



## **SMSF TRUST DEED VARIATION**

## **JODESA SUPERANNUATION FUND**

## **Copyright Warning © 2017**

### **NowInfinity Pty Ltd**

This document contains material ("**the Material**") protected by copyright, which copyright is owned by NowInfinity Pty Ltd ("**NowInfinity**").

The Material may not be reproduced in part or full in Australia or any other country by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any other form without the prior written permission of NowInfinity, except as permitted by the *Copyright Act 1968*.

You agree to the following terms:

- Not to reproduce the Material in any part without the prior written consent of NowInfinity;
- You acknowledge that the Material is provided by NowInfinity for general purposes and no specific legal, financial planning or accounting advice has been offered or provided in the making available of this template;
- You agree not to charge for providing the Material in whole or part to another person or company, or in any way make commercial use of the Material without the prior written consent of NowInfinity and payment of the appropriate copyright fee; and
- Not to modify or distribute the Material or any part of the Material without the expressed prior written permission of NowInfinity.

### ***Disclaimer***

This template is based on the relevant Australian Corporations, Superannuation and Taxation Laws as of 1 March 2017. NowInfinity, its employees and advisors offer no liability for any loss or damages of any kind whatsoever arising as a result of use of this template. This document is not personal or general advice for the purposes of the *Corporations Act 2001*, and no legal advice or accounting advice has been offered or given by NowInfinity, its employees and advisors in the production of this template on the NowInfinity website portal.

## DEED OF VARIATION OF JODESA SUPERANNUATION FUND

The date of this Deed is the date upon which the last of the parties executes the Deed.

### PARTIES

**TRUSTEE:** John Edward Sawyer and Deborah Lexly Sawyer of  
5 Olivine Gardens, WATTLE GROVE, WA 6107

**MEMBERS:** John Edward Sawyer and Deborah Lexly Sawyer of  
5 Olivine Gardens, WATTLE GROVE, WA 6107

### RECITALS

- A. John Edward Sawyer and Deborah Lexly Sawyer is the Trustee of Jodesa Superannuation Fund (the **Fund**).
- B. John Edward Sawyer and Deborah Lexly Sawyer are the Members of the Fund.
- C. The Fund was established by Deed dated 8 April 2010 and subsequently varied on 20 December 2013 (**Current Rules of the Fund**).
- D. Rule **28** of the Current Rules of the Fund allows the Trustee to vary the Governing Rules of the Fund (as the term is defined at Section 10(1) of the *Superannuation Industry Supervision Act 1993* (**SISA**), provided the variation does not reduce a Member's Benefit (as defined in the Current Rules of the Fund).
- E. The purpose of the Fund is to provide Benefits to Members and, in the event of the Member's death, then for the Member's Dependants, and such other purposes as permitted from time to time under the SISA and *Superannuation Industry (Supervision) Regulations 1994* (**SISR**).
- F. The settlement of this Deed, resolved by the Trustee as the new Governing Rules of the Fund (**New Governing Rules**), ensures the purpose of the Fund is consistent with the SISA and SISR.

### **OPERATIVE PARTS:**

1. **Replacement of Governing Rules:** The Current Rules of the Fund are replaced by the New Governing Rules marked as **Annexure One** to this Deed, pursuant to **Rule 28** of the Current Rules of the Fund subject to the following:
  - a. a reference in the New Governing Rules of the Fund to the declaration of trust is to the trust declared in the Deed dated 8 April 2010;
  - b. a reference to the Initial Trustee in the New Governing Rules of the Fund is to the party shown as trustee in the Deed dated 8 April 2010;
  - c. a reference to the settlement of the Fund in the New Governing Rules of the Fund is to the settlement of the Fund as constituted and shown in the Deed dated 8 April 2010;
  - d. a reference to Trustee, as other than the Initial Trustee, in the New Governing Rules of the Fund shall be to the Trustee read in this Deed as acting for the Fund at the date of this Deed, and shall as retired, removed, replaced and/or appointed under the terms of the New Governing Rules of the Fund from and following the date of this Deed;

- e. any Special Rules adopted prior to this Deed in respect to segregated assets and/or segregated Member Superannuation Interests are restated in the New Governing Rules;
  - f. any Special Rules adopted prior to this Deed restricting membership of the Fund and/or the payment of Benefits from the Fund (such as any limitations imposed in respect to Foreign Superannuation Funds and QROPS) are restated in the New Governing Rules;
  - g. any Special Rules adopted prior to this Deed by the Trustee and/or one or more Members of the Fund in respect to membership matters, including, but not limited to Default Superannuation Fund Nominations, Pension Interest Agreements, SMSF Living Wills, SMSF Wills, Binding Death Benefit Nominations, Alternate Decision-Maker Nominations and/or such other Special Rules in respect to the Members' SMSF estate planning are restated in the New Governing Rules;
  - h. any Special Rule adopted prior to this Deed by the Trustee and/or one or more of the Members in respect to any Fund administration matter not otherwise shown in the preceding terms of this Operative Part 1 is restated in the New Governing Rules;
  - i. any amendment which detrimentally affects a Member's Superannuation Interest shall not be incorporated in the New Governing Rules;
  - j. any variation of which would cause the Fund to be subject to resettlement (if determined to be a trust at law) and/or a capital gains tax event shall not be incorporated in the New Governing Rules; and
  - k. if the Fund has a defined benefit pension in existence pre-2004, a loan arrangement pre-1985 or any other Rule that advantages the Members of the Fund, but which would be lost or diminished if a variation were imposed, then the variation which would cause such a loss or diminishment is not to be incorporated in the New Governing Rules.
2. **No Resettlement at Law:** The replacement of the Current Rules of the Fund with the New Governing Rules does not constitute a resettlement of the Fund at law, equity or under any Superannuation Law.
  3. **Consent to Electronic Signatures:** The parties consent to execution of this Deed by electronic signature, and deem the electronic execution (including witness execution by electronic signatures) to be valid, subject to any state or Commonwealth electronic transactions and/or property law statutory provisions restricting such execution by electronic signature.
  4. **Defective Execution:** Should a party's execution of the Deed be defective and/or by electronic signature in a state in which electronic signature is not allowed in the circumstances, then the party and witness (whether the same or a different witness) may re-sign the Deed to correct the defect. Notwithstanding any such remediation of the execution, the effective date of the Deed shall be the date upon which the last of the parties executed the Deed, excluding any later remedial execution under the terms of this Clause.
  5. **Stamping:** The Trustee shall bear the responsibility of doing all things necessary to cause the stamping of this Deed (if required).
  6. **Counter-Parts:** The parties acknowledge and agree that this Deed may be executed in counterparts, and that each taken as a whole constitutes the duly constituted Deed.


7. **Severability:** The parties acknowledge and agree that should any term of this Deed be determined to be invalid, illegal or unlawful for any reason, such term shall be severed and the balance of this Deed shall be restated.
8. **Costs:** The costs of drawing, execution and holding of this Deed are to be met from the assets of the Fund.
9. **Ratification:** The parties ratify and continue the Fund on the terms read in this Deed.

**EXECUTED AS A DEED.**

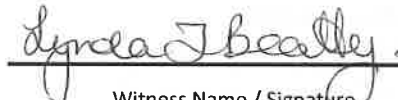
**The Trustee**

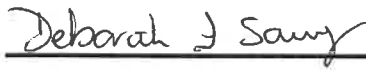
---

John Edward Sawyer and Deborah Lexly Sawyer of 5 Olivine Gardens, WATTLE GROVE, WA 6107:

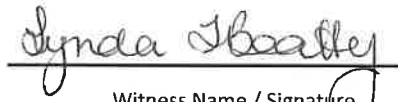
  
\_\_\_\_\_  
John Edward Sawyer  
Trustee

Dated: 28-3-18

  
\_\_\_\_\_  
Witness Name / Signature  
LYNDA F. BEATTY.

  
\_\_\_\_\_  
Deborah Lexly Sawyer  
Trustee

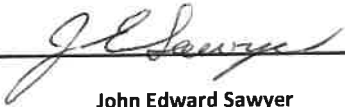
Dated: 28-3-18

  
\_\_\_\_\_  
Witness Name / Signature  
LYNDA F. BEATTY.


**The Member**

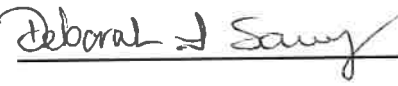
---

John Edward Sawyer and Deborah Lexly Sawyer of 5 Olivine Gardens, WATTLE GROVE, WA 6107:

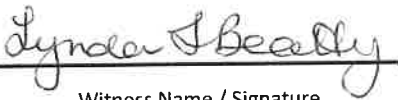
  
\_\_\_\_\_  
**John Edward Sawyer**  
Member

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

  
\_\_\_\_\_  
Witness Name / Signature  
LYNDA F. BEATTY.

  
\_\_\_\_\_  
**Deborah Lexly Sawyer**  
Member

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

  
\_\_\_\_\_  
Witness Name / Signature  
LYNDA F. BEATTY.