



Adapt. Chart new markets.

SAMPLE

DEED OF AMENDMENT

between

:= CAPTAIN AHAB

and

:= CAP'N JACK SPARROW
acting as the trustee of the
CARIBBEAN TREASURE TRUST

CONTENTS

1. Definitions and interpretation 5

2. Conditions precedent 8

3. Amendment and restatement of Principal Document 9

4. Mutual warranties 9

5. Trustees 10

6. Notices 11

7. General 12

SCHEDULE 1 | Conditions Precedent 15

SCHEDULE 2 | Aim of amendments 16

EXECUTION 17

ANNEXURE 1 | Amended Document 18

SAMPLE

Date

Parties

::= **CAPTAIN AHAB**

Address: 5 Ocean Road, Beachside City NSW 2000

Email: ahab@pegleg.com

::= **CAP'N JACK SPARROW** acting as the trustee of the **CARIBBEAN TREASURE TRUST**

Address: 6 Archipelago Crescent, Sunburst Vale NSW 2001

Fax: (02) 9999 9999

Recitals

- A On 26 January 2020, the parties entered into a deed entitled "**JOINT VOYAGE AGREEMENT**" (the *Principal Document*).
- B The parties have agreed that the Principal Document is amended and restated to be in the form of Annexure 1 in accordance with the terms of this deed (the *Amended Document*).
- C This deed is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this deed unless the context requires otherwise:

Amended Document has the meaning given in Recital B.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Conditions Precedent means the conditions precedent to the amendments under clause 3 taking effect as set out in Schedule 1.

Controller has the meaning given in the Corporations Act.

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

Effective Date means the date that is 1 Business Day after the date on which the Conditions Precedent are satisfied or waived in accordance with this deed.

Effective Time means 09:00 AM, or any other time of day agreed in writing by the parties, on the Effective Date.

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.

Principal Document has the meaning given in Recital A.

Relevant Trust means, in respect of any Trustee, the trust in respect of which the Trustee is expressed to have entered into this deed as trustee.

Trustee means any party to this deed that is expressed to have entered into this deed in its capacity as a trustee of any trust.

Interpretation

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

- (a) headings in this deed are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this deed is prepared by (or on behalf of) that party;
- (c) 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;
- (d) a reference to a document (including this deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this deed;

- (f) in each schedule to this deed, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) 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;
- (h) 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;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a liability includes a present, prospective, future or contingent liability;
- (m) the word "*month*" means calendar month and the word "*year*" means 12 calendar months;
- (n) 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;
- (o) a reference to a "*party*" is a reference to a party to this deed (including any person that executes a deed of adherence to this deed), and a reference to a "*third party*" is a reference to a person that is not a party to this deed;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

2. Conditions precedent

2.1 Notwithstanding any other provisions of this deed, the parties acknowledge and agree that the obligations of the parties under this deed will not become binding, and the amendments of the Principal Document pursuant to this deed will not take effect, unless and until all of the Conditions Precedent are:

- (a) satisfied; or
- (b) waived in accordance with this deed.

Satisfaction of conditions

2.2 The parties must use all reasonable endeavours, so far as lies within their respective powers, to procure that the Conditions Precedent are satisfied as soon as practicable.

Waiver

2.3 A Condition Precedent may only be waived by written agreement between all parties.

Notice

2.4 Each party must promptly notify the other parties in writing as soon as it becomes aware that a Condition Precedent is satisfied or becomes, or is likely to become, incapable of being satisfied.

3. Amendment and restatement of Principal Document

3.1 With effect on and from the Effective Time, the parties agree that the Principal Document is hereby amended and restated to be in the form of the Amended Document and the parties agree to be bound by the Amended Document on and from the Effective Time.

3.2 The parties acknowledge and agree that:

- (a) this deed varies the Principal Document and does not terminate, discharge, rescind or replace the Principal Document; and
- (b) nothing in this deed:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy that arose under or in connection with the Principal Document before the Effective Time; or
 - (ii) discharges, releases or otherwise affects any liability or obligation that arose under or in connection with the Principal Document before the Effective Time.

Aim of amendments

3.3 The intention of the parties in entering into this deed is set out in Schedule 2.

4. Mutual warranties

As at the time of execution of this deed and as at the Effective Time, each party represents and warrants to each other party that each of the following statements is true, accurate and not misleading by reference to the facts, matters and circumstances existing at the relevant time:

- (a) **(due incorporation)** if the party is a company, it is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted on that date;
- (b) **(powers)** it has the power and authority to execute, deliver and perform its obligations under this deed and the transactions contemplated by this deed, and no limit on its powers will be exceeded as a result of the entry into and/or performance of this deed;
- (c) **(authorisations)** it has taken all necessary actions, and obtained all required consents, to enable it to execute, deliver and perform its obligations under this deed, and any such authorisations are in full force and effect;
- (d) **(non-contravention)** its execution and performance this deed does not, and will not, contravene or conflict with:
 - (i) its constitutional documents, if the party is a company; or
 - (ii) to the best of its knowledge after due inquiry: