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SAMPLE

**PROMISSORY NOTE
[IOU]**

from

CAP'N JACK SPARROW ENTERPRISES PTY LTD
(ACN 343 784 343)

to

NOT SO SAVVY INVESTOR

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SAMPLE

Date

Parties

Issuer	CAP’N JACK SPARROW ENTERPRISES PTY LTD (ACN 343 784 343) Address: Never See Me Again Estate, Savvyville NSW 2656 Email: jack@piratemail.com (the <i>Issuer</i>)
Noteholder	NOT SO SAVVY INVESTOR Address: 54-54A Must Be High Street, Kensington SA 5068 Email: notsosavvy@investor.com (the Noteholder)

Recitals

- A This promissory note evidences the indebtedness of the Issuer to the Noteholder for the Principal Amount, subject to the terms of this promissory note.
- B This promissory note is an unconditional promise made by the Issuer to the Noteholder to pay the Principal Amount to the Noteholder, or to its order, in accordance with the terms of this promissory note. As such, this deed is a “note” within the meaning of Part IV of the Bills of Exchange Act.

Operative provisions

1. Definitions and interpretation

Definitions

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

Bills of Exchange Act means the *Bills of Exchange Act 1909* (Cth).

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

Controller has the meaning given in the Corporations Act.

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

Demand Notice has the meaning given in clause 4.1.

Event of Default means the occurrence of any of the following:

- (a) the Issuer fails to pay in full any sum payable by it pursuant to this deed when due;
- (b) an Insolvency Event occurs in respect of the Issuer; or
- (c) a material breach occurs in respect of the Issuer for the purposes of clause 10.7.

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.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

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.

Interest Commencement Date means the date of this deed.

Interest Payment Date means the last day of each month during the Interest Term. For the avoidance of doubt, the calendar month in which the Interest Commencement Date falls is the first month of the Interest Term.

Interest Rate means 5.00% per annum.

Interest Term means the period commencing on and including the Interest Commencement Date and ending on and including the Repayment Date.

Outstanding Interest means, at any time, the amount of the interest accrued under clause 3.1 that is outstanding at that time.

Outstanding Principal means, at any time, the amount of the Principal Amount that is outstanding at that time.

Principal Amount means the principal amount of USD 1,000,000.00 (one million) for which the Issuer is indebted to the Noteholder on the terms of this deed.

Repayment Date has the meaning given in clause 4.1(b).

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) 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;
- (g) 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;
- (h) a reference to writing includes any communication sent by post, facsimile or email;
- (i) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (j) all monetary amounts are in Australian currency;
- (k) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;
- (l) 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;
- (m) a reference to a "**party**" is a reference to a party to this deed, and a reference to a "**third party**" is a reference to a person that is not a party to this deed;
- (n) a reference to any thing is a reference to the whole and each part of it;

- (o) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (p) words in the singular include the plural and vice versa; and
- (q) a reference to one gender includes a reference to the other genders.

2. Indebtedness

The Issuer acknowledges and agrees that it is indebted to the Noteholder for the Principal Amount on the terms of this deed.

3. Interest

Accrual of interest

- 3.1 Simple interest will accrue on the Outstanding Principal during the Interest Term at the Interest Rate. Such interest will accrue daily and be calculated on the basis of a 365-day year. For the avoidance of doubt, such interest will not be capitalised or compounded.

Payment of interest

- 3.2 The Issuer must pay all Outstanding Interest on a monthly basis in arrears on each Interest Payment Date.

4. Repayment

Repayment on demand

- 4.1 The Noteholder may, by notice to the Issuer at any time (a *Demand Notice*), require the Issuer to repay all or part of the Outstanding Principal, together with the Outstanding Interest accrued thereon, on a specified date. The Demand Notice must specify:
- (a) the amount of the Outstanding Principal to be repaid; and
 - (b) the date on which such payment is to be made (the *Repayment Date*), which must not be earlier than the date that is 10 Business Days after the date of receipt, or deemed receipt, of the Demand Notice by the Issuer.
- 4.2 If the Noteholder serves a Demand Notice on the Issuer, the Issuer must pay to the Noteholder, or to its order, the amount of the Outstanding Principal specified in the Demand Notice, together with the Outstanding Interest accrued thereon, on the Repayment Date.

Prepayment permitted

- 4.3 Nothing in this deed precludes the Issuer from repaying all or part of the Outstanding Principal, together with the Outstanding Interest accrued thereon, earlier than is required under this deed at any time in its discretion without any premium or penalty, provided that the Issuer gives the Noteholder at least 10 Business Days' notice before making any such early repayment.

5. Events of Default

If an Event of Default occurs, the Noteholder may, by notice to the Issuer, declare all or part of the Outstanding Principal, together with the Outstanding Interest accrued thereon: