does not, during the period referred to in clause 9.1:

- (a) **(no new Cradle Shareholders)** issue any new Cradle Shares other than on conversion of Options issued, or Performance Rights granted, prior to the date of this agreement in accordance with clause 5;
- (b) **(Material Contracts)** enter into or terminate a Material Contract;
- (c) **(employment agreements)** increase the remuneration of or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise vary the employment agreements with, any of its directors or employees;
- (d) **(accelerate rights)** other than in respect of Performance Rights on issue as at the date of this agreement for the purposes of clause 5.3, accelerate the rights of any of its directors or employees to benefits of any kind;
- (e) **(termination payments)** pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been provided to Bidder;
- (f) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (g) **(dividends)** announce, declare or pay any dividends or other distributions to its shareholders;
- (h) **(Prescribed Event)** take any action which is, or would be reasonably expected to give rise to, a Prescribed Event or a Material Adverse Change;
- (i) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems; or
- (j) **(agreement)** agree to do any of the matters set out above.

9.4 Deeds of access, indemnity and insurance

- (a) Subject to the Scheme becoming Effective, Bidder must:
 - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of each member of the Cradle Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than Bidder or its Related Bodies Corporate; and
 - (ii) procure that member of the Cradle Group complies with any deeds of indemnity, access and insurance as at the date of this agreement.
- (b) Bidder acknowledges that, notwithstanding any other provision of this agreement, Cradle may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any Cradle Group directors and officers for a 7 year period from their respective retirement dates and that any actions to facilitate that insurance or in connection therewith (including paying any amounts to ensure such maintenance upfront) will

not be a Prescribed Event or breach any provision of this agreement, provided that Cradle has not acted unreasonably and has consulted with Bidder in respect of the entry into any such policy.

- (c) Without limiting Bidder's rights under this agreement, Bidder acknowledges that as at the date of this agreement it is not aware of any information giving rise to, and, if the Scheme becomes effective, it has no intention of making, a Claim against any past or present director or employee of the Cradle Group in relation to any circumstances or events which occurred prior to the date of this agreement.
- (d) The undertakings contained in this clause 9.4 are subject to any restriction at law, under the Corporations Act or any other applicable legislation and will be read down accordingly. Cradle receives and holds the benefit of this clause 9.4, to the extent it relates to the directors and officers of Cradle and other members of the Cradle Group, as trustee for them.
- (e) The undertakings contained in this clause 9.4 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Cradle Group ceasing to be a Subsidiary of Bidder.

10 Exclusivity

10.1 No existing discussions

Cradle represents and warrants that, other than the discussions with Bidder in respect of the Scheme, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.

10.2 No-shop

During the Exclusivity Period, Cradle must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction or which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the completion of the Transaction.

Nothing in this clause 10.2 prevents Cradle from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally.

10.3 No-talk

Subject to clause 10.6, during the Exclusivity Period, Cradle must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Cradle or any of its Related Bodies Corporate or Representatives or the person has publicly announced the Competing Transaction or any offer, proposal or expression of interest from any person in relation which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the completion of the Transaction.

10.4 No due diligence

During the Exclusivity Period, Cradle must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) solicits, invites, initiates, encourages, or permits any other person other than Cradle and their Representatives to undertake due diligence investigations on Cradle or any of its Related Bodies Corporate; or
- (b) subject to clause 10.6, makes available to any other person, or permits any other person to receive, other than Cradle and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to Cradle or any of its Related Bodies Corporate or permit access to Cradle's employees or officers to any other person (or that person's Representatives) who might reasonably be expected to submit, a proposal for a transaction which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise the completion of the Transaction or which may result in a Competing Proposal.

10.5 Notice of unsolicited approach

During the Exclusivity Period, Cradle must promptly inform Bidder if it or any of its Related Bodies Corporate or Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to Bidder all material details of the Competing Transaction, including details of the proposed bidder or acquirer;
- (b) receives any request for information relating to Cradle or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Cradle or any of its Related Bodies Corporate, which Cradle has reasonable grounds to suspect may relate to a current or future Competing Transaction; and
- (c) provides any information relating to Cradle or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.

10.6 Exceptions to no-talk and no due diligence

Clauses 10.3 and 10.4(b) do not apply to the extent they restrict Cradle or the Cradle Board from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not solicited, invited, facilitated, encouraged or initiated by Cradle in contravention of clause 10.2) provided that the Cradle Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a bona fide Competing Transaction could reasonably be considered to become a Superior Proposal; and

- (b) after receiving written advice from Queen's Counsel or Senior Counsel, that failing to respond to such a bona fide Competing Transaction would constitute a breach of the Cradle Board's fiduciary or statutory obligations.

10.7 Matching right

- (a) During the Exclusivity Period, Cradle:
 - (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party or Cradle proposes to undertake or give effect to a Competing Transaction; and
 - (ii) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend a Competing Transaction,

unless
 - (iii) the Cradle Board acting in good faith determines that the Competing Transaction would or is likely to be a Superior Proposal;
 - (iv) Cradle has provided Bidder with the material terms and conditions of the Competing Transaction, including price and the identity of the party making the proposal; and
 - (v) Cradle has given Bidder 5 Business Days after the provision of the information referred to in clause 10.7(a)(iv) to provide a matching or superior proposal (**Matching Offer**) to the terms of the Competing Transaction. Bidder shall have the opportunity, but not the obligation, to provide a Matching Offer.
- (b) This clause 10.7 has repeating applications so that if any further proposal which constitutes a Competing Transaction is made after Bidder has made a Matching Offer, Cradle must comply with paragraph (a)(i) and (a)(ii) of this clause in respect of any new Competing Transaction, unless paragraphs (a)(iii) to (a)(v) (inclusive) apply.
- (c) The Cradle Board must consider the Matching Offer and if it determines, acting in good faith, that the Matching Offer would provide an outcome that is at least as favourable to Cradle Shareholders as the relevant Competing Transaction, Cradle and Bidder must use their best endeavours to agree any amendments to this agreement and the contents of the Scheme Booklet (if applicable), which are reasonably necessary to reflect the Matching Offer, and to enter into an appropriate amending agreement to give effect to those amendments and to implement the Matching Offer, in each case, as soon as reasonably practicable.
- (d) If any part of the consideration proposed under the Competing Transaction is non-cash, then that consideration proposed will be valued for the purposes of this clause 10.7 at 90% of its prevailing market value at the close of business on the date that such Competing Transaction is first notified to Bidder.

10.8 Legal advice

Cradle acknowledges that it has received legal advice on this agreement and the operation of this clause 10.

11 Reimbursement of costs

11.1 Background

This clause 11 has been agreed in circumstances where:

- (a) Bidder and Cradle believe that the Scheme will provide significant benefits to Bidder, Cradle and Cradle Shareholders, and Bidder and Cradle acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Bidder will incur significant costs;
- (b) the parties have agreed that provision be made for the payments outlined in clause 11.2, without which Bidder would not have entered into this agreement;
- (c) the parties believe that it is appropriate for both parties to agree to the payment referred to in this clause 11 to secure Bidder's participation in the Transaction; and
- (d) both parties have received legal advice on this agreement and the operation of this clause 11.

11.2 Payment by Cradle to Bidder

Cradle agrees to pay to Bidder US\$750,000 if the Scheme does not proceed and:

- (a) **(Competing Transaction)** on or before the End Date:
 - (i) Cradle enters into a legally binding agreement to undertake a Competing Transaction;
 - (ii) any member of the Cradle Board recommends a Competing Transaction;
 - (iii) the Cradle Board announces that a Competing Transaction is a Superior Proposal; or
 - (iv) a Competing Transaction is announced or is open for acceptance and is reasonably capable of being completed and is more favourable to Scheme Participants;
- (b) **(change of recommendation)** any member of the Cradle Board fails to recommend the Scheme or withdraws their recommendation except:
 - (i) if a member of the Cradle Board changes his or her recommendation following the receipt of the report of the Independent Expert (or any update of, or revision, amendment or addendum to, that report) where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of Cradle Shareholders. (This exception does not apply where a Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this agreement); or
 - (ii) where Cradle is entitled to terminate this agreement pursuant to clause 14.1(b)(ii) and has given the appropriate termination notice to Bidder;

- (c) **(material breach)** Bidder validly terminates this agreement in accordance with clause 14.1(b)(ii);
- (d) **(breach of exclusivity)** Cradle is in breach of clause 10 and does not cease the conduct which caused the breach within one Business Day following written notice from Bidder outlining the nature of the breach; or
- (e) **(Prescribed Event or Material Adverse Change)** all of the following are satisfied:
 - (i) a Prescribed Event or a Material Adverse Change occurs prior to 8.00am on the Second Court Date; and
 - (ii) this agreement is validly terminated in accordance with clause 14; and
 - (iii) all of the following apply in relation to the Prescribed Event or the Material Adverse Change:
 - (A) the prevention of the Prescribed Event or Material Adverse Change was within the control of Cradle; and
 - (B) had the Prescribed Event or Material Adverse Change occurred prior to the date of this agreement, the Prescribed Event or Material Adverse Change might reasonably be expected to have resulted in Bidder not entering into this agreement; and
 - (C) Cradle has failed to rectify the Prescribed Event or Material Adverse Change within 10 Business Days after receipt of notice from Bidder requiring Cradle to do so.

11.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event under clause 11.2 no amount is payable under clause 11.2 if the Scheme becomes Effective.

11.4 Timing of payment

Cradle must pay Bidder the amount referred to in clause 11.2 within 10 Business Days of receipt by Cradle of a demand for payment from Bidder. The demand may only be made:

- (a) after the occurrence of an event referred to in clauses 11.2(a), 11.2(b), 11.2(c) or 11.2(d); or
- (b) all of the circumstances referred to in clause 11.2(e) occurring.

11.5 Nature of payment

The amount payable by Cradle to Bidder under clause 11.2 is an amount to compensate Bidder for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by Bidder in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic

initiatives which Bidder could have developed to further its business and objectives,

but is without prejudice to and does not limit any rights which Bidder, any Bidder Indemnified Party or any Bidder shareholder may have against Cradle.

11.6 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 amount payable under clause 11.2:

- (a) is unlawful;
- (b) involves a breach of the duties of the Cradle Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Cradle's obligation to pay the amount payable under clause 11.2 does not apply and if Bidder has received any part of the payment due under clause 11.2 it must refund it within ten Business Days of such final determination.

11.7 Survival

Any accrued obligations under this clause survive termination of this agreement.

12 Representations and warranties

12.1 Cradle's representations and warranties

Cradle represents and warrants to Bidder that each of the statements set out in Schedule 6 is true and correct and not misleading or deceptive in all material respects as at the date of this agreement and as at 5.00pm on the Business Day immediately prior to the Second Court Date.

12.2 Cradle's indemnity

Cradle indemnifies the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct.

12.3 Cradle warranty certificate

Cradle must provide to Bidder by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of Cradle and made in accordance with a resolution of the Cradle Board stating, as at that date, that the representations or warranties given by Cradle in clause 12.1 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

12.4 Qualifications to Cradle's representations and warranties

The Cradle representations and warranties under clause 12.1 and Schedule 6 are each subject to matters:

- (a) Fairly Disclosed in the Data Room or responses to the Bidder Request List;

- (b) which were Fairly Disclosed in a document lodged with ASIC, given to ASX for public release or available from the registers maintained by the High Court and the Federal Courts of Australia, the Supreme Courts of Western Australia and the PPSR, in the 2 years prior to the date of this agreement; and
- (c) actually known to Bidder (other than matters known by representatives of professional advisers to the extent those representatives are not involved with the Transaction).

12.5 Bidder's representations and warranties

Bidder represents and warrants to Cradle that each of the statements set out in Schedule 7 is true and correct and not misleading or deceptive in all material respect as at the date of this agreement and as at 5.00pm on the Business Day immediately prior to the Second Court Date.

12.6 Bidder's indemnity

Bidder indemnifies the Cradle Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.5 not being true and correct.

12.7 Bidder warranty certificate

Bidder must provide to Cradle by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed on behalf of Bidder stating, as at that date, that the representations and warranties given by Bidder in clause 12.5 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

12.8 Liability of directors and officers

- (a) If the Scheme becomes Effective, each party releases its rights against, and will not make or commence any Claim against, any past or present director or employee of the other party in relation to information provided to it by the other party in connection with the Transaction containing any statement which is false or misleading to the extent that the past or present director or employee of the other party has not engaged in wilful misconduct or fraud. In this clause 12.8(a), the reference to any past or present director or employee of the other party refers to any past or present director or employee of Bidder or the Cradle Group.
- (b) Each party holds the releases in clause 12.8(a) in respect of its directors and employees as trustee for its past and present directors and employees.
- (c) This clause 12.8 is subject to any restriction at law (including the Corporations Act) and will be read down accordingly.

13 Court proceedings

13.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Cradle must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties otherwise agree in writing; or
- (b) Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates in writing that, in their opinion, an appeal would likely have less than a reasonable prospect of success;
- (c) there is, in the bona fide view of the Cradle Board, a Superior Proposal which should be recommended in preference to the Scheme; or
- (d) the first attempted appeal to the initial Court refusal to make orders convening the Scheme Meeting or approving the Scheme does not overturn the initial Court's decision,

in which case either party may terminate this agreement. A party will not be entitled to terminate this agreement pursuant to this clause 13.1 if the Court's refusal to make the orders was the result of a breach of this agreement by that party.

13.2 Defence of proceedings

- (a) Subject to clause 13.2(b), each of Bidder and Cradle must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this agreement or the completion of the Transaction. Neither Bidder nor Cradle will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- (b) The obligations in clause 13.2(a) do not apply to Cradle during a Superior Proposal Period. For the avoidance of doubt, if the Superior Proposal that gave rise to the commencement of the Superior Proposal Period is withdrawn, terminated, rejected, expires or is otherwise concluded and this agreement remains on foot, the obligations in clause 13.2(a) will once again apply.

