

## Smith Robinson Family Trust

### Discretionary Trust Document Package

Prepared for Smith Robinson  
Your Client  
Account Number  
Matter Name Family Trust  
Matter Number  
Prepared by Customer Support  
Date 24 February, 2011 2:59 PM  
downloaded

#### Contents of document package

---

Trust Deed .....	2
Schedule .....	16

#### What to do next

---

##### Before you print your document

You must press "CTRL + A" then "F9" to repaginate the table of contents once you have opened this document. If you forget to do this, you may see errors in the Table of Contents when you print, and there will be important omissions in the clauses of the document itself.

##### You need to arrange for the documents to be signed and the trust established

How to establish the trust is explained in the *Discretionary Trust Establishment Kit*, prepared by Maddocks. The Kit starts on the next page.

#### Questions or further information

---

If you have any questions, you can call Cleardocs on 1300 307 343.

**Cleardocs** will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.

## **Discretionary Trust Establishment Kit**

This Kit has been prepared by Maddocks.

### **Introduction: Understanding the structure of the Trust**

The Cleardocs discretionary trust is a trust under which the trust's trustee or trustees may distribute trust income or other trust property:

- among the beneficiaries named in the schedule to the trust deed, or
- to any one or more people who fit within the description of the general class of beneficiaries which is also set out in the schedule.

At the trustees' complete discretion, the distributions of trust income or other trust property may be made to any number of these eligible beneficiaries and in any proportion.

If you require a trust in which the beneficiaries have a fixed interest in the income or other trust property, or where the class of eligible beneficiaries is restricted (say, to only blood relatives of the named beneficiaries), then you must seek legal advice. Please contact us so we may refer you to Maddocks who can provide you with a free estimate of fees for drafting a deed to suit your needs.

Cleardocs also has available a hybrid trust deed and a unit trust deed. Please see the product pages on their website for information on the trusts created by these deeds.

### **Process: Establishing the Discretionary Trust**

To effectively establish the Smith Robinson Family Trust, you need to arrange for the following formalities to be completed.

#### **Sign the documents – in the right order**

- 1 Each of the documents in the Discretionary Trust package must be properly executed by the relevant parties as indicated. Before the Discretionary Trust deed is executed, the trustee should execute the consent to act.

#### **Settlor to pay**

- 2 The settlor must pay the settled sum as specified in the Discretionary Trust deed to the trustee and the trustee must issue the settlor a receipt for the sum paid.

#### **Pay stamp duty**

- 3 The original and all counterparts of the Discretionary Trust deed should be lodged for assessment of stamp duty with the revenue office of the State or Territory in which the Discretionary Trust was established. The applicable amount of stamp duty must be paid. The amount varies according to the State or Territory.

#### **Copies of the Discretionary Trust deed**

- 4 The trustee should keep the original executed version of the Discretionary Trust deed.

### **Apply for an Australian Business Number (known as an 'ABN')**

- 5 An application must be made to the Australian Taxation Office for an Australian Business Number.

### **Trustee to comply with its responsibilities**

- 6 At all times, the trustee is to make sure that it carries out its duties in relation to the Trust in accordance with the provisions of the Discretionary Trust deed. In this regard, the trustee should ensure that it reviews and is familiar with the terms of the Discretionary Trust deed.

### **Any questions?**

If you have any questions:

**about your documents or about establishing your Discretionary Trust**, please contact your accountant or Two Administrator 2 on 03 98869123; or

**about legal issues**, contact the law firm Maddocks on (03) 9288 0555 and ask for the Cleardocs helpline.

All the legal information contained in this document is provided by our lawyers at Maddocks.

SAMPLE

# Discretionary Trust Deed

establishing the

---

**Smith Robinson Family Trust**

---

SAMPLE

CLEARDOCS PTY

1 Albert St  
test VIC 3000  
Tel: 03 98869123  
Fax: 03 98869123  
it@cleardocs.com  
<http://www.cleardocs.com>

Maddocks  
Level 6  
140 William Street  
Melbourne VIC 3000  
Tel: 03 9288 0555  
Fax: 03 9288 0666  
info@maddocks.com.au  
[www.maddocks.com.au](http://www.maddocks.com.au)

