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# **DEED POLL**

establishing the

# **BUCCANEERS' BOUNTY TRUST**

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## Parties

<b>Initial Trustee</b>	<b>BUCCANEERS' BOUNTY PTY LTD (ACN 555 555 555)</b> Address: C/- Work Club, L8/99 Elizabeth Street, Opp. NSW Supreme Court, Sydney NSW 2000 Fax: +61 (0) 2 9475 0075 Email: bounty@blueocean.law  (the <i>Initial Trustee</i> )
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## Recitals

- A By this deed poll, the Initial Trustee establishes a fixed unit trust (the *Trust*) and declares this deed poll to be the constitution of the Trust.
- B The Initial Trustee consents to become the Trustee in accordance with the powers, and subject to the provisions, of this deed poll.
- C The beneficial interest in the Trust is divided into Units. The Trust is constituted for the benefit of the Unitholders and, by holding Units, each Unitholder shall be bound by the terms of this deed poll.

## Operative provisions

### 1. Definitions and interpretation

#### Definitions

1.1 The following definitions apply in this deed poll:

*Accounting Period* means each of the following:

- (a) the period commencing on the Commencement Date and ending on the following 30 June;
- (b) each subsequent period of 12 calendar months ending on 30 June;
- (c) the period commencing on the last 1 July prior to the Vesting Day and ending on the Vesting Day; and
- (d) any other period determined by the Trustees (provided that no such period may commence prior to the Commencement Date or end after the Vesting Day).

*Certificate* means a certificate issued under clause 6.1 in respect of any Units for the time being outstanding.

*Commencement Date* means the date on which Units are first issued.

**Controller** has the meaning given the Corporations Act.

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

**Distribute** means pay, transfer, assign, convey, apply or Set Aside.

**Fair Value** means the fair value of particular Units determined in accordance with Australian accounting principles.

**Foreign Income** means foreign income as defined in section 6AB(1) of the applicable Tax Act.

**Franked Dividends** means dividends the whole or part of which are taken to have been franked under Part 3-6 of the applicable Tax Act.

**General Meeting** means a meeting of Unit Holders convened in accordance with clause 7.

**Governmental Agency** means any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**Insolvency Event** means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
  - (i) except for the purpose of a solvent reconstruction or amalgamation:
    - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
    - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
    - (C) a resolution that it be wound up is passed or proposed;
  - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
  - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
  - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
  - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
  - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to

- the Australian Securities and Investments Commission that any such action be taken;
- (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
  - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
  - (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
  - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
  - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
- (i) a bankruptcy notice is issued against the person;
  - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
  - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
  - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
  - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
  - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
  - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
  - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

**Investment** means any one of the holdings of investments forming for the time being a constituent part of the Trust Fund including the assets and goodwill of any business vested in or carried on by the Trustee.

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth).

**Net Income** means the net income of the Trust determined in accordance with section 95(1) of the applicable Tax Act.

**Partly Paid Units** has the meaning given in clause 4.1.

**Property** means tangible, intangible, real, personal, movable or immovable property of any description and at any location including policies of assurance or endowment, cash and choses in action.

**Register** has the meaning given in clause 6.4.

**Set Aside** means, in respect of any particular assets, the placement of those assets to the credit of any particular Unitholders in the books of the Trust in accordance with clause 11.6.

**Separate Trust** means a separate trust created pursuant to clause 11.6(b) in respect of any assets that have been Set Aside.

**Special Resolution** means a resolution passed as special business at a duly convened General Meeting by at least 75% of the votes cast by the Unitholders present and voting on the resolution in person or by proxy.

**Tax Acts** means the ITAA 1936 and the *Income Tax Assessment Act 1997* (Cth).

**Trust** has the meaning given in Recital A.

**Trust Fund** means, subject to clause 11.6(b), the trust fund of the Trust from time to time, including:

- (a) all amounts contributed, credited or paid for any Units issued pursuant to this deed poll;
- (b) any Property derived, received, advanced to, acquired, borrowed or raised by the Trustee from any source at any time, whether capital or income, held by the Trustee upon the Trust and subject to the powers and provisions of this deed poll;
- (c) any accumulations of Trust Income made by the Trustees under this deed poll; and
- (d) all accretions to, or income, profits or gains of, the trust fund of the Trust.

**Trustee Act** means the *Trustee Act 1925* (NSW).

**Trustees** means the trustees of the Trust from time to time (being, on the date of this deed poll, this Initial Trustee), whether original, additional, surviving, alternate or substituted.

**Trust Income** means the income produced from:

- (a) the Investments and Property of the Trust Fund; or
- (b) any other income producing activity conducted by the Trust,

after allowing for the expenses of the Trust calculated in accordance with the law of trusts, standard accounting procedures for trusts and the administrative powers contained within this deed poll and may include realised or unrealised capital gains if so determined by the Trustee.

**Unfranked Dividends** means dividends that are not Franked Dividends.

**Unit** means an undivided part or share in the beneficial interest in the Trust issued in accordance with this deed poll.

**Unitholder** means the registered holder of any Units from time to time, including persons jointly so registered and persons that may become so registered in the future, notwithstanding

that such persons may not be in existence at the date of this deed poll and, in the case of any such person that becomes a Unitholder in its capacity as the trustee of any trust, notwithstanding that such trust may not have come into existence at the date of this deed poll.

***Untaxed Amount*** means an amount not subject to tax under the Tax Acts.

***Vesting Day*** means the first to occur of the following dates:

- (a) eighty years less one day from the Commencement Date;
- (b) where the rule of law commonly known as “the rule against perpetuities” would render void any of the dispositions of trusts made under this deed poll relating to any property comprising the whole or part of the Trust Fund, the date of expiration of that perpetuity period; or
- (c) the date nominated by the Trustees in writing.

***Vesting Period*** means the period commencing on the Commencement Date and ending on the Vesting Day.

## **Interpretation**

1.2 The following rules of interpretation apply in this deed poll unless the context requires otherwise:

- (a) headings in this deed poll are for convenience only and do not affect its interpretation or construction;
- (b) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (c) a reference to a document (including this deed poll) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (d) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this deed poll;
- (e) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (f) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (g) a reference to writing includes any communication sent by post, facsimile or email;
- (h) a reference to time refers to time in Brisbane, Queensland and time is of the essence;
- (i) a reference to the consent, or a direction, of the Unitholders or any class of them shall be interpreted in accordance with clause 3.6;

- (j) the meaning of general words is not limited by specific examples introduced by “*include*”, “*includes*”, “*including*”, “*for example*”, “*in particular*”, “*such as*” or similar expressions;
- (k) a reference to any thing is a reference to the whole and each part of it;
- (l) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (m) words in the singular include the plural and vice versa; and
- (n) a reference to one gender includes a reference to the other genders.

## **2. Establishment of the Trust**

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### **Declaration of trust**

- 2.1 The Initial Trustee hereby declares that the Trustees will, on and from the Commencement Date, stand possessed of the Trust Fund and of the Trust Income on trust for the Unitholders by way of a fixed unit trust, with the powers and subject to the provisions of this deed poll.

### **Name of the Trust**

- 2.2 The Trust will be known as “The Buccaneers' Bounty Trust” or such other name as the Trustees may from time to time determine in writing.

### **Relationship of Trustee and Unitholders**

- 2.3 Nothing in this deed poll will constitute or be deemed to constitute a relationship of principal and agent between the Trustee and the Unitholders nor the relationship of partners as between the Trustee and the Unitholders or as between the Unitholders themselves, nor to give rise to any association between the Unitholders themselves. All Trust Income or capital payable to Unitholders in accordance with the provisions of this deed poll will be payable to them separately and Trust Income or capital received by the Trustee will not be received, or construed as received, by or on behalf of the Unitholders jointly or otherwise.