13.3 Costs

Any costs incurred as a result of the operation of this clause 13 will be borne equally by each party.

14 Termination

14.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.9 and 13.1), this agreement may be terminated at any time prior to 8.00am on the Second Court Date:

- (a) **(End Date)** by either Bidder or Cradle, if the Scheme has not become Effective on or before the End Date, unless the Scheme has not become Effective due to a breach by such party of its obligations under this agreement; or
- (b) **(lack of support or breach):**
 - (i) by Bidder, if:
 - (A) any Cradle director changes or withdraws their recommendation to the Scheme Participants that they

vote in favour of the Scheme, or makes any adverse modification or qualification to their recommendation, or otherwise makes a public statement indicating that they no longer support the Transaction; or

- (B) any Cradle director qualifies or withdraws their voting intention to vote the Cradle Shares in which they have a Relevant Interest in favour of the resolution to approve the Scheme, in the absence of a Superior Proposal;
- (ii) by either Bidder or Cradle if the other is in material breach of any clause of this agreement (including a representation or warranty), taken in the context of the Transaction as a whole, where the loss to the non-defaulting party that could reasonably be expected to follow from such a breach would exceed \$1,000,000 provided that either Bidder or Cradle, as the case may be, has, if practicable, given notice to the other setting out the relevant circumstances and stating an intention to terminate and, the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 10:00 pm on the day before the Second Court Date) after the time such notice is given;
- (c) **(Scheme not approved)** by either Bidder or Cradle, if the resolution submitted to the Scheme Meeting is not approved by the requisite majority;
- (d) **(competing interest)** by Bidder, if a person has a Relevant Interest in more than 20% of Cradle Shares (other than Bidder and its Associates or any person who had a Relevant Interest in more than 20% of Cradle Shares as at the date of this agreement);
- (e) **(restraint)** by either Bidder or Cradle, if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
- (f) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.9(a);
 - (ii) clause 3.9(b); or
 - (iii) clause 13.1;
- (g) **(Material Adverse Change)** by Bidder, if a Material Adverse Change or Prescribed Event occurs prior to 8.00am on the Second Court Date;
- (h) **(Insolvency)** by either Bidder or Cradle, if the other party or, in the case of Cradle, any of its Related Bodies Corporate, becomes Insolvent; or
- (i) **(Material Contract)** by Bidder, if a Material Contract is terminated and the loss to Bidder that could reasonably be expected to follow from such termination of the Material Contract would exceed \$1,000,000.

14.2 Termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

14.3 Effect of termination

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations and rights set out in clauses 7.3(b), 7.3(c), 7.3(e), 7.3(f), 11, 12.8, 13.3, 16, 18 and 19, will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause 14.3 releases any party from liability for any pre-termination breach of this agreement.

14.4 Damages

- (a) In addition to the rights of termination under clause 14.1 but subject to clause 14.4(b), where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.
- (b) Despite any other provision in this agreement, where an amount becomes payable to Bidder under clause 11.2 and is actually paid to Bidder (or is payable, but no demand is made under clause 11.2), Bidder cannot make any Claim (other than a Claim under clause 11) against Cradle which relates to the event that gave rise to the right to make a demand under clause 11.2.

15 Public announcements

15.1 Public announcement of Scheme

Immediately after signing this agreement, Cradle will issue a public announcement of the Transaction in the form agreed between Cradle and Bidder.

15.2 Required disclosure

Where a party is required by law, the Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Transaction or the Project, it may do so only after it has given the other party as much notice as possible and has consulted to the fullest extent possible in the circumstances with the other party and its legal advisers.

15.3 Other announcements

Subject to clauses 15.1 and 15.2, no party may make any public announcement or disclosure in connection with the Transaction or the Project (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

16 Confidential Information

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this agreement.

17 Notices and other communications

17.1 Form - all communications

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

17.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 17.1. The email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

17.3 Delivery

Communications must be:

- (a) sent by email to the address set out or referred to in the Details; or
- (b) if email communication is not practicable, sent by express overnight courier to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

17.4 When effective

Communications take effect from the time they are received or taken to be received under clause 17.5 (whichever happens first) unless a later time is specified.

17.5 When taken to be received

Communications are taken to be received:

- (a) if sent by courier, 1 day after posting (or 2 days after posting if sent from one country to another); or
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) when the sender receives a reply message from the recipient confirming receipt,

whichever happens first.

17.6 Receipt outside business hours

Despite clauses 17.4 and 17.5, if communications are received or taken to be received under clause 17.5 after 10.00pm or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

18 Goods and services tax (GST)

18.1 Consideration GST exclusive

Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

18.2 Payment of GST

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 18.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

18.3 Reimbursements

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

18.4 Calculation of payments

If an amount payable under this agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

18.5 Interpretation

For the purposes of this clause 18:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 18;

- (b) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

19 Miscellaneous

19.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

19.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

19.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

19.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

19.5 Conflict of interest

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

19.6 Remedies cumulative

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

19.7 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

19.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

19.9 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

19.10 Enforceability

For the purpose of this agreement:

- (a) Cradle is taken to be acting as agent and trustee on behalf of and for the benefit of all Cradle Indemnified Parties; and
- (b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

19.11 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

19.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

19.13 Costs

Subject to clause 11, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

19.14 Stamp duty

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

19.15 Entire agreement

Except for the Confidentiality Agreement, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

19.16 Assignment

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

19.17 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;

- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) paragraphs 19.17(a) and 19.17(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

19.18 Governing law

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

19.19 Counterparts

This agreement may consist of a number of copies, signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document. This agreement will take effect when all counterparts are received (whether by email or otherwise) by Bidder at its address listed in the Details.

19.20 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement 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 agreement or is contrary to public policy.

EXECUTED as an agreement

Schedule 1 Prescribed Events

- 1 **(Conversion)** Cradle converts all or any of its shares into a larger or smaller number of shares.
- 2 **(Reduction of share capital)** Cradle resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3 **(Buy-back)** Cradle:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 **(Distribution)** Cradle makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5 **(Issuing or granting shares or options)** Cradle or any of its Subsidiaries:
 - (a) issues shares;
 - (b) grants an option over its shares; or
 - (c) agrees to make such an issue or grant such an option,

in each case to a person outside the Cradle Group other than as disclosed by Cradle to Bidder before the date of this agreement or pursuant to the exercise of conversation of any Options or Performance Rights on issue prior to the date of this agreement.
- 6 **(Securities or other instruments)** Cradle or any of its Subsidiaries:
 - (a) issues securities or other instruments convertible into shares or debt securities; or
 - (b) agrees to issue securities or other instruments convertible into shares or debt securities,

in each case to a person outside the Cradle Group other than as disclosed by Cradle to Bidder before the date of this agreement.
- 7 **(Constitution)** Cradle adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 8 **(Disposals)** Cradle or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the Cradle Group's business or property.
- 9 **(Acquisitions, disposals or tenders)** Cradle or any of its Subsidiaries:
 - (a) acquires or disposes of;
 - (b) agrees to acquire or dispose of;

- (c) offers, proposes, announces a bid or tenders for (other than client bids or tenders in the ordinary course of Cradle's business),
- any business, assets, entity or undertaking the value of which exceeds \$1 million.
- 10 **(Encumbrances)** other than in the ordinary course of business and consistent with past practice Cradle or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property.
- 11 **(Employment arrangements)** other than in the ordinary course of business and consistent with past practice Cradle or any of its Subsidiaries:
- (a) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;
- (b) other than in respect of Performance Rights on issue as at the date of this agreement for the purposes of clause 5.3, accelerates the rights of any of its directors or employees to compensation or benefits or any kind (including under any Cradle executive or employee share plans); or
- (c) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement).
- 12 **(Commitments and settlements)** Cradle or any of its Subsidiaries:
- (a) enters into or agrees to enter into a Material Contract;
- (b) terminates or amends in a material manner a Material Contract or amends any other contract in such a manner that it becomes a Material Contract;
- (c) waives any material third party default in any Material Contract; or
- (d) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$50,000) less than the full compensation due to Cradle or a Subsidiary of Cradle.
- 13 **(Financial advisors)** a member of the Cradle Group amending in any material respect any arrangement with a financial advisor, or entering into arrangements with a new financial advisor, in respect of the Transaction or a Competing Proposal (except in the case of a Competing Proposal a member of the Cradle Group may enter arrangements in relation to a Competing Proposal provided the arrangements are on terms consistent with those in the market generally).
- 14 **(Insolvency)** Cradle or any of its Related Bodies Corporate becomes Insolvent.

Scheme Implementation Agreement

Schedule 2 Conditions Precedent

Condition	Party entitled to benefit
1 Regulatory Approvals	
Before 8.00am on the Second Court Date:	
(a) (ASIC and ASX) ASIC and ASX have issued or provided and not withdrawn such consents or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Transaction;	Both
(b) (FIRB approval) either:	Cannot be waived
(i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification to the Transaction either without conditions or with conditions acceptable to Bidder; or	
(ii) following notice of the Transaction having been given by Bidder to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired;	
(c) (Tanzanian FCC approval) the Tanzanian Fair Competition Commission provides a "no objection letter" in respect of the Transaction under the Fair Competition Act 2003;	Cannot be waived
(d) (Regulatory Authority) all other approvals of a Regulatory Authority which Bidder and Cradle agree are necessary or desirable to implement the Scheme (including in relation to the Mineral Rights) are obtained; and	Both
(e) (Court orders) no Court or 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 Transaction and no such order, decree, ruling, other action or refusal is in effect.	Both
2 Scheme approval	Cannot be waived
Cradle Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act at the Scheme Meeting.	
3 Options	Bidder
Before the Second Court Date, all outstanding Options are vested and an Optionholder Deed is entered in respect of the outstanding Options	

Condition	Party entitled to benefit
between the relevant Optionholder and Cradle, as contemplated in clause 5.1.	
4 Performance Rights	Bidder
Before the Second Court Date, all outstanding Performance Rights are vested and the relevant resultant Cradle Shares are issued or agreed to be issued before the Record Date.	
5 Thurwan Limited Options	Bidder
Before the Second Court Date, Thurwan Limited gives notice under the Consulting Agreement between Thurwan Limited and Cradle dated on or about 10 August 2016 to elect that Cradle pay Thurwan Limited the net cash value of 1,000,000 unissued Options (exercise price A\$0.25 and expiring on 31 October 2018) pursuant to and in accordance with that Consulting Agreement, such net cash value being equal to the sum of the Scheme Consideration less A\$0.25 per Option.	
6 Court approval	Cannot be waived
The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	
7 Independent Expert Report	Cradle
The Independent Expert provides a report to Cradle that concludes that the Scheme is in the best interests of Cradle Shareholders and the Independent Expert not withdrawing or adversely modifying that conclusion before 8.00am on the Second Court Date.	
8 Third party consents	Both
Before 8.00am on the Second Court Date, all other approvals of a third party which Bidder and Cradle agree are necessary or desirable to implement the Scheme (including any counterparty consents under Material Contracts to the change of control that would be caused by the Transaction) are obtained.	
9 No Prescribed Event	Bidder
No Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.	
10 No Material Adverse Change	Bidder
No Material Adverse Change occurs or becomes apparent between the date of this agreement and 8.00am on the Second Court Date.	
11 No termination	Both
This agreement has not been terminated in accordance with clause 14.	
12 Index decline	Bidder

Condition**Party entitled to benefit**

After the Announcement Date the Bloomberg Commodity Index does not fall to a level that is 80% or less of the level as at the close of trading on the Announcement Date and remains at or below that 80% level for at least 3 Business Days or until the date immediately before the Second Court Date.

13 New information

Bidder

Between the date of this agreement and 8.00am on the Second Court Date Cradle does not become aware of any information which:

- (a) Cradle would be obliged to tell ASX immediately pursuant to ASX Listing Rule 3.1 if it was not relying upon the exception in ASX Listing Rule 3.1A; or
- (b) if the Transaction were proceeding by way of a takeover bid pursuant to Chapter 6 of the Corporations Act, it would be required to include in a target's statement pursuant to section 638 of the Corporations Act,

where that information would, or would be reasonably likely to, result in a Material Adverse Change in relation to Cradle after the date of this agreement.

14 Deed Poll

Cradle

Simultaneous with the execution of this agreement, Bidder signs and delivers the Deed Poll.

15 Escrowed Cradle Shares

Bidder

Prior to the Second Court Date, any escrowed Cradle Shares are released from escrow so that they may transferred to Bidder in accordance with the Scheme.

Scheme Implementation Agreement

Schedule 3 Timetable

Event	Date
Lodge Scheme Booklet with ASIC and ASX	10 April 2017
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	11 April 2017
First Court Date	4 May 2017
Printing and despatch of Scheme Booklet	9 May 2017
Scheme Meeting held	8 June 2017
Second Court Date	15 June 2017
Lodge Court order with ASIC (Effective Date)	16 June 2017
Record Date	23 June 2017
Implementation Date	30 June 2017

Schedule 4 Cradle's obligations

- 1 **(Cradle Information)** ensure that the Cradle Information included in the Scheme Booklet complies with applicable law, the Listing Rules and applicable ASIC Regulatory Guides.
- 2 **(Further Cradle Information)** provide to Bidder and Scheme Participants such further or new Cradle Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Cradle Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet.
- 4 **(Provide a copy of the report)** on receipt, provide Bidder with a copy of any draft or final report received from the Independent Expert.
- 5 **(Cradle Board recommendation)** state in the Scheme Booklet and the public announcement contemplated by clause 15.1 (on the basis of statements made to Cradle by each member of the Cradle Board) that each member of the Cradle Board recommends that the Scheme Participants vote in favour of the Scheme in the absence of a Superior Proposal, unless:
 - (a) the Independent Expert opines that the Scheme is not in the best interest of Cradle Shareholders; or
 - (b) in relation to matters occurring after the date of this agreement, the Cradle Board obtains written advice from Queen's Counsel or Senior Counsel that compliance or continued compliance with this clause would involve a breach of their fiduciary duties or would be unlawful on any other basis.
- 6 **(Directors' voting intentions)** ensure that the Scheme Booklet states the voting intention of each Cradle director in respect of the Scheme at the time of the Scheme Booklet.
- 7 **(Registry details)** subject to the terms of the Scheme:
 - (a) provide all necessary information about the Scheme Participants to Bidder which Bidder requires in order to assist Bidder to solicit votes at the Scheme Meeting; and
 - (b) provide all necessary directions to the Registry to promptly provide any information that Bidder reasonably requests in relation to the Register, including any sub-register, and, where requested by Bidder Cradle must procure such information to be provided to Bidder in such electronic form as is reasonably requested by Bidder.
- 8 **(Proxies)** except to the extent that Cradle would be in breach of Australian privacy laws, cause the Registry to report to Cradle and Bidder on the status of proxy forms received by the Registration for the Scheme Meeting:
 - (a) on the day that is 10 Business Days before the Scheme Meeting;

- (b) on each Business Day following the day that is 10 Business Days before the Scheme Meeting, up to the deadline for receipt of proxy forms; and
- (c) immediately following such deadline,

and to provide such other information as it may receive concerning the voting intentions of Cradle Shareholders to Bidder.

- 9 **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- 10 **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Cradle to convene the Scheme Meeting.
- 11 **(Registration of explanatory statement)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.
- 12 **(Send Scheme Booklet)** send the Scheme Booklet to Cradle Shareholders as soon as practicable after the Court orders Cradle to convene the Scheme Meeting.
- 13 **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Cradle Shareholders for the Scheme and, for this purpose, the directors of Cradle must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of Bidder. Cradle shall not seek to adjourn or otherwise change the timing of the Scheme Meeting (or actually do so) without the prior written consent of Bidder.
- 14 **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
- 15 **(Lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Cradle Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
- 16 **(Registration)** register all transfers of Scheme Shares to Bidder on the Implementation Date in accordance with the Scheme.
- 17 **(Listing)** take all reasonable steps to maintain Cradle's listing on ASX, notwithstanding any suspension of the quotation of Cradle Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.
- 18 **(Other steps)** do all other things necessary to give effect to the Transaction and the orders of the Court approving the Scheme and take all actions within its power to give effect to this agreement.

Scheme Implementation Agreement

Schedule 5 Bidder's obligations

- 1 **(Bidder Information)** provide to Cradle for inclusion in the Scheme Booklet such Bidder Information as Cradle reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, or applicable ASIC Regulatory Guides).
- 2 **(Board approval of Scheme Booklet)** review drafts of the Scheme Booklet and after finalisation of the Scheme booklet, procure that a meeting of the directors of Bidder approves those sections of the Scheme Booklet which include the Bidder Information as being in a form appropriate for provision to ASIC for review and complies with the requirements of the Corporations Act, Corporations Regulations, or applicable ASIC Regulatory Guides in respect of the Bidder Information.
- 3 **(Further Bidder Information)** provide to Cradle such further or new Bidder Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 4 **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
- 5 **(Deed Poll)** simultaneous with the execution of this agreement, sign and deliver the Deed Poll.
- 6 **(Court documents)** provide to Cradle any affidavits from Bidder or their Representative reasonably required for the purposes of each Court hearing, including an opinion from a suitably qualified and reputable Mauritius lawyer opining on the due execution of the Deed Poll and enforceability under the laws of Mauritius.
- 7 **(Scheme consideration)** if the Scheme becomes Effective, procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.2, the Scheme and the Deed Poll.
- 8 **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.1(a).
- 9 **(Other steps)** do all things necessary to give effect to the Transaction and the orders of the Court approving the Scheme.

Schedule 6 Cradle's representations and warranties

- 1 **(Incorporation)** Cradle and each of its Subsidiaries is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution and corporate power)** the execution and delivery of this agreement by Cradle has been properly authorised by all necessary corporate actions of Cradle. Cradle has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 3 **(No contravention or impediment)** this agreement and performance by Cradle of its obligations under this agreement do not contravene the constitution of any member of the Cradle Group or any law by which any member of the Cradle Group is bound and does not result in:
 - (a) any monies borrowed by any member of the Cradle Group being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
 - (b) any agreement or other instrument to which any member of the Cradle Group is party being terminated or modified or any action being taken or arising thereunder; or
 - (c) the interest of Cradle in any Subsidiary or PHT being terminated or modified.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on Cradle.
- 5 **(Cradle Information)** the Cradle Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC.
- 6 **(Advisors)** Cradle has provided complete and accurate information regarding fees in all retainers and mandates with financial advisers and fee estimates for other advisors in relation to the Transaction and any Competing Proposal or any other transaction where such retainer or mandate is current, or under which the Cradle Group still has obligations and will be no outstanding payment obligations as at 5.00pm on the day immediately prior to the Second Court Date.
- 7 **(Reliance)** the Cradle Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 8 **(Further information)** Cradle will, as a continuing obligation, provide to Bidder all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure

that there would be no breach of the warranty in paragraph 5 if it applied as at the date upon which that information arose.

- 9 **(Disclosure)** Cradle has Fairly Disclosed to Bidder all information known to it (having made reasonable enquiries) as at the date of this agreement regarding matters affecting or relating to it:
- (a) which is not already in the public domain; and
 - (b) the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this agreement at all or only entering into this agreement on materially different terms.
- 10 **(Continuous disclosure)** Cradle is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.
- 11 **(Complete and accurate)** all the information provided to Bidder by Cradle in connection with the Bidder Request List, whether under due diligence or not, is complete and accurate and is not misleading, whether by way of omission or otherwise.
- 12 **(Opinions)** any statement of opinion or belief contained in the Cradle Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 13 **(Provision of information to Independent Expert)** all information provided by or on behalf of Cradle to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 14 **(Compliance)** Cradle, its Subsidiaries and their officers and employees have complied in all material respects with all Australian and foreign laws and regulations applicable to them (including in relation to anti-bribery and corruption) and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 15 **(Mineral Rights)** to the best of knowledge and belief of the directors of Cradle and Grant Davey (after having made reasonable enquiries):
- (a) PHT holds all of the beneficial and legal interest in the Mineral Rights and no other person has any rights of whatsoever nature in respect of the Mineral Rights;
 - (b) the Mineral Rights are not liable to cancellation or forfeiture for any reason and there is no proceeding or dispute of any nature, affecting, or likely to affect, the Mineral Rights;
 - (c) PHT has complied with all provisions of the Mineral Rights, the Mining Act and other relevant laws in so far as they apply to the Mineral Rights;
 - (d) the Mineral Rights are valid and currently in good standing, including (but not limited to) all taxes and fees (if any), rents, expenditures and other outgoings having been paid and all returns (if any) having been submitted;
 - (e) the Mineral Rights are free from all encumbrances, validly subsisting, and in full force and effect pursuant to and in accordance with the Mining Act;
 - (f) there are no unsatisfied writs of execution relating to the Mineral Rights;

- (g) there are no environmental liabilities relating to or affecting the Mineral Rights nor are there any circumstances relating to the Mineral Rights which may reasonably be expected to give rise to future environmental liabilities and no environmental bonds are required to be lodged in relation to the Project;
- (h) no person has any agreement, option or right capable of becoming an agreement, option or right for the acquisition of the Mineral Rights or any part thereof or any interest therein; and
- (i) the Transaction does not result in the Mineral Rights becoming subject to forfeiture, suspension or cancellation or other adverse action or conditions being imposed on the Mineral Rights.