# Table of contents

<b>Overview</b>	<b>1</b>
<b>A The trust</b>	<b>2</b>
Establishment of a discretionary trust	2
Beneficiaries of the trust	2
Trustee may nominate additional beneficiaries	2
Trustee may delete a class of eligible beneficiaries	2
Interest of named beneficiaries and members of classes of beneficiaries	2
<b>B Distributions under the trust</b>	<b>2</b>
Until vesting day, the trustee has absolute discretion to distribute income to beneficiaries	2
Trustee's right to determine nature of income	2
Trustee's right to accumulate income	3
Failure to exercise discretion	3
Trustee's right to advance part of the trust fund	3
Trustee's right to distribute from a class of income	3
Trustee may determine what is income and what is capital	3
Allocation of income or capital of a category	3
Allocation of expenses	4
Distributed income and capital remain in categories	4
Method of distribution	4
Decisions to be in writing	4
Distribution to a guardian in case of legal disability	4
Distribution to a nominee	5
Distribution to charity	5
Trust for beneficiary under legal disability	5
Details of trust for beneficiary under a legal disability	5
Trustee is discharged by distribution	5
<b>C Ending of the trust</b>	<b>5</b>
Before vesting day, the trustee may decide to whom to distribute trust fund on that day	5
Failure to exercise discretion	5
<b>D The trustee's powers</b>	<b>6</b>
Overriding general powers	6
Specific powers	6
Trustee may delegate an exercise of power etc	8
Trustee may appoint a manager	8
Trustee may register assets in the name of a nominee	8
Authority to act on the trustee's behalf	8
Powers to be exercised at the trustee's absolute discretion	8
Advice	9
<b>E Limitations on benefiting under deed</b>	<b>9</b>
Settlor not to benefit from this trust	9
<b>F Liability, indemnity etc</b>	<b>9</b>
Liability of the trustee	9
Indemnity to the trustee	9
Indemnity in addition to any indemnity at law	9
No indemnity from beneficiaries	9
Trustee not bound to take proceedings against another trustee	9
Trustee may insist on protection	9
Remuneration	10
Administration expenses	10
<b>G Appointment, retirement etc of trustee and appointor</b>	<b>10</b>

	Trustee of the trust .....	10
	Retirement of the trustee .....	10
	Removal of trustee .....	10
	Appointment of trustee .....	10
	Termination of appointment of trustee.....	10
	Transfer of assets .....	10
	Appointor may appoint appointor .....	11
	Appointor may remove appointor in certain circumstances.....	11
	Appointor may appoint replacement by will .....	11
	Appointor on insolvency or if power not exercised.....	11
<b>H</b>	<b>Variation and termination of the trust .....</b>	<b>11</b>
	Trustee may vary this deed .....	11
	Variation not to cause vesting after vesting day .....	12
	Variation not to allow benefit to trustee .....	12
	Time variation takes effect.....	12
	Altering termination date.....	12
	Retained amounts .....	12
	Power to postpone sale .....	12
<b>I</b>	<b>Miscellaneous .....</b>	<b>12</b>
	Statements and accounts .....	12
	Financial statements .....	12
	Access to accounts and books .....	13
	Auditor .....	13
	Currency conversion .....	13
	Trustee may value assets and liabilities .....	13
	No partnership etc.....	13
	Notices.....	13
	Time notice is given.....	13
	Waiver .....	13
	Other rights preserved.....	14
	Severance.....	14
	More than one appointor .....	14
	More than one trustee .....	14
	Joint and several obligations .....	14
	References to laws.....	14
	Counterparts .....	14
	Jurisdiction.....	14
	<b>Definitions .....</b>	<b>15</b>
	<b>Schedule.....</b>	<b>16</b>
	<b>Execution .....</b>	<b>18</b>

## Overview

By executing this deed, the settlor creates a discretionary trust.

The trustee of the trust is given power to invest the trust fund at the trustee's absolute discretion. The trustee is given extensive powers to distribute the income and capital of the trust among a wide range of beneficiaries. Those powers are also to be exercised at the trustee's absolute discretion.

The beneficiaries are either named in the Schedule or are members of classes of persons described in the Schedule. The trustee has power to add beneficiaries and to remove beneficiaries. No beneficiary has any entitlement to any part of the trust fund under the trust deed.

The settlor cannot benefit under the trust.

Some of the trustee's powers can only be exercised with the consent of the appointor, if an appointor is named in the Schedule. The appointor has power to remove a trustee and appoint a new one.

SAMPLE

## **A The trust**

### **Establishment of a discretionary trust**

1 The settlor named in the Schedule, Joe Joseph, has paid the Settled Sum specified in the Schedule to the trustee named in the Schedule, Sandra Smith to establish the Smith Robinson Family Trust. Sandra Smith has agreed to be the initial trustee of the trust. The trustee is to act in accordance with this deed. The trust is to commence on the day this deed is executed and is to end on the 'vesting day'.

### **Beneficiaries of the trust**

2 The beneficiaries of the trust are:

- the persons named in the Schedule as beneficiaries; and
- the persons who are members of any of the classes of eligible beneficiaries specified in the Schedule.

### **Trustee may nominate additional beneficiaries**

3 The trustee may at any time nominate one or more persons (except the settlor) as an additional class of eligible beneficiaries under this deed. The trustee may do so by signing a statement to that effect.

However, the trustee must not do so without the consent of the appointor.

### **Trustee may delete a class of eligible beneficiaries**

4 The trustee may at any time, with the consent of the appointor, delete a class of eligible beneficiaries from the Schedule to this deed. The trustee may do so by signing a statement to that effect.

### **Interest of named beneficiaries and members of classes of beneficiaries**

5 A named beneficiary or a member of a class of eligible beneficiaries has no interest in any part of the trust fund or any of its income. Nor, as a group, do all the named beneficiaries and members of all the classes of eligible beneficiaries.

## **B Distributions under the trust**

### **Until vesting day, the trustee has absolute discretion to distribute income to beneficiaries**

6 Until the vesting day, the trustee has an absolute discretion to decide to distribute any part of the income of the trust fund for a financial year, in any proportions the trustee decides, to any one or more persons who are named in the Schedule as beneficiaries or who are members of any of the classes of eligible beneficiaries described in the Schedule. The trustee has an absolute discretion to exclude a named beneficiary or a member of a class of beneficiaries.

### **Trustee's right to determine nature of income**

7 The trustee may, instead of relying on the definition of 'income of the trust fund' set out in this deed, decide at any time prior to 30 June in a financial year to adopt, for that financial year, another definition of 'income of the trust fund'. A decision under this clause 7 must be made by signing a minute to that effect.



### **Trustee's right to accumulate income**

- 8 The trustee may decide to accumulate any income of the trust fund for any period that is allowed by the law governing this deed. When that decision is made, the relevant income (less any tax payable on it) becomes capital of the trust fund and the trustee ceases to have any power to distribute it under clause 6.

### **Failure to exercise discretion**

- 9 If the trustee fails to exercise the trustee's discretion under clause 6 or 8 on or prior to 30 June in a financial year, the income in respect of which the discretion has not been exercised will be held by the trustee in trust successively for the persons described below and in accordance with the following rules:
- 9.1 The named beneficiaries who are alive on 30 June of that financial year. If there are more than one, the income must be paid to them as tenants in common.
- 9.2 If there are no named beneficiaries alive on 30 June of that financial year, the next of kin of the named beneficiaries the share that the relevant named beneficiary would have received had all the named beneficiaries been alive on 30 June of that financial year.
- 9.3 If there is no next of kin, the income is to be treated as having been accumulated.

### **Trustee's right to advance part of the trust fund**

- 10 The trustee may, at any time before the vesting day, distribute any part of the trust fund (except a part already held on trust for a person under clause 18) to a named beneficiary or a member of a class of eligible beneficiaries, either immediately and absolutely or to be used for the maintenance, education, advancement or benefit of that person in any manner the trustee decides. The amount ceases to be part of the trust fund that the trustee can distribute or advance before the vesting day.

### **Trustee's right to distribute from a class of income**

- 11 The trustee may, at any time before 30 June in a financial year, decide that a distribution of income for that year is to be made solely from income that the trustee regards as a particular class of income.

### **Trustee may determine what is income and what is capital**

- 12 In determining the income of the trust for a financial year, the trustee may decide whether, and to what extent, a receipt or outgoing is on account of income or capital. The trustee's decision is final.

### **Allocation of income or capital of a category**

- 13 The trustee may resolve that income of a financial year, or capital which is distributed or accumulated under this deed, is the whole or part of the income or capital of a category. The result is that all or part of that income or capital is specifically or separately allocated and identified in a distribution or accumulation.

### **Allocation of expenses**

- 14 The trustee may allocate expenses and outgoings, at the trustee's discretion, to income or capital of any one or more categories. If the trustee does not do so, the expenses and outgoings are to be allocated in the following way:
- first, against income which is not income of a category;
  - second, against income of a category to which a tax credit, rebate or exemption does not attach;
  - third, against the remaining income.

### **Distributed income and capital remain in categories**

- 15 Income or capital to which a beneficiary becomes entitled and which can be identified as being of a category remains of that category after the beneficiary becomes entitled to it, and after it is passed to or received by the beneficiary.

### **Method of distribution**

- 16 The trustee may distribute an amount to a beneficiary under this deed in any one or more of the following ways:
- with the beneficiary's consent, by placing the amount to the credit of the beneficiary in a 24 hour call account;
  - by drawing a cheque for the amount payable to the beneficiary or paying the amount into a bank account in the name of beneficiary;
  - by paying the amount by cheque or in cash to a third person as directed by the beneficiary;
  - by satisfying any amount owed by the beneficiary to a third person;
  - by applying any part of the amount towards satisfaction of money owing by the beneficiary to the trustee on any account or owing to any other person;
  - by transferring any of the assets of the fund in specie to the beneficiary;
  - by setting the amount aside in a separate account in the books of the trust in the name of the beneficiary, in which case the amount shall be held on a separate trust for such beneficiary or if so determined in writing by the trustee, as an amount owed to the beneficiary as an interest free debt at call.

An amount paid by cheque is to be paid either personally or by post to the beneficiary's registered address.

### **Decisions to be in writing**

- 17 A decision by the trustee concerning distributions under the trust is to be evidenced in writing. The trustee must keep the evidenced decision with the papers relating to the trust, and must record its effect in the trust's books.

### **Distribution to a guardian in case of legal disability**

- 18 If a person who is entitled to a distribution of income or capital under this deed is under a legal disability, the trustee must either:
- make the payment to that person's parent, guardian or legal personal representative; or
  - hold the relevant amount in trust for that person alone on the same basis in all other respects as the trustee holds the trust fund.

### **Distribution to a nominee**

- 19 At the request of a person who is entitled to a distribution of income or capital under this deed and who is not under a legal disability, the trustee may distribute the amount to a person nominated by that person.

### **Distribution to charity**

- 20 A distribution to a charity is to be made to the Secretary or Treasurer of that charity.

### **Trust for beneficiary under legal disability**

- 21 The trustee may hold any amount which is distributable under this deed on trust for a beneficiary who is under a legal disability. The trustee may do so until the beneficiary ceases to be under a legal disability. The assets and income of that trust are not part of the assets or income of this trust.

### **Details of trust for beneficiary under a legal disability**

- 22 The trust for a beneficiary under a legal disability is subject to the following rules:
- The trustee may make a distribution towards the maintenance, education or benefit of the beneficiary and may make a distribution to a trustee or guardian of that beneficiary, without being responsible for what that person does with the distribution.
  - If the beneficiary dies before ceasing to be under a legal disability, the trustee must hold the assets of that trust on trust for the beneficiary's personal legal representative.

### **Trustee is discharged by distribution**

- 23 If the trustee makes a distribution in accordance with this deed, a receipt by the person to whom the distribution is made discharges the trustee's liability. The trustee is not responsible for what is done with the distribution.

## **C Ending of the trust**

### **Before vesting day, the trustee may decide to whom to distribute trust fund on that day**

- 24 Before the vesting day, the trustee has an absolute discretion to decide to distribute the trust fund and any unapplied and undistributed income from it, in any proportions the trustee decides, to any one or more persons who are named in the Schedule as beneficiaries or who are members of any of the classes of eligible beneficiaries described in the Schedule. The trustee has an absolute discretion to exclude a named beneficiary or a member of a class of beneficiaries.

### **Failure to exercise discretion**

- 25 If the trustee fails to exercise the trustee's discretion in relation to the whole of trust fund and any unapplied and undistributed income before the vesting day, the amounts in respect of which the discretion has not been exercised will be held by the trustee in trust successively for the persons described below and the trustee must, as soon as possible, distribute those amounts in accordance with the following rules:
- 25.1 The trustee must distribute the amount to the named beneficiaries who are alive on the vesting day. If there are more than one, the amount must be paid to them as tenants in common.

- 25.2 If there is no named beneficiary alive on the vesting day, the trustee must distribute to the next of kin of the named beneficiaries the share that the relevant named beneficiary would have received had all the named beneficiaries been alive on the vesting day.
- 25.3 If there is no next of kin, the trustee must distribute the amount to such of the entities listed in section 30-315(2) of the *Income Tax Assessment Act 1997* (Cwlth) at the date of this deed, as are existing on the vesting day in equal shares as tenants in common.

## **D The trustee's powers**

### **Overriding general powers**

- 26 The trustee has all the powers in relation to the assets of the trust that it is possible to give a trustee, including all the powers that an individual would have as the legal and beneficial owner of the assets.

### **Specific powers**

- 27 The following specific powers are included in the trustee's overriding general powers and do not in any way restrict the general powers contained in clause 26:

- to invest the assets of the trust and vary such investment at any time, and to enter into and pay for those investments;
- to advance or lend money to any person, with or without any security being provided;
- to borrow and raise money from any person;
- to enter into any derivatives contract, or purchase, sell or deal in any derivatives product, and otherwise to do and perform all things so as to operate, use or deal with facilities of any stock or futures exchange, either directly or through any broker or agent in any market anywhere in the world;
- to provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations;
- to mortgage, pledge, charge or otherwise provide the assets of the trust as security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation;
- to purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any real or personal property;
- to sell, transfer, hire, lease, dispose of, manage, divide or otherwise deal with any assets of the trust;
- to purchase, acquire, vary, sell, transfer or dispose of any deferred property or rights, or any life, life endowment, term or other policy, and to make any relevant payment or pay any premium from the assets of the trust;
- to pay out of the assets of the trust any costs, charges, taxes, duties or expenses of the trust including those which are:
  - incidental to the management of the assets of the trust;
  - incidental to, or incurred in the exercise of, any power, authority or discretion of the trustee;

