

DEED OF COVENANT AND ASSURANCE

Queensland Building and Construction Commission Act 1991

Approved Form 7 – Version 8

WARNING FOR COVENANTORS

This is an important document

By signing this Deed 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 Act 2001 (Cth)*; or
- (b) the Licensee, being a natural person becomes bankrupt under the *Bankruptcy Act 1966 (Cth)*; 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 you/your Client satisfies the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018 for a contractor's licence under the *Queensland Building and Construction Commission Act 1991*. The information you have provided may be disclosed by QBCC to another party with your/your Client's consent or as authorised or required by law. In addition, QBCC may provide all or some of this information to a financial specialist engaged by QBCC to provide expert advice as to financial matters relevant to your client's ability to satisfy the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018. For further information visit the QBCC website at qbcc.qld.gov.au.

EFFECTIVE FROM NOVEMBER 2022

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DEED OF COVENANT AND ASSURANCE CHECKLIST

EFFECTIVE NOVEMBER 2022




What is a Deed of Covenant and Assurance?

A Deed of Covenant and Assurance:


- is a binding agreement of legal effect between a Covenantor, a QBCC Licensee and the QBCC;
- allows QBCC Licensees to rely on assets of a Covenantor to increase the Licensee's acceptable net tangible assets;
- can be enforced by the Licensee's liquidator, administrator or trustee in bankruptcy in the event of a Licensee becoming insolvent.

General



Is the Deed in the prescribed format?

<p>The Deed can only be accepted in the prescribed format;</p> <ul style="list-style-type: none"> • The Deed must not be altered in any way; • QBCC cannot accept a Deed that has had sections crossed out, added to, or amended. 	<p>No – STOP</p>  <p>The Deed cannot be accepted if it has been changed in any way.</p>	<p>Yes</p> <p>Continue to next question</p>
<p>Have any errors been made when completing the Deed?</p> <ul style="list-style-type: none"> • Errors must be crossed out and initialled by the Covenantor and Licensee; • Correction fluid cannot be used. 	<p>Yes – STOP</p>  <p>Errors need to be crossed out and initialled by the Covenantor and the Licensee.</p>	<p>No</p> <p>Continue to next question</p>
<p>Are there two Covenantors assuring amounts to the Licensee?</p> <ul style="list-style-type: none"> • A single Deed signed by two Covenantors is not acceptable; • A separate Deed needs to be completed by each Covenantor. 	<p>Yes – STOP</p>  <p>There must be a separate Deed for each Covenantor.</p>	<p>No</p> <p>Continue to next question</p>





Deed Completion

<p>Page 5</p> <p>Has the date the Deed was executed and the place at which it was executed been completed?</p>	<p>No – STOP</p>  <p>These details must be completed.</p>	<p>Yes</p> <p>Continue to next question.</p>
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Licensee details

<p>Page 5</p> <p>Has the legal and correct name of the Licensee only been used?</p> <ul style="list-style-type: none"> • If the Licensee is a company, the full and correct company name (including Pty Ltd) must be shown (and only its full and correct name); • If the Licensee is an individual, the individual's full name must be shown (and only its full and correct name); • QBCC does not grant licences to trusts, partnerships or trading names, and these details must not be included as part of the Licensee's name. 	<p>No – STOP</p>  <p>The Deed must state the full legal and correct name of the Licensee only.</p>	<p>Yes</p> <p>Continue to next question.</p>
<p>Page 11</p> <p>Has the Licensee executed the Deed in the Licensee section, using its legal and correct name (and only its legal and correct name)?</p>	<p>No – STOP</p>  <p>The Licensee must execute the Deed in the Licensee section using its legal and correct name.</p>	<p>Yes</p> <p>Continue to next question.</p>

Covenantor details

<p>Page 5</p> <p>Has the legal and correct name for the Covenantor been used?</p> <p>If the Covenantor is an individual, the Covenantor's full name only must be shown, with no abbreviations (i.e. Geoffrey not Geoff).</p>	<p>No - STOP</p> <p> The Deed must state the full legal and correct name of the Covenantor.</p>	<p>Yes</p> <p>▼ Continue to next question.</p>
<p>Is the Covenantor eligible to provide a Deed?</p> <p>Does the Covenantor have an eligible relationship with the Licensee?</p> <p>For corporate (ie. company) Licensees:</p> <ul style="list-style-type: none"> • A director of the Licensee company • A related body corporate of the Licensee company <p>For Licensees who are trustees of a trust:</p> <ul style="list-style-type: none"> • A director of the Licensee company (if the trustee Licensee is a company) • A related body corporate of the Licensee company (if the trustee Licensee is a company) • A beneficiary of the trust for which the Licensee is trustee <p>For Licensees who operate under a partnership:</p> <ul style="list-style-type: none"> • A director of the Licensee company (if the Licensee is a company) • A related body corporate of the Licensee company (if the Licensee is a company) • Another partner in the partnership <p>For Licensees who are a group company*:</p> <ul style="list-style-type: none"> • A director of the Licensee company • A related body corporate of the Licensee company • Another company in the same group 	<p>No - STOP</p> <p> A Deed of Covenant and Assurance can only be provided by an eligible Covenantor.</p>	<p>Yes</p> <p>▼ Continue to next question.</p>
<p>Page 9</p> <p>Has Schedule B been correctly completed by the Covenantor's solicitor?</p> <ul style="list-style-type: none"> • The Licensee can elect not to obtain legal advice; • The Covenantor must receive legal advice before signing the Deed and its solicitor must complete Schedule B; • If the Covenantor is a director of the Licensee, he or she must still receive independent legal advice in his or her capacity as Covenantor. • Failure to complete Schedule B renders the Deed void. <p>The solicitor must not alter the wording of Schedule B.</p>	<p>No - STOP</p> <p> Legal advice must be obtained by the Covenantor.</p>	<p>Yes</p> <p>▼ Continue to next question.</p>
<p>Page 10</p> <p>Has the Covenantor executed the Deed in the Covenantor section, using its legal and correct name?</p>	<p>No - STOP</p> <p> The Covenantor must execute the Deed in the Covenantor section using its legal and correct name.</p>	<p>Yes</p>

* Per the definition of 'group company' under the Minimum Financial Requirements Regulation 2018, all entities within the group must be party to a Deed of cross guarantee. <https://www.qbcc.qld.gov.au/running-business/financial-requirements/Deed-covenant-assurance>

THIS DEED PROVIDES

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

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

“Covenanted Amount” means the amount set out at Schedule A.

“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 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 Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018, 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. The amount will be no more than the Covenanted Amount.

“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 Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018.

“Property” means all the assets and undertaking of a Covenantor, present or future, and includes any interest or estate in such 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 (Cth)*; 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 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:
 - (i) 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:
 - (A) all of the creditors of the Licensee;
 - (B) all priority claims on the Licensee’s estate; and
 - (C) all fees and indemnities payable to the liquidator or trustee in bankruptcy (as applicable).
- (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 Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018;

3. COVENANTS BY LICENSEE (continued)

- (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 Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018 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 submits 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. VARIATIONS

This Deed may only be varied in writing signed by all parties.

14. 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:

(Please tick if appropriate)

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

SCHEDULE A - COVENANTED AMOUNT

This amount is the maximum amount of the Defined Amount

\$

SCHEDULE B - STATEMENT BY COVENANTOR'S SOLICITOR

I, (full name)

, of

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.

Signature of
Covenantor's
solicitor

Date

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Notes:

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