16 **(No default)** neither it nor any of its Subsidiaries:

- (a) is in default under any document, agreement or instrument binding on it or its assets; nor
- (b) has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect,

in each case where such default, occurrence or event would result, or is reasonably likely to result in, a Material Adverse Change.

17 **(Contract information):**

- (a) it has disclosed to Bidder prior to the date of this agreement complete copies of all Material Contracts;
- (b) no Cradle Group member is a party to any contract or commitment (other than a Material Contract) involving revenue or expenditure of more than \$50,000 over the term of the contract or commitment or a contract or commitment which has term of over 12 months; and
- (c) to the extent copies of the contracts have not been provided to Bidder, none of those contracts to which the Cradle Group is a party contain provisions requiring (either expressly or so as to avoid a right of termination or other right adverse to the relevant members of the Cradle Group arising) Cradle to seek the counterparty's consent to the change of control that would be caused by the Transaction.

18 **(No Change of control):** other than as disclosed by Cradle to Bidder prior to the date of this agreement, no person has the right to exercise or purported to exercise, or has stated an intention to exercise, any rights under any law or provision of any agreement or other instrument to which Cradle or any Subsidiary of Cradle is a party, or by or to which Cradle or any Subsidiary of Cradle or any of its assets may be bound or be subject, which results, or could result, to an extent which is material in the context of Cradle or Cradle and its Subsidiaries taken as a whole, in:

- (a) any monies borrowed by Cradle or any Subsidiary of Cradle being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (b) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder;

- (c) the interest of Cradle or any Subsidiary of Cradle in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified;
- (d) the Mineral Rights becoming subject to forfeiture, suspension or cancellation or other adverse action or conditions being imposed on the Mineral Rights; or
- (e) the business of Cradle or any Subsidiary of Cradle with any other person being adversely affected,

as a result of the acquisition of Cradle Shares by Bidder pursuant to the Scheme.

19 **(Securities)** Cradle's issued securities as at the date of this agreement are:

Number	Class
164,727,617	Ordinary shares
1,000,000	Options, exercise price 25c, expiry 30/4/18
3,250,000	Options, exercise price 25c, expiry 31/10/18
2,000,000	Options, exercise price 30c, expiry 30/6/18
787,500	Performance Rights

and Cradle has also agreed to issue to Thurwan Limited:

Number	Class
1,000,000	Options, exercise price 25c, expiry 31/10/18

Other than as identified above, none of the members of the Cradle Group has issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Cradle Shares or securities of any member of the Cradle Group.

- 20 **(No Encumbrances)** there is no Encumbrance over all or any of its or its Subsidiaries' assets or revenues other than as disclosed to Bidder prior to the date of this agreement.
- 21 **(Payments)** all material tax, levies, assessments, contributions, fees, rates, duties and other governmental or municipal charges or impositions including all material royalties (other than those that may still be paid without penalty or interest) for which any member of the Cradle Group are liable, including any penalty or interest, having been paid.
- 22 **(No claims)** other than as disclosed by Cradle to Bidder prior to the date of this agreement, as at the date of this agreement there are no existing or threatened claims, litigations, disputes or proceedings against any member of the Cradle Group or their directors and Cradle directors are not aware of any circumstances which could give rise to any such claims, litigations, disputes or proceedings.
- 23 **(Voting intentions)** as at the date of this agreement, each of Cradle directors has stated to Cradle that they intend to vote any Cradle Shares in which they have a Relevant Interest in favour of the Scheme, unless a Superior Proposal arises.

- 24 **(Insolvency)** Cradle and its Subsidiaries are not Insolvent.
- 25 **(shares in PHT and Subsidiaries)** Cradle is the full legal and beneficial owner of:
- (a) all of the issued shares in the capital of all of its Subsidiaries (other than PHT) (which are all fully paid ordinary shares); and
 - (b) 22,835,000 ordinary shares in the capital of PHT.
- 25 **(PHT)** to the best of knowledge and belief of the directors of Cradle and Grant Davey (after having made reasonable enquiries), warranties 1, 14, 16, 17, 18, 20, 21, 22 and 24 above are true and correct and not misleading or deceptive in all material respects as if they were also made about PHT.

Schedule 7 Bidder's representations and warranties

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary actions of Bidder.
- 3 **(Power)** it has full power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(Reliance)** the Bidder Information provided to Cradle for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Cradle and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act.
- 6 **(Bidder Information)** the Bidder Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements.
- 7 **(Insolvency)** it is not Insolvent.
- 8 **(Scheme Consideration)** it has access to the necessary funds to, if the Scheme becomes Effective, satisfy its payment obligations under the Scheme and the Deed Poll.

Schedule 8 Material Contracts

- 1 ISA
- 2 Letter agreement between Argonaut and Cradle Resources executed on 9 April 2015 as amended by an email dated 22 December 2016.
- 3 Sale of Mineral Rights Agreement between RECB Limited and Panda Hill Tanzania Ltd as amended on 24 September 2015 and each of the agreements entered into by the parties which are attached as schedules thereto
- 4 Panda Hill Option Agreement originally between Verona Capital Pty Ltd, RECB Limited and Panda Hill Mines Limited dated 28 May 2012 and each subsequent Deed of Amendment and Restatement
- 5 Letter agreement between Matador Capital Pty Ltd and Cradle dated 10 August 2016
- 6 Letter agreement between Thurwan Limited and Cradle dated 10 August 2016

Scheme Implementation Agreement

Signing page

DATED: 9 March 2017

EXECUTED by **TREMONT INVESTMENTS LIMITED** in accordance with the constituent documents in its place of incorporation:

[Signed "Brendon Howard Jones"]

.....
Signature of Authorised Signatory

[Brendon Howard Jones]

.....
Name of Authorised Signatory in full

[Signed "Pieter Rudolf Pretorius"]

.....
Signature of Authorised Signatory

[Pieter Rudolf Pretorius]

.....
Name of Authorised Signatory in full

EXECUTED by **CRADLE RESOURCES LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

[Signed "Ian Peter Middlemas"]

.....
Signature of director

[Ian Peter Middlemas]

.....
Name of director (block letters)

[Signed "Samuel Edward Smart"]

.....
Signature of ~~director~~/company secretary*

*delete whichever is not applicable

[Samuel Edward Smart]

.....
Name of ~~director~~/company secretary* (block letters)

*delete whichever is not applicable

Scheme Implementation Agreement

Annexure A - Scheme

Scheme of Arrangement

Dated 2017

Cradle Resources Limited (ACN 149 637 016) (**Cradle**)

Scheme Participants

King & Wood Mallesons

Level 30
QV1 Building
250 St Georges Terrace
Perth WA 6000
Australia
T +61 8 9269 7000
F +61 8 9269 7999
DX 210 Perth
www.kwm.com

Scheme of Arrangement

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Scheme of Arrangement

Details

Parties	Cradle and Scheme Participants	
Cradle	Name	Cradle Resources Limited
	ACN	149 637 016
	Address	Level 7, 1008 Hay Street Perth WA 6000 Australia
	Fax	+61 8 9389 2099
	Attention	Company Secretary
Scheme Participants	Name	Each person registered as a holder of Cradle Shares as at 5.00pm on the Record Date (other than Excluded Shareholders)
Governing law	Western Australia	

General terms

1 Definitions and interpretation

1.1 Definitions

In this Scheme:

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691), Australian Securities Exchange, as appropriate.

Bidder means Tremont Investments Limited, a company incorporated in Mauritius.

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

CHES means the Clearing House Electronic Subregister System managed by ASX.

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

Court means the Federal Court of Australia, or the Supreme Court of Western Australia, to be agreed by Bidder and Cradle.

Cradle Share means a fully paid ordinary share in the capital of Cradle.

Cradle Shareholder means each person registered in the Register as a holder of Cradle Shares.

Deed Poll means the deed poll dated 9 March 2017 executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement, under which Bidder covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or any other security arrangement having the same effect.

End Date means the date that is 6 months from the date of the Scheme Implementation Agreement or such other date as determined in accordance with the terms of the Scheme Implementation Agreement.

Excluded Share means a Cradle Share held by an Excluded Shareholder as at the Record Date.

Excluded Shareholder means Bidder and its Associates.

Immediately Available Funds means electronic funds transfer or other form of cleared funds acceptable to Cradle.

Implementation Date means the fifth Business Day following the Record Date or such other date as is agreed in writing by Bidder and Cradle.

Listing Rules means the Listing Rules of the ASX.

Option means any option issued by Cradle in respect of Cradle Shares, whether vested or unvested.

Performance Rights means any performance rights issued by Cradle in respect of Cradle Shares, whether vested or unvested.

Record Date means 5.00pm on the fifth Business Day following the Effective Date or such other date as Cradle and Bidder agree in writing.

Register means the share register of Cradle and **Registry** has a corresponding meaning.

Registered Address means, in relation to a Cradle Shareholder, the address shown in the Register.

Regulatory Authority means:

- (a) ASX and ASIC;
- (b) the Takeovers Panel;
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute,

including, in Australia, Mauritius and Tanzania.

Scheme means this scheme of arrangement between Cradle and Scheme Participants under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 5.2 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Cradle and Bidder in accordance with clause 8.2 of this Scheme.

Scheme Consideration means \$0.33 for each Scheme Share.

Scheme Implementation Agreement means the scheme implementation agreement dated 9 March 2017 between Cradle and Bidder under which, amongst other things, Cradle has agreed to propose this Scheme to Cradle Shareholders, and each of Bidder and Cradle has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Cradle Shareholders ordered by the Court to be convened pursuant to section 411(a) of the Corporations Act at which Cradle Shareholders will vote on this Scheme.

Scheme Participant means each person registered as a Cradle Shareholder at the Record Date, other than an Excluded Shareholder.

Scheme Share means a Cradle Share on issue as at the Record Date other than an Excluded Share.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme.

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Takeovers Panel means the review body continuing in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) and given powers under Part 6.10 of the Corporations Act.

Trust Account means the trust account operated by or on behalf of Cradle to hold the Scheme Consideration on trust for the Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.3 of this Scheme, as nominated by Cradle at least 5 Business Days prior to the Implementation Date.

1.2 Reference to certain general terms

Unless the contrary intention appears, a reference in this Scheme to:

- (a) **(variations or replacement)** a document, agreement (including this document) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;

- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) **(time of day)** time is a reference to Perth, Western Australia time.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Scheme.

2 Preliminary

2.1 Cradle

- (a) Cradle is a public company limited by shares incorporated in Australia and registered in Western Australia.
- (b) Cradle is admitted to the official list of the ASX and Cradle Shares are officially quoted on the stock market conducted by ASX.

2.2 Bidder

Bidder is a private company limited by shares and is incorporated in Mauritius.

2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Bidder, Cradle will procure Bidder to provide the Scheme Consideration to Cradle on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them, will be transferred to Bidder on the Implementation Date; and
- (c) Cradle will enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

2.4 Scheme Implementation Agreement

By executing the Scheme Implementation Agreement, Cradle and Bidder have agreed to implement the terms of this Scheme.

2.5 Deed Poll

Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to pay the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

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

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in schedule 2 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent relating to the approval of the Court in item 6) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Cradle and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2 Conditions precedent and operation of clauses 5 and 6

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme.

3.3 Certificate in relation to conditions precedent

Cradle and Bidder must each provide to the other by 8:00am on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

The certificates referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 End Date

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms,

unless Cradle and Bidder otherwise agree in writing.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

Cradle must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder and Cradle agree in writing.

5.2 Transfer and registration of Scheme Shares

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 and 6.5 of this Scheme and Bidder having provided Cradle with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Cradle as attorney and agent for Scheme Participants under clause 8.1 of this Scheme) by:
 - (i) Cradle delivering to Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
 - (ii) Bidder duly executing the Share Scheme Transfer and delivering it to Cradle for registration; and
- (b) immediately following receipt of the duly executed Share Scheme Transfer, Cradle must enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4 Title and rights in Scheme Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Cradle of Bidder in the Register as the holder of the Scheme Shares.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to Bidder and is deemed to have authorised Cradle to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Cradle Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under this Scheme will, at the date of the transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 Appointment of Bidder as sole proxy

Subject to the payment of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until Cradle registers Bidder as the holder of all of the Scheme Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 5.8(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

6 Scheme Consideration

6.1 Consideration under the Scheme

Cradle and Bidder must pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with this clause 6.

6.2 Satisfaction of obligations

Bidder must, and Cradle must use its best endeavours to procure that Bidder does, no later than two Business Days before the Implementation Date, deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to Bidder's account).

6.3 Payment of Scheme Consideration

On the Implementation Date, subject to receipt of the Scheme Consideration from Bidder in accordance with clause 6.2 of this Scheme, Cradle must pay or procure payment to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Participant, whereby the amounts referred to in this clause 6.3 of this Scheme must be paid by:

- (a) where a Scheme Participant before the Record Date has made an election in accordance with the requirements of the Register to receive dividend payments from Cradle by electronic funds transfer to a bank account nominated by the Scheme Participant, paying by direct credit to the nominated bank account; or
- (b) where a Scheme Participant has not made an election referred to in clause 6.3(a), sending a cheque drawn on an Australian bank in Australian currency to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 6.6).

6.4 Unclaimed monies

Cradle may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to Cradle; or
- (b) has not been presented for payment within six months after the date on which the cheque was sent.

During the period of one year commencing on the Implementation Date, on a written request from a Scheme Participant, Cradle must reissue a cheque that was previously cancelled under this clause 6.4. Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

The *Unclaimed Money Act 1990 (WA)* will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined under the *Unclaimed Money Act 1990 (WA)*).

6.5 Orders of a court

In the case of notice having been given to Cradle (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then Cradle shall procure that payment is made in accordance with that order; or
- (b) which would prevent Cradle from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme,

Cradle will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

6.6 Joint holders

In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Participants by Bidder must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by Cradle if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before 5.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept.

7.2 Register

Cradle must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

7.3 No disposals after Record Date

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

Cradle will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

7.4 Maintenance of Cradle Register

For the purpose of determining entitlements to the Scheme Consideration, Cradle will maintain the Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to Bidder contemplated in clauses 5.2 and 6.3 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Bidder, its Associates and their successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of Bidder, its Associates or their successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6 Details of Scheme Participants

Within 2 Business Days after the Record Date, Cradle will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to Bidder in such form as Bidder reasonably requires.

7.7 Quotation of Cradle Shares

- (a) Cradle will apply to ASX to suspend trading on ASX in Cradle Shares with effect from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, Cradle will apply:
 - (i) for termination of the official quotation of Cradle Shares on ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8 General Scheme provisions

8.1 Power of attorney

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Cradle and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against Bidder,

and Cradle accepts such appointment. Cradle as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

8.2 Variations, alterations and conditions

Cradle may, with the consent of Bidder (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

8.3 Further action by Cradle

Cradle will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

8.4 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to Cradle and Bidder doing all things and executing all deeds, instruments, transfers or other documents necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Cradle and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Cradle.

8.5 No liability when acting in good faith

Neither Cradle nor Bidder, nor any of their respective directors, officers, employees and advisors (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

8.6 Enforcement of Deed Poll

Cradle undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

8.7 Stamp duty

Bidder will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

8.8 Notices

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

9 Governing law and jurisdiction

This Scheme is governed by the law in force in Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Scheme Implementation Agreement

Annexure B - Deed Poll

Deed Poll

Dated 9 March 2017

Given by Tremont Investments Limited (**Bidder**)

In favour of **Scheme Participants**

King & Wood Mallesons

Level 30
QV1 Building
250 St Georges Terrace
Perth WA 6000
Australia
T +61 8 9269 7000
F +61 8 9269 7999
DX 210 Perth
www.kwm.com

Deed Poll

Details

Parties	Bidder	
Bidder	Name	Tremont Investments Limited
	Incorporated in	Mauritius
	Address	C2-202, Level 2, Office Block C, La Croisette, Grand Baie, 30517, Mauritius
	Attention	Directors

In favour of	Each person registered as a holder of Cradle Shares as at 5.00pm on the Record Date (other than Excluded Shareholders)	
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Recitals	A	Cradle and Bidder have entered into the Scheme Implementation Agreement.
	B	In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to pay the Scheme Consideration to Cradle on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
	C	Bidder is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

Governing law	Western Australia
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Date of Deed Poll	See Signing page
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Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

In this deed poll (unless the context otherwise requires):

Authorised Officer means:

- (a) in respect of Bidder, each of its directors, or any other person nominated by Bidder to act as an Authorised Officer under this deed poll and notified to Cradle in writing; and
- (b) in respect of Cradle, each of its directors, or any other person nominated by Cradle to act as an Authorised Officer under this deed poll and notified to Bidder in writing.

Details means the section of this agreement headed “Details”.

Scheme means the proposed scheme of arrangement between Cradle and Scheme Participants under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Bidder and Cradle, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Cradle and Bidder.

Scheme Implementation Agreement means the scheme implementation agreement dated 9 March 2017 between Cradle and Bidder under which, amongst other things, Cradle has agreed to propose the Scheme to Cradle Shareholders, and each of Bidder and Cradle has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this deed poll except that references to “this Scheme” in that clause are to be read as references to “this deed poll”.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

1.4 Nature of deed poll

Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and

- (b) under the Scheme, Cradle undertakes to enforce this deed poll against Bidder on behalf of and as agent and attorney for each Scheme Participant.

2 Conditions precedent and termination

2.1 Conditions precedent

Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms,

unless Bidder and Cradle otherwise agree in writing.

2.3 Consequences of termination

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

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations contained in clause 7.1; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this deed poll which occurs before it is terminated.

3 Performance of obligations generally

Bidder undertakes in favour of each Scheme Participant that it will fulfil its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

4 Scheme Consideration

4.1 Provision of Scheme Consideration

Subject to clause 2, Bidder undertakes in favour of each Scheme Participant to pay or procure the payment of the Scheme Consideration to the trust account held by Cradle on behalf of each Scheme Participant subject to and in accordance with the terms of the Scheme.

4.2 Payment of Scheme Consideration

Bidder's obligation to provide the Scheme Consideration to Cradle on behalf of each Scheme Participant is satisfied by Bidder, no later than two Business Days before the Implementation Date, depositing in immediately available funds the aggregate amount of the Scheme Consideration payable to all Scheme

Participants into the trust account held by Cradle on behalf of each Scheme Participant (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to Bidder's account).

5 Representations and warranties

Bidder represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
- (d) this deed poll is valid and binding upon Bidder and enforceable against Bidder in accordance with its terms.

6 Continuing obligations

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

- (a) Bidder has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

7 General

7.1 Stamp duty

Bidder must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clause 7.1(a).

7.2 Notices

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll must be in writing and sent to the address stated in the Details, or as otherwise advised by the party from time to time, and marked to the attention of the person stated in the details.

7.3 Waiver

- (a) A waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party giving the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this deed poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

7.4 Variation

A provision of this deed poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) the variation is agreed to by Cradle and Bidder in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

7.5 Remedies cumulative

The rights, powers and remedies of Bidder and the Scheme Participants under this deed poll are cumulative and are in addition to, and do not exclude any, other rights, powers and remedies given by law independently of this deed poll.

7.6 Assignment

The rights and obligations of Bidder and each Scheme Participant under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of Bidder and Cradle.

7.7 Governing law and jurisdiction

This deed poll is governed by the law in force in Western Australia. Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

7.8 Further action

Bidder must execute all deeds and other documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

7.9 Service of process

Without preventing any other mode of service, any document in a legal action, suit or other proceeding in the courts of Western Australia or courts of appeal from them (including any writ of summons or other originating process or any third or other party notice) may be served on Bidder by being delivered to or left for Bidder at the address shown in the Details.

EXECUTED as a deed poll

Deed Poll

Signing page

DATED: 9 March 2017

EXECUTED by TREMONT)
INVESTMENTS LIMITED in)
accordance with the constituent)
documents in its place of incorporation:)

[Signed "Brendon Howard Jones"])

.....)
Signature of Authorised Signatory)

[Brendon Howard Jones])

.....)
Name of Authorised Signatory in full)

[Signed "Pieter Rudolf Pretorius"]

.....
Signature of Authorised Signatory

[Pieter Rudolf Pretorius]

.....
Name of Authorised Signatory in full

Deed Poll

Annexure A - Scheme

[See Annexure A of Scheme Implementation Agreement]