- incurred because of the death of a trustee, the settlor, appointor or any beneficiary;
- to exercise all rights and perform all duties associated with the trustee holding shares, stock or debentures in any company;
- to establish, purchase, acquire, promote or conduct any company, business, profit-making undertaking or scheme, either in the trustee's own capacity or in its capacity as trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind up any such company, business, undertaking or scheme;
- to employ any person (including beneficiaries but not the settlor) to carry on any business of the trust or to do anything in connection with matters required to be done under this deed, and to remunerate that person (and make arrangements as to that person's superannuation);
- to appropriate, wholly or partly, any asset of the trust in satisfaction of any interest a person may have in the assets of the trust or any benefit which the trustee determines to pay to or apply for the benefit of, a beneficiary;
- to value, or engage a person to value, in whole or in part, the assets or any asset of the trust;
- to open and operate bank accounts in the usual way, to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities;
- to give receipts for money received;
- to deposit any securities, deeds or other documents with any bank;
- to underwrite shares, securities or other obligations;
- to grant options in respect of any of the assets of the trust;
- to become a director, or appoint any person as a director, of any company an interest in which forms part of the assets of the trust, and to be independently paid an amount appropriate for such a position;
- subject to the relevant provisions of this deed, to appoint new trustees in relation to all or any part of the fund on any terms the trustee sees fit;
- to receive any real or personal property by gift or by will as additions to the assets of the trust;
- to grant, cancel or redeem an annuity;
- to divide the assets in their own particular form, without first realising those assets, between the trust fund and any other trusts established under this deed;
- to exercise a power or discretion even though the trustee or a director, member, associate or relative of the trustee has or may have a direct or indirect interest in the method or result of exercising the power or discretion, or may benefit directly or indirectly from its exercise, provided that such power or discretion is exercised in good faith and for a proper purpose;
- to take any action to protect the assets of the trust;
- to enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward

- rate agreement and any other financial risk management agreement;
- to mix the trust fund with any other money, funds or property, including without limitation, other trusts' money, funds or property and may join with any other person or the trustee in its personal capacity or as trustee or any other trust fund or both of them in making common investments;
- in addition to the power set out in clause 28, to appoint in writing an attorney or attorneys and delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the trustee and execute any powers of attorney or other instruments necessary to effect such purpose;
- to make any election required or permitted at law;
- subject to the provisions of this deed, to exercise all or any of these powers:
  - as the trustee sees fit;
  - either alone or jointly with any person including a trustee for any other trust or the trustee in its personal capacity or as trustee of any other trust fund and to assume joint or several liability in respect of any joint exercise of these powers; and
  - in relation to the assets of the trust, as if the trustee was the beneficial owner of those assets.

In this clause, the term 'any person' is taken to include the trustee in his or her personal capacity, the trustee as trustee of another trust, any director, member, associate or relative of the trustee and any company, business or partnership in which the trustee is a director, member, partner or otherwise involved.

**Trustee may delegate an exercise of power etc**

28 The trustee may appoint a person to exercise any power or discretion of the trustee under this deed.

**Trustee may appoint a manager**

29 The trustee is not required to act personally, but may appoint a person to manage any part of the trust on the trustee's behalf.

**Trustee may register assets in the name of a nominee**

30 The trustee may register the assets in the name of a nominee. The trustee retains all the trustee's powers in relation to assets registered in the nominee's name.

**Authority to act on the trustee's behalf**

31 If the trustee authorises another person to exercise a power or discretion of the trustee, the trustee may include in the authority provisions to protect persons dealing with the authorised person. The trustee remains liable for the acts and omissions of the authorised person.

**Powers to be exercised at the trustee's absolute discretion**

32 The trustee has an absolute discretion whether to exercise a power under this deed, and how a power is to be exercised. Neither a beneficiary nor any other person may challenge an exercise of a power or a failure to exercise it, or require a reason for its exercise or non-exercise.

## **Advice**

- 33 The trustee may rely on advice from a qualified lawyer in relation to interpreting and applying this deed, and anything to be done or not done under it. The trustee may rely on advice or information supplied by any other person in relation to any matter that the trustee believes in good faith is within their competence.

## **E Limitations on benefiting under deed**

### **Settlor not to benefit from this trust**

- 34 The settlor is not entitled to any benefit under this trust. A person claiming under or in right of the settlor is not entitled to any benefit under this trust unless he or she is a named beneficiary.

## **F Liability, indemnity etc**

### **Liability of the trustee**

- 35 The trustee is not liable to the beneficiaries in respect of any loss unless it arises from fraud, gross negligence or breach of trust on the part of the trustee.

