

Bid Implementation Agreement

Dated 8 May 2015

Guangdong Rising H.K. (Holding) Limited
Hong Kong company number 1352915
ARBN 148 961 344 (“**Bidder**”)

PanAust Limited
ABN 17 011 065 160 (“**Target**”)

King & Wood Mallesons

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Governor Phillip Tower
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Bid Implementation Agreement

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Bid Implementation Agreement

Details

Parties	Bidder and Target	
Bidder	Name	Guangdong Rising H.K. (Holding) Limited
	Hong Kong Company Number	1352915
	ARBN	148 961 344
	Address	C/- King & Wood Mallesons Level 61 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000
	Attention	Paul Schroder paul.schroder@au.kwm.com +61 2 9296 2060
Target	Name	PanAust Limited
	ABN	17 011 065 160
	Address	C/- Herbert Smith Freehills ANZ Tower 161 Castlereagh Street Sydney NSW 2000
	Attention	Tony Damian tony.damian@hsf.com +61 2 9225 5784
Recitals	A	Bidder has made the Takeover Bid to acquire all of the Target Shares.
	B	Bidder is proposing to announce a variation to the terms of the Takeover Bid to increase the consideration offered.
	C	The Directors of Target are proposing to recommend the Bidder's varied Takeover Bid in the absence of a Superior Proposal.
	D	Target and Bidder have agreed to co-operate with each other in relation to the varied Takeover Bid on the terms of this agreement.
Governing law	Queensland, Australia	
Date of agreement	See Signing page	

General terms

1 Definitions and interpretation

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

ACCC means the Australian Competition and Consumer Commission.

Advisers means, in relation to an entity, its legal, financial and other expert advisers.

Announcement Date means 8 May 2015.

ASIC means the Australian Securities and Investments Commission.

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

Authorised Officer means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

Bidder's Statement means the replacement bidder's statement issued by Bidder in respect of the Takeover Bid and dated 7 April 2015.

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

Competing Transaction means a transaction or proposed transaction notified to the Target Board which, if completed, would mean a person (other than Bidder or its Related Bodies Corporate) would:

- (a) directly or indirectly, acquire or obtain a right to acquire an interest or relevant interest in or become the holder of:
 - (i) 10% or more of all Target Shares; or
 - (ii) any current production, development or exploration asset, or other material asset, of the Target 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 Target, 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 Target.

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

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

Director means a director of Target, other than Mr Zezhong Li (and Mr Qian Deng, as alternate director).

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); or
- (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; or
- (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); or
- (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; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (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); or
- (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.

Listing Rules means the Listing Rules of ASX Limited.

Long Term Share Plan means the loan share plan whereby Target issues shares or a trustee transfers shares to relevant executives of Target at market value, as approved by shareholders of Target in 2010.

Offer means each offer to acquire Target Shares dated 13 April 2015 and made pursuant to the Takeover Bid, the terms of which are contained in the Bidder's Statement, as are proposed to be increased in accordance with the announcement to be released by Bidder under clause 2(a).

Offer Period means the period during which the Offer is open for acceptance, including any extension of the Offer Period.

Officers means, in relation to an entity, its directors, officers, partners and employees.

Regulatory Authority includes:

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

Related Bodies Corporate has the meaning given in the Corporations Act.

Representatives of a party includes:

- (a) each of the Related Bodies Corporate of the party; and
- (b) each of the Officers and Advisers of the party or any of its Related Bodies Corporate.

Share Rights means rights granted to eligible Target employees under the Share Rights Plan.

Share Rights Plan means the plan established by Target in 2007 under which eligible employees may be offered rights to be issued ordinary shares in Target provided certain conditions are met.

Subsidiaries has the meaning given in the Corporations Act.

Superior Proposal means a publicly announced Competing Transaction which following consideration of advice from Advisers (including advice of Queen's Counsel or Senior Counsel) is:

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

Takeover Bid means the off-market takeover bid by Bidder for all Target Shares made in accordance with Chapter 6 of the Corporations Act.

Target Board means the board of directors of Target.

Target Group means Target and its Subsidiaries.

Target Share means a fully paid ordinary share in Target and includes Target Shares issued as a result of exercise of any Share Rights or in connection with the vesting of Target Shares outstanding under Target's Long Term Share Plan.

Target Shareholder means a holder of one or more Target Shares.

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 permitted 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 Brisbane, Queensland.

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 5.00 pm 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 Announcements

As soon as reasonably practicable on the Announcement Date:

- (a) Bidder will release to ASX an announcement increasing the consideration payable under the Offer to A\$1.85 in the form agreed between the parties; and
- (b) Target will release to ASX an announcement setting out the Directors' unanimous recommendation of the Offer to Target Shareholders (subject to there being no Superior Proposal) and intention to accept the Offer in accordance with the terms of this agreement, in the form agreed in writing between the parties.

3 Co-operation

3.1 Long Term Share Plan

Target must cooperate with Bidder and take the actions reasonably requested by Bidder to effect acceptance of the Takeover Bid in respect of Target Shares held by the trustee under the Long Term Share Plan, including, once a change of control of Target (as defined in the Long Term Share Plan) has occurred:

- (a) in the absence of a direction from a Long Term Share Plan participant to the trustee or to Target to the contrary, causing the trustee to accept the Offer in respect of each Target Share held by the trustee for which any loan amount remains outstanding and to apply the Offer consideration received for the share to repay the outstanding loan amount; and
- (b) seeking to enforce and collect payment of any loan amounts outstanding under the Long Term Share Plan in accordance with its terms and the terms of the applicable loan agreements.

3.2 Target Board appointments

For so long as Bidder has a relevant interest in an aggregate of at least 50% of the total issued Target Shares (other than Target Shares outstanding under Target's Long Term Share Plan), Target must use its best endeavours to

nominate and facilitate the appointment to the Target Board the number of persons designated by Bidder that is sufficient to constitute a majority of members of the Target Board, provided that Bidder will procure that its Representatives (including any directors appointed by Bidder pursuant to this clause 3.2) do not participate in decisions of Target in relation to the Takeover Bid.

4 Recommendation

Target represents and warrants that the Directors have met and considered the Offer and that all of the Directors have informed Target that they will:

- (a) unanimously recommend the Offer to Target Shareholders, subject to there being no Superior Proposal;
- (b) promptly, and in any event within 5 Business Days after the date of this agreement, accept, or procure the acceptance of, the Offer in respect of all Target Shares that they, or their associates, own, control or otherwise have a relevant interest in, other than Target Shares which remain restricted under the terms of the Long Term Share Plan; and
- (c) in respect of all Target Shares that they, or their associates, own, control or otherwise have a relevant interest in that are subject to the terms of the Long Term Share Plan, not do anything that would jeopardise the sale of those Target Shares into the Takeover Bid.

5 Other announcements

5.1 Required Disclosure

Where a party is required by law or the Listing Rules to make any announcement or make any disclosure relating to a matter the subject of the Takeover Bid, it may do so only after it has given the other party as much notice as reasonably practicable having regard to its disclosure obligations and has consulted with the other party to the extent reasonably practicable having regard to its disclosure obligations.

5.2 Other Announcements

Subject to clause 5.1 no party may make any public announcement or disclosure in connection with the Takeover Bid (including, where possible, disclosure to a Regulatory Authority) other than in a form approved by the other party (acting reasonably). Each party will use all reasonable endeavours to provide or withhold the approval as soon as practicable.

6 Warranties

6.1 Bidder Warranties

Bidder represents and warrants to Target that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this agreement by Bidder has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement; and
- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under Bidder's constitution or any agreement or deed or writ, order or injunction, rule or regulation to which Bidder is a party.

6.2 Target Warranties

Target represents and warrants to Bidder that:

- (a) each member of the Target Group is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this agreement by Target has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under Target's constitution or any agreement or deed or writ, order or injunction, rule or regulation to which Target or any of its Subsidiaries is a party; and
- (d) none of Target or any of its Related Bodies Corporate or any of its or their Representatives are engaged in any discussions or negotiations in respect of any Competing Transaction.

7 Termination

7.1 Termination rights

This agreement may be terminated by either party by notice to the other party:

- (a) if the other party is in material breach of this agreement and that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) if Bidder withdraws the Takeover Bid as permitted by the Corporations Act for any reason;

- (c) if there is a material breach of a representation or warranty contained in clause 6.1 or 6.2 (as the case may be);
- (d) 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 Takeover Bid; or
- (e) if any member of Target Group becomes Insolvent.

7.2 Termination by Bidder

This agreement may be terminated by Bidder by notice in writing to Target if:

- (a) a Superior Proposal is made or publicly announced for Target by a third party;
- (b) any director of Target does not recommend the Takeover Bid be accepted by Target Shareholders or having recommended the Takeover Bid, withdraws or adversely modifies his or her recommendation of the Takeover Bid; or
- (c) a person (other than Bidder or its associates) has a relevant interest in more than 5% of the Target Shares on issue.

7.3 Effect of termination

If this agreement is terminated by another party under this clause 7:

- (a) each party will be released from its obligations under this agreement except its obligations under clauses 1 and 9;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

8 Notices and other communications

8.1 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.

8.2 When effective

Communications take effect from the time they are received or taken to be received under clause 8.3 (whichever happens first) unless a later time is specified.

8.3 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent;
- (c) if sent by email, when received by the recipient.

9 Miscellaneous

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 Remedies cumulative

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

9.7 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.

9.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on completion of any transaction contemplated by this agreement.

9.9 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.

9.10 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.

9.11 Costs

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.

9.12 Entire 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.

9.13 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 prior written consent of the other party.

9.14 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) clauses 9.14(a) and 9.14(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.

9.15 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.

9.16 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

EXECUTED as an agreement.

Bid Implementation Agreement

Signing page

DATED: _____ May 2015

**EXECUTED by GUANGDONG RISING)
H.K. (HOLDING) LIMITED:)**

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)

)

)

)

[Signed 'Lixin Wang']

[Signed 'Hongqun Weng']

.....)

.....)

Signature of director

Signature of director

)

)

LIXIN WANG

HONGQUN WENG

.....)

.....)

Name of director

Name of director

)

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

[Signed 'Garry Hounsell'])
.....)

Signature of director)

GARRY HOUNSELL)
.....)

Name of director (block letters))

[Signed 'Paul Scarr'])
.....)

Signature of company secretary)

PAUL SCARR)
.....)

Name of company secretary (block)
letters))