

Mainiac Custodian Trust

Trust Deed



Mainiac Custodian Trust

Trust Deed

Parties	
Full name	Mainiac Investments Pty Ltd ACN 145 007 227
Trustee for	Mainiac Investments Superannuation Fund
Short name	Fund Trustee
Address	8 Salem Court, North Haven SA 5018
Full name	Mainiac Super Holdings Pty Ltd ACN 154 193 496
Short name	First Custodian
Address	8 Salem Court, North Haven SA 5018

Background

- A The Fund Trustee is the current trustee of the Fund.
- B Subject to certain limited exceptions, SIS prohibits a regulated superannuation fund from borrowing money or maintaining an existing borrowing of money.
- C Section 67A of SIS provides an exemption to that prohibition.
- D The Fund Trustee wishes to borrow money in accordance with section 67A of SIS, which is to be applied for the acquisition of the Investment.
- E The Fund Trustee is satisfied that it is not prohibited by SIS or any other law from acquiring the Investment.
- F The Custodian will hold the Investment on trust for the Fund Trustee in accordance with the terms of this Deed and the requirements of section 67A of SIS.

Terms

1. CUSTODIAN TRUST

- (a) The trusts created by this Deed (**Trust**) will be known as the Mainiac Custodian Trust.
- (b) The Custodian acknowledges and declares that:
 - (i) it will hold the Investment on trust for the Fund Trustee in accordance with the terms of this Deed and the requirements of section 67A of SIS;
 - (ii) on the acquisition of the Investment, the Fund Trustee will have a beneficial interest in the Investment that is vested and indefeasible;
 - (iii) the Fund Trustee will have a right to acquire legal ownership of the Investment by making one or more payments after acquiring the beneficial interest; and
 - (iv) the Fund Trustee is entitled to all income, proceeds, accretions, benefits and privileges attached to or resulting from the Investment absolutely.

2. OBLIGATIONS

2.1 Custodian's obligations

- (a) The Custodian must:
 - (i) do all things necessary for it to acquire and hold the Investment (including executing relevant documentation);
 - (ii) promptly transfer, deal with or otherwise dispose of the Investment as the Fund Trustee directs and not otherwise;
 - (iii) comply with all lawful directions made to it by the Fund Trustee;
 - (iv) promptly provide the Fund Trustee with all information and documentation that it holds or receives in relation to the Investment;
 - (v) keep proper minutes of all resolutions and proceedings and proper books of account and records of the Investment; and
 - (vi) account to the Fund Trustee (or as it directs) for all income, proceeds or other distributions paid or made in respect of the Investment.
- (b) Notwithstanding any other provision of this Deed, the Custodian must not exercise any right or power that it has:
 - (i) under or in connection with this Deed; or
 - (ii) as the holder of legal title to the Investment,
 without the prior consent of the Fund Trustee (which consent need not be in writing).

2.2 Fund Trustee's obligations

The Fund Trustee must:

- (a) provide the Custodian with the funds necessary for the Custodian to acquire the Investment (including to enable the Custodian to pay any costs of and incidental to the acquisition of the Investment such as stamp duties and registration and other fees);
- (b) provide the Custodian with the funds necessary for the Custodian to pay all costs of and incidental to holding and maintaining the Investment;
- (c) provide the Custodian with all information and documentation that it reasonably requires to acquire, hold, maintain or dispose of the Investment;
- (d) indemnify the Custodian in accordance with clause 3.

3. INDEMNITY

- (a) Subject to clause 3(b), the Custodian is entitled to be indemnified out of the Investment against any Claims made against, and for any Losses incurred by, the Custodian:
 - (i) in the execution or attempted execution of any of the trusts, authorities, powers and discretions conferred on the Custodian by this Deed or by virtue of being the Custodian of the Trust;
 - (ii) in relation to the acquisition or holding of the Investment;
 - (iii) as a consequence of complying with a lawful direction made to it by the Fund Trustee.
- (b) The Custodian has no right of indemnity under this clause 3 if it is proven that the Claims or Losses have resulted from an act or omission of the Custodian committed, made or omitted in personal, conscious and fraudulent bad faith by the Custodian.

4. REMOVAL & APPOINTMENT OF CUSTODIAN

- (a) Subject to this clause 4, the Custodian may be appointed or removed or may retire at any time in accordance with the law for the time being in force in South Australia.
- (b) The Fund Trustee has the power, at any time, to remove any Custodian and to appoint a new Custodian or new Custodians in the place of a Custodian or in addition to the Custodian.
- (c) The Fund Trustee may not be appointed as a Custodian.
- (d) The Fund Trustee must exercise the powers vested in it under clause 4(b) by deed.
- (e) The Custodian may only retire if it provides at least 30 days written notice to the Fund Trustee of its intention to retire.

5. COSTS & DUTIES

- (a) The Fund Trustee is responsible for paying all costs of and in connection with the preparation and execution of this Deed.
- (b) The Fund Trustee is responsible for paying all stamp duty, duties or other taxes of a similar nature on and in relation to this Deed and any instrument, document or transaction contemplated by this Deed.

6. GENERAL

- (a) This Deed may be altered only by Deed signed by each party.
- (b) This Deed is governed by the law of the State of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
- (c) This instrument is intended to be, and will take effect as, a deed notwithstanding any lack of formality in its form, execution or attestation.

7. INTERPRETATION

In this Deed:

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in South Australia.

Claim means a claim, demand, suit, action or proceeding brought or made by a third party.

Custodian means any trustee or trustees for the time being of the Trust, whether the First Custodian or any additional or substituted trustee.

Fund means the Mainiac Investments Superannuation Fund, governed by the Trust Deed.

Investment means the property located at 3/41 Winston Avenue, Cumberland Park SA 5041 to be acquired by the Custodian to be held on the trusts created by this Deed, or any investment in replacement of it permitted by SIS.

Losses means liabilities, losses, damages, expenses and costs of any kind or nature whether arising in contract or tort (including negligence) or under a statute.

SIS means the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Trust Deed means the deed establishing the Fund dated on or about 2 July 2010, including any schedules, as amended from time to time.

Signing

Executed as a deed

Date 7th March 2014

Executed by Mainiac Investments Pty Ltd

X 

Christopher John Main - Director

X 

Catherine Anne Main - Director

Executed by Mainiac Super Holdings Pty Ltd

X 

Christopher John Main - Director

X 

Catherine Anne Main - Director