### **Indemnity to the trustee**

- 36 The trustee is entitled to an indemnity out of the assets of the trust in respect of any liability incurred in connection with acting as trustee of the trust. This does not apply if the liability arose from fraud, gross negligence or breach of trust on the part of the trustee.

### **Indemnity in addition to any indemnity at law**

- 37 The indemnity in the previous clause is in addition to any indemnities the trustee is entitled to by law.

### **No indemnity from beneficiaries**

- 38 A beneficiary is under no obligation whatever to personally indemnify the trustee or a creditor of the trust or any sub-trust established under this deed in relation to any liability, loss, damage or expense either incurred or suffered in connection with the trust. The trustee is unable to exercise against a beneficiary any right by way of subrogation or indemnity.

### **Trustee not bound to take proceedings against another trustee**

- 39 A trustee is not bound to take legal proceedings against a co-trustee for an alleged breach of trust.

### **Trustee may insist on protection**

- 40 The trustee is entitled not to enter into an agreement, execute a document or assume liability of any type in connection with the trust unless it includes a provision limiting the trustee's liability to the extent of the trustee's right to an indemnity from the assets of the trust.

## **Remuneration**

- 41 The trustee is entitled to reasonable remuneration for acting as trustee. The remuneration may be in the form of fees, salary, commission or other remuneration. It may be paid out of capital or income of the trust.

## **Administration expenses**

- 42 The trustee must pay all the expenses and costs of administering the trust out of the income or capital of the trust. If the trustee is engaged in a profession, the trustee may charge usual professional charges for any professional work done for the trust by the trustee or a professional, partner or employee.

## **G Appointment, retirement etc of trustee and appointor**

### **Trustee of the trust**

- 43 The initial trustee of the trust is named in the Schedule.

### **Retirement of the trustee**

- 44 A trustee may resign as trustee of the trust by giving the appointor sufficient notice to enable the appointor to appoint a replacement. However, unless there is a remaining trustee, the resignation is only effective when a new trustee has been appointed.

### **Removal of trustee**

- 45 The appointor may remove a trustee at any time by signing a statement to that effect.

### **Appointment of trustee**

- 46 The appointor may appoint an additional or replacement trustee at any time by a written statement to that effect. If there is no appointor, the first named beneficiary who is still alive may exercise this power.

### **Termination of appointment of trustee**

- 47 The appointment of a trustee terminates automatically if any of the following occurs:
- the trustee is found to be of unsound mind, or the trustee or his or her estate becomes liable to be dealt with in any way under a law dealing with mental health;
  - the trustee becomes bankrupt or makes an arrangement or composition with his or her creditors;
  - the trustee enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction), or has an administrator, receiver, official manager, or receiver and manager appointed to any part of its assets.

### **Transfer of assets**

- 48 On retirement or removal of a trustee, or automatic termination of a trustee's appointment, the trustee must immediately do each of the following at the trust's expense:
- hand over the books, accounts, documents and property of the trust to the new trustee;
  - do everything necessary to vest the assets of the trust in the new trustee;



- do everything reasonably required by the new trustee to hand over to the new trustee possession and control of any assets in the hands of third parties;
- do everything reasonably required by the new trustee to inform the new trustee of the full state of affairs of the trust.

#### **Appointor may appoint appointor**

49 The appointor may appoint a person as an additional or replacement appointor. The appointor may do so by deed.

#### **Appointor may remove appointor in certain circumstances**

50 Where an appointor has appointed an additional appointor (**second appointor**) pursuant to the power set out in clause 49, that appointor may remove the second appointor at any time. That appointor may do so by deed.

#### **Appointor may appoint replacement by will**

51 The appointor may appoint a person as a replacement by will. The will is effective for this purpose unless the appointor has revoked the power to appoint an appointor prior to the appointor's death.

#### **Appointor on insolvency or if power not exercised**

52 If a sole individual appointor:

- dies and has not appointed a replacement by deed or by will and has not revoked the power to appoint an appointor, then the named beneficiaries or the surviving named beneficiary becomes appointor on the appointor's death; or
- becomes mentally or physically incapable of fulfilling the role of appointor, the appointor's legal personal representative becomes appointor for so long as that incapacity continues.

If a sole company appointor enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction), or has an administrator, receiver, controller or receiver and manager appointed to any part of its assets, then the named beneficiaries or the surviving named beneficiary becomes appointor.

In either case, if there is no surviving named beneficiary, then:

- if the appointor is the sole individual appointor, that person's legal personal representative becomes appointor; or
- if the appointor is the sole company appointor, there will be no replacement appointor.

## **H Variation and termination of the trust**

#### **Trustee may vary this deed**

53 The trustee may vary this deed at any time before the vesting day, even to the extent of revoking all the trusts it establishes, but only with the consent of the appointor. The trustee must do so by executing another deed. That deed may reserve this power of variation.

