



DEED OF COVENANT & ASSURANCE

CHECKLIST

- This checklist is designed by QBCC to assist Licensees, Accountants and Lawyers who are completing the document to complete it correctly;
- By completing this checklist you will ensure the Deed is correct and can be accepted by QBCC. Failure to submit a correct Deed will result in the Application being delayed, and
- **You are not required to submit the checklist to QBCC.**

Page 3: Is the place and date completed?

Page 3: Is the name of the licensee correct (“Licensee”)?

If the licensee is a company, the full correct company name (including Pty Ltd) only must be shown. If the licensee is an individual, the individual’s full name only must be shown with no abbreviations (e.g. Geoffrey not Geoff). The QBCC does not licence trusts, partnerships or trading names and they must not be included with the licensee’s name.

Page 3: Is the name of the Covenantor correct (“Covenantor”)?

The Covenantor’s name cannot include the name of a trust, partnership or trading name.

Does the Covenantor have the appropriate relationship with the licensee to act as the assurer?

- Individual licensees can rely upon a Deed only if the Covenantor (assurer) -
 - has entered into a legal partnership agreement with the licensee or
 - is the beneficiary of a trust of which the licensee is the trustee.A spousal or family relationship only is not acceptable.
- Company licensees can rely on a Deed only where the Covenantor (assurer) is –
 - a director of the licensee or
 - a parent, subsidiary or associated company or
 - in a legal partnership with the licensee or
 - a beneficiary of a trust of which the licensee is the trustee.

Page 10: Has Schedule A been correctly completed by the Covenantor’s solicitor?

The Covenantor’s solicitor **must** complete this section in full **whether or not** the licensee has elected not to obtain legal advice. Failure to complete this section renders the Deed void.

The solicitor must not alter the wording of Schedule A.

Pages 11 and 12: Has the Covenantor correctly executed the Deed?

The Covenantor’s execution cannot include the name of a trust, partnership or trading name.

1. If the Covenantor is a natural individual, then the execution must be completed in the first section headed “SIGNED SEALED AND DELIVERED by” – no seal can be used. This must be witnessed by any individual over the age of 18 (not QBCC staff).
2. If the Covenantor is a company of which there are two or more directors, the Deed must be executed in the second section headed “THE COMMON SEAL of” and must be signed by either two directors or one director and one secretary. (If company was

registered prior to 1/7/1998, a company seal must be affixed over the execution; unless constitution states otherwise).

3. If the Covenantor is a company of which there is a single director, the execution must be signed in the third section headed "SIGNED SEALED AND DELIVERED FOR AND ON BEHALF OF"-.

Pages 11 and 12: Has the Licensee correctly executed the Deed?

1. If the licensee is a natural individual, then the execution must be completed in the first section headed "SIGNED SEALED AND DELIVERED by" – no seal can be used. This must be witnessed by any individual over the age of 18 (not QBCC staff).
2. If the licensee is a company of which there are two or more directors company, it must be executed in the second section headed "THE COMMON SEAL of" and must be signed by either two directors or one director and one secretary. (If company registered prior to 1/7/1998, a company seal may be affixed over the execution).
3. If the licensee is a sole director company, the execution must be signed in the third section headed "SIGNED SEALED AND DELIVERED FOR AND ON BEHALF OF"- .

Is the Deed in the Prescribed Format?

The format of the Deed must not be altered in any way. QBCC will not accept a Deed that has had sections crossed out or added to.

Have any corrections been properly made?

Errors must be crossed out and initialled by all parties to the Deed (not including the solicitor). Correction fluid cannot be used and QBCC will reject any Deed where correction fluid is used.

Has the Accountant/Accepted Independent Accountant completed the MFR Report?

For an application to be finalised this Deed must be accompanied by a correctly completed MFR Report. This report must be in the name of the licensee and correctly list all Covenantor(s) by full name in the table on the second page under "Financial Information"?

Has the Accountant/Accepted Independent Accountant completed the Covenantor's Statement of Financial Position?

For an application to be finalised this Deed must be accompanied by a correctly completed Covenantor's Statement of Financial Position. This document can be found on page 42 of the QBCC's Minimum Financial Requirements and can be downloaded from our website www.qbcc.qld.gov.au

Deed of Covenant and Assurance

Date:

WARNING FOR COVENANTORS

This is an important document

By signing it the Covenantor becomes responsible for payment of what could be a significant amount of money if:

- (a) the winding up of the Licensee, being a company, begins under the *Corporations Law*, or
- (b) the Licensee, being a natural person becomes bankrupt under the *Bankruptcy Act*; and
- (c) the Covenantor receives a written demand by the Licensee to pay the Defined Amount to the Licensee.

The Covenantor **MUST** receive legal advice before signing this document.

The Covenantor should:

- (a) consider seeking, and if it thinks fit, obtain independent financial advice before signing this document; and
- (b) make, and continue to make, its own enquiries about the credit worthiness, financial position and honesty of the Licensee.

WARNING FOR LICENSEES

This is an important document

It is in the best interest of the Licensee to receive legal advice before signing this document. If the Licensee chooses not to obtain legal advice, they must indicate this by completing the item at Clause 13.

PRIVACY NOTICE

QBCC is collecting the information on this form to ascertain whether the applicant for a licence or licence renewal benefiting from this Deed satisfies the Minimum Financial Requirements of the Queensland Building and Construction Board for a contractor's licence under the *Queensland Building and Construction Commission Act 1991*. QBCC may provide all or some of the information you have provided to a financial specialist engaged by QBCC to provide expert advice as to financial matters relevant to your ability to satisfy the Minimum Financial Requirements. The information you have provided may also be disclosed by QBCC to another party with your consent or as Authorised or required by law. For further information visit the QBCC website at www.qbcc.qld.gov.au.

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DEED made at (city where executed).....

on (date)

BETWEEN:

of (address):.....
("Licensee")

AND:

of (address):.....
("Covenantor")

AND: The Queensland Building and Construction Commission

of: 299 Montague Road, West End in the State of Queensland ("the Commission")

RECITALS:

- A. The Licensee is a licensee under the provisions of the *Queensland Building and Construction Commission Act 1991* (Qld) ("the Act") or is the applicant for such a licence ("the Licence").
- B. The licence authorises the Licensee to conduct the business of carrying out or supervising building work of a class or classes specified in the licence.
- C. As a condition of the grant, renewal or upon compliance audit commenced by the Commission of a licence, the Licensee must comply with the Queensland Building and Construction Board policy "Minimum Financial Requirements" in relation to, among other things, a prescribed level or amount of net tangible assets. The Minimum Financial Requirements relating to the Licensee's financial circumstances are referred to in the Act and are to be made or issued under the Act by the Queensland Building and Construction Board ("Minimum Financial Requirements").
- D. The Commission is responsible for the administration of the Act and, among other things, compliance by Licensees under the Act with the Minimum Financial Requirements.
- E. The Covenantor has requested the Licensee to apply for the licence or comply with the provisions of the Act to enable it to continue to hold the licence. The Licensee has agreed to do so in consideration of, and conditional upon, the execution of this Deed by the Covenantor.
- F. This Deed is entered into to give effect to the agreement between the Licensee and the Covenantor referred to in recital E and also for the purpose of enabling the Licensee to comply with the Minimum Financial Requirements.

THIS DEED PROVIDES

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Deed, in addition to the definitions set out above:

“Covenantor” means:

- (a) the entity named as such in this Deed; and
- (b) any entity joined as such to this Deed by the execution of an additional Deeds,

so that references in this Deed to “Covenantor” and obligations cast upon the “Covenantor” by this Deed, shall refer to and oblige those entities jointly and severally.

“Deed” means this Deed as varied from time to time.

“Defined Amount” means the amount determined pursuant to the Minimum Financial Requirements, as being the amount assured by the Covenantor to the Licensee by Deed of Covenant and Assurance, as stated in the MFR Report provided to the Commission from time to time. The amount is the difference between the Net Tangible Assets held by the Licensee and the Net Tangible Assets required for the Licensee’s Maximum Revenue.

“Excluded Property” means the Property of a Covenantor, an agreement to create a charge over which must be registered under a statute to avoid contravening that or another statute.

“GST” means any tax imposed by or through the GST Act on supply (without regard to any input tax credit).

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts.

“Licensee’s Contribution” means the worth of the net tangible assets of the Licensee which, as at the time of the most recent grant or compliance audit commenced by the Commission has been assessed as being the extent to which the Licensee has itself complied (ie: without reliance on this Deed or the covenants this Deed contains) with the Minimum Financial Requirements.

“Property” means all the assets and undertaking of a Covenantor, present or future, and includes any interest or estate in such property.

“Subject Property” means all the Property of a Covenantor other than Excluded Property.

“Supply” means any supply within the meaning which it bears in the GST Act.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the expression "entity" includes a natural person, corporation, unincorporated association, partnership, trust and any entity having a legal personality;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by laws, regulations, rules and other statutory instruments (however described) issued under it;
- (d) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (e) a reference to any document or agreement (including this Deed) is to that document or agreement as amended, novated, varied or replaced from time to time;
- (f) a reference to a provision or clause of this Deed includes any modification or variation to such provision or clause from time to time made under the provisions of this Deed;
- (g) a reference to a party to this Deed includes that party's successors and assigns, but does not include anyone who purports to be an assignee under an assignment prohibited by this Deed;
- (h) a reference to the term "in writing" or "written" includes any communications sent by letter, facsimile, email or other mode of transmission capable of producing or reproducing any words in visible and legible form; and
- (i) where the Covenantor consists of more than one entity, covenants on the part of the Covenantor will bind those entities jointly and severally.

2. COVENANTS BY COVENANTOR

The Covenantor:

- (a) covenants that if:
 - (i) the winding up of the Licensee, being a company, begins under the *Corporations Act 2001*; or
 - (ii) the Licensee, being a natural person, becomes a bankrupt under the *Bankruptcy Act 1966 (Cth)*,
 the Covenantor shall, upon a written demand by the Licensee, pay the Defined Amount to the Licensee;
- (b) acknowledges, if the Licensee is a natural person, that the benefit of the covenants in this Deed in favour of the Licensee will vest in, and be enforceable by, the Licensee's trustee in bankruptcy in accordance with the *Bankruptcy Act 1966 (Cth)*;

- (c) covenants not to assign or vary the burden of any covenant or obligation (present or contingent) existing upon it under this Deed;
- (d) covenants not to prove in a liquidation or bankruptcy (as the case may be) of the Licensee for the Defined Amount;
- (e) covenants that, upon demand under subclause (a) hereof being made upon it, its Subject Property shall be charged with, and secure, payment of the Defined Amount; and
- (f) covenants that this Deed is in the same terms as the prescribed pro forma for this Deed.

3. COVENANTS BY LICENSEE

The Licensee covenants that:

- (a) it will account to the Covenantor for any part of the Defined Amount which has been paid to it which remains as a surplus after the payment in full of all of its unsecured creditors;
- (b) it will provide to the Commission such information as the Commission may from time to time require in relation to satisfaction or otherwise by the Licensee of the Minimum Financial Requirements;
- (c) it will not consent to the Covenantor assigning or varying the burden of any covenant or obligation (present or contingent) which it may bear under this Deed;
- (d) it will not assign the benefit of any covenant made in its favour in this Deed;
- (e) it will, as and when required by the Covenantor, inform the Covenantor of the worth of the Licensee's Contribution at that time; and
- (f) this Deed is in the same terms as the prescribed pro forma for this Deed.

4. REVOCATION OR RELEASE

4.1 *Prohibition*

This Deed may not be revoked or released ("revoked") and is not capable of being so revoked except as expressly permitted by this Deed.

4.2 *Revocation by satisfaction of the Minimum Financial Requirements*

This Deed is revoked if the Commission gives written notice to the Licensee and the Covenantor that the Licensee has satisfied the Minimum Financial Requirements in a manner other than reliance by it on this Deed and the benefit of the covenants contained in this Deed.

4.3 *Alternatively, revocation is to be by further deed*

Revocation of this Deed, if it is not effected by notice by the Commission under subclause 4.2, may only be effected by a further deed by all of the parties to this Deed.

4.4 *Otherwise ineffective*

Any revocation other than as permitted by this clause will be ineffective.

4.5 *Continuing application of this Deed*

Even if this Deed has been validly revoked under this clause, that revocation will not apply to the Defined Amount insofar as it arises, accrues or becomes payable before such revocation.

5. FURTHER ASSURANCE

Each party to this Deed agrees to do all such acts, matters and things as may be required in order to perfect and give effect to the intent of this Deed.

6. TRUSTEE PROVISIONS

6.1 *Application*

The following provisions of this clause apply if any party to this Deed is a trustee of a trust.

6.2 *Binding in all capacities*

The party:

- (a) acknowledges and covenants that this Deed is binding upon it personally and in its capacity as trustee of the trust; and
- (b) will cause any successor of it as trustee of the trust to execute a Deed where it is required to do so.

6.3 *Representations and covenants*

The party represents and covenants in respect of the trust that:

- (a) it is the sole trustee of the trust and no action has been taken to remove or replace it;
- (b) it has power under the trust deed to execute and perform its obligations under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the trust deed;
- (c) this Deed is executed as part of the true and proper administration of the trust;

- (d) it has a right to be fully indemnified out of the trust fund and no action has been taken to restrict or limit that right;
- (e) it is not in default under the trust deed; and
- (f) no vesting date for the trust fund has been determined,

and further warrants that each of the above warranties will remain true as long as this Deed remains in force.

6.4 Income

Subject to subclause 2(e), nothing in this Deed will prevent the party from distributing the income (but not the capital) of the trust fund in accordance with the trust deed.

6.5 Limit upon exercise of powers

None of the following powers will be exercised by the party or any other person relating to the trust whilst this Deed remains in force, unless the prior written consent of the Commission is obtained:

- (a) Any power to vary the terms of the trust.
- (b) Any power to resettle the trust property.
- (c) Any power to add any beneficiaries or class of beneficiaries to the trust.

7. PARTNERSHIP PROVISIONS

If a party is a member of a partnership or other unincorporated structure or association ("the Partnership"), the following provisions will apply:

- (a) This Deed will continue to be binding notwithstanding any changes which may, from time to time, be made in the constitution of the Partnership.
- (b) If the Partnership ceases to carry on business, this Deed will continue to bind the party.
- (c) If the party ceases to be a member of any partnership, then this Deed will continue to bind the party and will have force and effect in accordance with its terms.

8. NOTICES

If any notices are required to be given or served under this Deed they may be served in the manner described in section 39 of the *Acts Interpretation Act 1954 (Qld)*.

9. GOODS AND SERVICES TAX

In the event that:

- (a) any transaction effected by, required by or performed under this Deed gives rise to a requirement to pay GST; and
- (b) that requirement to pay GST is occasioned by, or relates to, the payment of the Defined Amount under this Deed,

the Covenantor covenants to indemnify the party, treated as the supplier in relation to that requirement to pay GST, against any loss occasioned by that need to pay GST.

10. STAMP DUTY

The Covenantor will be liable in respect of the stamp duty payable upon this Deed and will indemnify each other party to this Deed in respect of any such liability.

11. JURISDICTION AND FORUM

This Deed will be governed by and construed in accordance with the laws of Queensland and each party to this Deed covenants to submit to the non-exclusive jurisdiction of the courts of Queensland and courts with jurisdiction to hear appeals therefrom.

12. WARRANTIES BY THE COVENANTOR AS TO LEGAL ADVICE

The Covenantor represents and warrants to the Commission that the Covenantor:

- (a) has obtained legal advice from its solicitors in respect of this Deed (as is evidenced by those solicitors having made the statements set out in the schedule hereto);
- (b) has read and understood the contents of this Deed; and
- (c) acknowledges that the execution of this Deed was not brought about in any way by collateral representations of any of the parties, their servants or agents or persons connected thereto or by any third party other than specified in this Deed.

13. WARRANTIES BY THE LICENSEE AS TO LEGAL ADVICE

The Licensee represents and warrants to the Commission that the Licensee it has obtained legal advice from its solicitors in respect of this Deed, unless indicated otherwise by completion of the Statement of Licensee as to legal advice, and;

- (a) has read and understood the contents of this Deed; and
- (b) acknowledges that the execution of this Deed was not brought about in any way by collateral representations of any of the parties, their servants or agents or persons connected thereto or by any third party other than specified in this Deed.

Statement of Licensee as to legal advice:

The Licensee has elected of its own free will not to receive legal advice in respect of this Deed.

[please tick if applicable]

SCHEDULE A – STATEMENT BY COVENANTOR’S SOLICITOR

I,, of
....., solicitor,
hereby state as follows:

1. I have explained to the Covenantor (or, if the Covenantor is a company, the Covenantor’s director/s) the contents and effect of this Deed and the provisions it contains.
2. I have asked the Covenantor (or, if the Covenantor is a company, the Covenantor’s director/s) whether the Covenantor is executing this Deed of the Covenantor’s own free will. He/she/they has/have assured me that the Covenantor is.
3. I have made enquiries of the Covenantor (or, if the Covenantor is a company, the Covenantor’s director/s) from which I have formed the opinion that the Covenantor understands the obligations created by this Deed.
4. After giving the explanation and making the enquiries to which I have referred above, the Covenantor executed this Deed in my presence and appeared to do so freely, voluntarily and mindful of its implications and consequences.

Dated thisday of.....20....

.....
Signature of Covenantor’s solicitor

Notes:

- A Statement is required from the Covenantor’s solicitor.
- Cross out the parts above which are not applicable, i.e.: he/she/they, has/have

EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED by)
)
)
 (Name of Person in Full))
 in the presence of:)
)
))
 (Signature of Witness)) (Signature of Person)
)
)
 (Name of Witness in Full))

- This form of execution is to be used for a natural person

THE COMMON SEAL of)
)
))
 (Name of Company in Full))
 was affixed in accordance with its) (Signature of Second Director)
 Constitution in the presence of:)
)
) (Name of Second Director in Full)
 (Signature of Secretary/ First Director))
)
)
 (Name of Secretary/ First Director in Full))

- This form of execution is to be used for a Company with two or more directors

SIGNED SEALED AND DELIVERED)
FOR AND ON BEHALF OF)
)
)
 (Name of Company in Full))
)
 by.....)
)
 (Sole Director) in accordance with the)
 authority given to him/her by that))
 company in the presence of:) (Signature of Sole Director)
)
)
 (Signature of Witness))
)
)
 (Name of Witness in Full))

- This form of execution is to be used for a Company with only one director

SIGNED SEALED AND DELIVERED by)
)
)
 (Name of Person in Full))
 in the presence of:)
)
)
 (Signature of Witness)) (Signature of Person)
)
)
 (Name of Witness in Full))

- This form of execution is to be used for a natural person

THE COMMON SEAL of)
)
)
 (Name of Company in Full))
 was affixed in accordance with its) (Signature of Second Director)
 Constitution in the presence of:)
)
)
 (Signature of Secretary/ First Director)) (Name of Second Director in Full)
)
)
)
 (Name of Secretary/ First Director in Full))

- This form of execution is to be used for a Company with two or more directors

SIGNED SEALED AND DELIVERED)
FOR AND ON BEHALF OF)
)
)
 (Name of Company in Full))
)
 by.....)
)
 (Sole Director) in accordance with the)
 authority given to him/her by that)
 company in the presence of:) (Signature of Sole Director)
)
)
 (Signature of Witness))
)
)
 (Name of Witness in Full))

- This form of execution is to be used for a Company with only one director

THE COMMON SEAL of the)
Queensland Building and Construction)
Commission)
was affixed by)

.....)
(Name of authorised officer))
a duly authorised officer of the)
Queensland Building and Construction)
Commission)

In the presence of:)) (Signature of authorised officer)

.....)
(Signature of Witness))

.....)
(Name of Witness in Full))