## **3. Units and Unitholders**

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### **Issue of Units**

- 3.1 The beneficial interest in the Trust Fund as originally constituted and as existing from time to time will be vested in the Unitholders.
- 3.2 Each Unit:
- (a) confers an equal undivided interest in the Trust Fund; and
  - (b) entitles its holder, together with the holders of all other Units, to the beneficial interest in the Trust Fund as a whole and not to any particular security or investment comprised in the Trust Fund or any part thereof and no Unitholder will be entitled to have transferred to the Unitholder any property comprised in the Trust Fund other than in accordance with the provisions contained in this deed poll.
- 3.3 Each person that becomes registered as a Unitholder will be deemed to have agreed to become a party to this deed poll (as it may be altered or varied from time to time) and will be entitled to

the benefit of and will be bound by the terms and conditions of this deed poll (as so altered or varied).

### **Fractions of Units**

- 3.4 Where any calculation performed under this deed poll results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Trustee determines. Any excess application or other money or property that results from rounding becomes an Asset of the Trust.

### **Issue of additional units**

- 3.5 The Trustee, with and only with the consent of the Unitholders:

- (a) may issue additional Units from time to time; and
- (b) has the power to:
  - (i) classify or designate such Units as carrying to not carrying any special rights, privileges, powers, liabilities or obligations; or
  - (ii) reclassify Units that are already issued and, in respect thereof, to create, amend or revoke any special rights, privileges, powers, liabilities or obligations,

in such manner as the Trustee thinks fit, provided that, unless the Unitholders agree otherwise or waive the operation of this clause 3.5 in any particular case:

- (c) all new issues of Units of a particular class shall be offered in the first instance to existing Unitholders holding Units of that class pro rata to their existing holdings;
- (d) all new issues of Units of a class not previously issued will be offered in the first instance to the Unitholders (of whatsoever class) pro rata to their existing holdings; and
- (e) offers of new issues of Units will be made by notice specifying the number and class of the Units offered and a period within which the offer may be accepted and, after the expiration of that period, or on the receipt of an intimation from the person to whom the offer is made that it declines to accept the Units offered, the Trustee may dispose of those Units in such manner as it thinks most beneficial to the Trust Fund. The Trustee may similarly so dispose of any new Units which, in the opinion of the Trustee, by reason of the proportion that those new Units bear to the Units held by the persons entitled to the offer, cannot be conveniently offered under this clause 3.5.

### **Unitholders' consent**

- 3.6 For the purposes of this deed poll, the consent of the Unitholders or any class thereof to any act or thing, or the direction of the Unitholders or any class thereof in relation to any act or thing, will conclusively be deemed to have been given on production of:

- (a) a consent in writing executed by or on behalf of all of the Unitholders, or all of the Unitholders of the relevant class, as the case may be; or
- (b) a minute signed by the chairman of a meeting of the Unitholders, or a meeting of the Unitholders of the relevant class, as the case may be, stating that, at a duly convened meeting of the Unitholders or the Unitholders of the relevant class (as applicable), a

resolution was duly passed in favour of such consent or direction by a majority, or in the case of special consent or special direction by 75 per cent or more, of the votes cast by the Unitholders present in person or by proxy at the meeting.

### **Valuations**

- 3.7 The Trustee may at any time, and must if requested by Unitholders holding a majority of the Units, cause a valuation of the Property and Investments of the Trust Fund to be made by such competent valuer or expert as the Trustee may decide.

### **Liability of Unitholders**

- 3.8 Save for any liability expressly contracted for, no Unitholder will incur any liability, whether under or in connection with this deed poll or by virtue of being or becoming a Unitholder, to the Trustee any other Unitholder or any person, and in particular:
- (a) no Unitholder will incur any liability by way of indemnity or otherwise in respect of any contract, act or omission of the Trustee whether or not such contract, act or omission was made in the course of the carrying on of any business made at the request or direction, or with the concurrence, of the Unitholder or was wrongful and whether or not at the time of such contract, act or omission the Trust Fund was solvent or sufficient to meet the Trustee's right of indemnity under clause 15;
  - (b) to the maximum extent permitted by law, any statute or rule of law providing for indemnity of the Trustee by any Unitholder is hereby negated; and
  - (c) except in accordance with this clause 3.8, the Trustee will not claim or seek to enforce against any Unitholder any indemnity or other liability and the Trustee's right of indemnity against the Trust Fund is restricted to the Trustee's rights under clause 15.

### **Number of Unitholders**

- 3.9 The Trustee must ensure that the Trust is registered under the Corporations Act before the number of Unitholders exceeds 20.

## **4. Partly Paid Units**

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- 4.1 The Trustee may issue Units of any class without requiring full immediate payment in cash for them (*Partly Paid Units*) whereupon the provisions of this clause 4 will apply. The Trustee may at such time make arrangements so that the Unitholders' obligations in relation to the timing and amounts of call payments made under clause 4.2 will vary from Partly Paid Unit to Partly Paid Unit.
- 4.2 The Trustee may, from time to time, make calls on a Unitholder in respect of any money unpaid on the Units held by the Unitholder. Such calls may specify a time at which payment is required and each Unitholder must pay to the Trustee the amount called on the Units held by the Unitholder within the time specified, provided that no Unitholder will be obliged to comply with a time limit of less than 14 days in this regard.
- 4.3 The joint holders of a Unit will be jointly and severally liable to pay all calls in respect of them.
- 4.4 A Unitholder may, at any time, offer to pay to the Trustee all, or any part of, the money uncalled and unpaid on any Units held by the Unitholder. The Trustee may, in its absolute discretion, either accept or reject such payment.

- 4.5 As soon as is reasonably practicable after any Unitholder has made a payment under clause 4.2 or 4.4, the Trustee shall endorse the relevant Certificate to show the amount cumulatively paid in respect of each Unit represented by the Certificate.
- 4.6 The Trustee will have a first and paramount lien on every Partly Paid Unit for all money (whether immediately payable or not) called or payable at a fixed time in respect of a Partly Paid Unit. The Trustee will also have a first and paramount lien on all Partly Paid Units registered in the name of the same Unitholder for all money presently payable by that Unitholder to the Trustee, but the Trustee may at any time declare any Unit to be wholly or in part exempt from the provisions of this clause 4.6. The Trustee's lien on a Unit extends to all Trust Income or capital of the Trust Fund payable in respect of that Unit to its holder.
- 4.7 The Trustee may sell any Units over which the Trustee has a lien in accordance with clause 4.6 or any other provision of this deed poll, provided that no such sale will be made:
- (a) unless a sum in respect of which the lien exists is then due and payable; and
  - (b) until the expiration of 14 days after written notice, demanding payment of the amount in respect of which the lien exists as is then due and payable, has been served on the relevant Unitholder or on the person entitled to the Unit because of the death, bankruptcy or mental incapacity of that Unitholder (as applicable).
- 4.8 The proceeds of a sale under clause 4.7 will be received by the Trustee and applied in payment of the amount in respect of which the lien exists as is presently payable and the residue (if any) will, subject to a like lien for sums not presently payable as existed on the Units before the sale, be paid to the person entitled to the Units at the date of sale.

#### **Forfeiture of Partly Paid Units**

- 4.9 Without affecting the rights of the Trustee under clauses 4.1 to 4.8 or otherwise, if a Unitholder fails to pay any call, or instalment of a call, on the day appointed for its payment, the Trustee may at any time thereafter, during the time that any part of the call or instalment remains unpaid, serve a notice on the Unitholder requiring payment of as much of the call or instalment as is unpaid.
- 4.10 The notice referred to in clause 4.9 must:
- (a) appoint a further date, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made; and
  - (b) state that, unless the sum demanded is paid on or before the date appointed, the Units in respect of which the call was made will be liable to forfeiture by the Trustee.
- 4.11 If any of the requirements of clauses 4.9 and 4.10 are not complied with, any Unit in respect of which notice has been given may, at any time thereafter, but before the payment required by the notice has been made, be forfeited by a resolution of the Trustee to that effect. Forfeiture will include all entitlements to all income, profits and gains of any kind in respect of the forfeited Unit not actually paid or credited to its holder before the date of the forfeiture.
- 4.12 A forfeited Unit may be sold or otherwise disposed of on any terms and in any manner as the Trustee thinks fit and, at any time before a sale or disposition, the forfeiture may be withdrawn on any terms as the Trustee thinks fit.