### **Variation not to cause vesting after vesting day**

54 The trustee may not vary this deed in a way that causes any part of the trust fund to vest after the vesting day.

### **Variation not to allow benefit to trustee**

55 The trustee may not vary clauses 34 or 38.

### **Time variation takes effect**

56 A variation takes effect on the date specified in the deed. If no date is specified, it takes effect on the date of the deed.

### **Altering termination date**

57 The trust terminates 80 years after the date of this deed. It terminates at an earlier date if the trustee, with the appointor's consent, decides that in the interests of beneficiaries it should terminate at a specified earlier date.

### **Retained amounts**

58 The trustee must hold any retained amounts on trust for the beneficiaries in accordance with their entitlements at the time of termination of this deed.

### **Power to postpone sale**

59 The trustee may postpone the realisation of any asset for any period the trustee thinks desirable.

## **I Miscellaneous**

### **Statements and accounts**

60 The trustee must establish and maintain proper books of account which accurately reflect all receipts and outgoings of the trust. The trustee may separately record all income and capital of different categories or classes referred to in this deed.

### **Financial statements**

61 The trustee must ensure that financial statements are prepared as at the end of each financial year by an appropriately qualified accountant. The statements are to include a profit and loss account and a balance sheet. They are to be certified by that accountant to be a true and proper statement of the affairs of the trust in accordance with generally accepted accounting principles. They must set out:

- the income of the trust;
- the capital of the trust;
- costs and disbursements and other outgoings paid or payable out of the trust and chargeable against income;
- capital expenditure and liabilities chargeable to capital;
- investments and money comprised in the trust;
- amounts held in the accumulated income account;
- amounts distributed to beneficiaries.

### **Access to accounts and books**

62 A beneficiary is entitled to inspect the books and accounts of the trust on giving the trustee reasonable notice.

### **Auditor**

63 On the appointor's request, the trustee must appoint an auditor to act as auditor of the accounts of the trust.

### **Currency conversion**

64 If it is necessary to convert an amount from one currency to another, the trustee must decide when it is to take place and the basis on which it is to be done.

### **Trustee may value assets and liabilities**

65 The trustee may at any time value the assets and liabilities of the trust. In doing so, the trustee is not to be regarded as having a valuer's knowledge or any expertise in valuing assets. The trustee may determine what valuation methods and policies to apply. The valuation of an asset must be a market valuation unless the trustee decides that there is no market for an asset or that the market value does not represent its fair value.

### **No partnership etc**

66 This deed does not create the relationship of partners, or of principal and agent, between the trustee and the beneficiaries. It does not create the relationship of partners between the beneficiaries.

### **Notices**

67 A notice or other communication that is required to be given or made or that may be given or made to the trustee is only given or made if it is in writing and delivered personally or sent to the address or fax number set out in the Schedule, or a replacement address or fax number notified to beneficiaries by the trustee.

A notice or other communication that is required to be given or that may be given to a beneficiary is only given if it is in writing and delivered personally or sent to the beneficiary's registered address or fax number last notified in writing to the trustee.

### **Time notice is given**

68 A notice or other communication is given or made:

- when it is delivered personally;
- when it should have been delivered in the ordinary course of the post (3 days within Australia; 10 days outside);
- when the sender receives an acknowledgement or transmission report from the sender's fax that the notice or other communication was sent in full.

A notice or other communication that is given or made after normal business hours is given or made at 9:00 am on the next business day (recipient's business days and time).

### **Waiver**

69 The trustee or a beneficiary only waives a right or the performance of a duty by specifically waiving it in writing. Nothing else suffices.

**Other rights preserved**

70 This deed does not affect any other rights the trustee or a beneficiary may have apart from the deed.

**Severance**

71 This deed is to be interpreted so as to avoid any illegality. If any clause is nonetheless illegal, it is to be severed from the deed to the extent of the illegality.

**More than one appointor**

72 If there is more than one appointor at any time, the powers exercisable by the appointor are only exercisable by the appointors jointly.

**More than one trustee**

73 If there is more than one trustee at any time, the powers and discretions exercisable by the trustee are only exercisable unanimously or by a majority of the trustees.

**Joint and several obligations**

74 The obligations imposed on persons under this deed are imposed jointly and severally.

**References to laws**

75 References to laws in this deed refer to those laws as amended if that is consistent with the overall purpose of this deed and does not lead to an anomaly.

**Counterparts**

76 This deed may be executed by executing identical documents. It comes into effect when all the identical documents have been executed.

**Jurisdiction**

77 This deed is governed by the law of the jurisdiction specified in the schedule. Each party submits to the jurisdiction of the courts of that jurisdiction. No party may argue, on the basis of the doctrine of forum non-conveniens or any other basis, that the courts of that jurisdiction should not exercise jurisdiction.

## Definitions

**Appointor** includes the initial appointor (the person or persons named as appointor in the Schedule); and a person appointed as appointor in accordance with this deed.

**Assets** does not include distribution amounts that are immediately payable but are not yet paid, whether or not they have been transferred to a distribution account.

**Associate** means what it means under the *Corporations Act*.

**Beneficiary** means a beneficiary named in the Schedule, or a member of a class of eligible beneficiaries specified in the Schedule, or a person named as an additional beneficiary by the trustee in accordance with clause 3.

**Business day** means Monday to Friday, except public holidays in the jurisdiction stated in the Schedule.

**Child** includes an adoptive child.

**Class of eligible beneficiaries** means a class stated in the Schedule (except a class the trustee has deleted under clause 4), and a class nominated by the trustee under clause 3.

**Clear days** in relation to a period of notice, excludes the day the notice is given and the day it becomes effective.

**Financial year** means the period from 1 July in a year to 30 June in the next year. It also means the lesser period ending on 30 June after the date of this deed; and the period from 1 July until the termination of the trust before 30 June of the next year.

**Income** for a given financial year, excludes any income for that year that the trustee has decided to accumulate.

**Income of the trust fund** means, subject to clause 7, the net income of the trust as defined in section 95(1) of the *Income Tax Assessment Act 1936* (Cth) (as amended).

**Law** includes a requirement under a law, and the rules of a stock exchange or other body with whose rules the trustee must comply.

**New trustee** includes any remaining trustee.

**Next of kin** means a persons' spouse or, if there is no spouse, those most closely related by blood in equal degree.

**Person** includes an entity that is not a legal entity.

**Perpetuity period** means a period of 80 years from the date of this deed.

**Spouse** includes a person not legally married to a second person where that person is living with the second person as his or her spouse on a permanent and bona fide domestic basis.

**Tax** means any type of tax, duty, charge, fee or other requirement imposed by a government or government agency or authority of any type.

**Trustee** if there is more than one trustee at any time, then at that time 'trustee' means 'trustees'.

**Trust fund** includes any income that has been accumulated or that has not been distributed.

**Vesting day** means the first to occur of:

the expiration of the perpetuity period; or

such earlier date that the trustee, with the consent of the appointor (if any) determines in writing.

**Writing** includes writing in electronic form.

## Schedule

<b>Date of this deed</b>	24 February 2011
<b>Name of the trust</b>	Smith Robinson Family Trust
<b>Name of the settlor</b>	Joe Joseph
<b>Address of the settlor</b>	123 Main St MELBOURNE, VIC, 3000
<b>Name and address of the trustee</b>	Sandra Smith 123 High St MELBOURNE VIC, 3000
<b>Named beneficiaries</b>	Sandra Smith 123 High St MELBOURNE VIC, 3000 John Robinson 123 High St MELBOURNE VIC, 3000
<b>Classes of eligible beneficiaries</b>	means each of the following, but does <i>not</i> include the settlor, or any child or spouse of the settlor: The spouse of a named beneficiary; The parents of a named beneficiary; The children of the named beneficiaries; The grandchildren of the named beneficiaries; The brothers and sisters of the named beneficiaries; The nieces and nephews of the named beneficiaries; The uncles and aunts of the named beneficiaries and the children of those uncles and aunts; The spouses of any children of the named beneficiaries; The spouses of any grandchildren of the named

beneficiaries;

The spouses of any brothers and sisters of the named beneficiaries;

The spouses of any nieces and nephews of the named beneficiaries;

Schools, universities, colleges and other educational bodies of any kind either within or outside Australia;

Companies:

- Of which any of the beneficiaries otherwise mentioned in this schedule is a shareholder or director, or
- In which at least one share is owned beneficially by any of the beneficiaries otherwise mentioned in this schedule

The trustees of any trusts in which any of the beneficiaries otherwise previously mentioned in this schedule has any interest, including an interest that is only expectant or prospective;

Partners in any partnership in which any of the beneficiaries otherwise mentioned in this schedule is a partner;

Charities the trustee nominates for this purpose;

Other legal entities the trustee nominates for this purpose.

**Name of the appointor**

Sandra Smith

**The law of the jurisdiction that governs this deed**

Victoria

**The settled sum**

\$10

## Execution

Executed as a deed.

Dated: \_\_\_\_\_

Signed, sealed and delivered by:

Signature: \_\_\_\_\_  
Sandra Smith, trustee of the trust created by  
this deed

Witness signature: \_\_\_\_\_

Witness name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Joe Joseph  
Settlor of the trust created by this deed

Witness signature: \_\_\_\_\_

Witness name: \_\_\_\_\_

SAMPLE