



CATHOLIC ARCHDIOCESE OF MELBOURNE

THE ROMAN CATHOLIC TRUSTS
CORPORATION FOR THE DIOCESE OF MELBOURNE

BUILDING DESIGN SERVICES AGREEMENT

THIS AGREEMENT is made between the Principal and Building Designer on the date identified in **schedule 1**.

RECITALS

- A The Principal proposes to undertake the Project.
- B The Building Designer has represented to the Principal that it has the skill and expertise required for the performance of the Services in accordance with this Agreement.
- C In reliance on the Building Designer's representations the Principal has agreed to appoint the Building Designer to perform the Services on the terms set out in this Agreement.

IT IS AGREED

1. INTERPRETATION

1.1. In this Agreement:

"**Agreement**" means this document including all schedules.

"**Authority**" means a governmental, semi-governmental, local or other authority that exercises jurisdiction over the Project, the Services or the Site.

"**Business Day**" means a day which is not a Saturday, Sunday or public or bank holiday in Melbourne.

"**Commencement Date**" is the date identified in **schedule 1**.

"**Project Budget**" means the budget stipulated by the Principal in relation to the Project as set out in **schedule 1**, and the revisions to the budget made or approved by the Principal at any time.

"**Construction Contract**" means the contract to be entered between the Principal and the Contractor.

"**Contractor**" means the contractor to be appointed by the Principal to build the Project under the Construction Contract.

"**Building Designer**" means the party named in **schedule 1**.

"**Date for Completion**" means the date for completion of the Services identified in **schedule 1**.

"**Documentation**" means all documentation which the Building Designer is required to produce pursuant to this Agreement including plans, drawings, specifications, calculations, models and records.

"**ensure**" means to do everything reasonably possible within the Building Designer's power or control having regard to the standards of care normally expected of consultants with expertise and experience in carrying out services similar to the services to be performed under this Agreement.

"**Fee**" means the lump sum identified in **schedule 3**.

"**Intellectual Property Rights**" means patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.

"**Insolvency Event**" means:

- a) the bankruptcy, winding up or insolvency of the other party;
- b) the other party entering any scheme of arrangement or composition; or
- c) a receiver or administrator being appointed to any property of the other party.

"**Loss**" includes any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the Principal pays, suffers or incurs or is liable for including:

- a) all liabilities on account of tax;
- b) all interest and other amounts payable to third parties; and
- c) all legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of any claim or action.

"**party**" means either the Principal or Building Designer as stipulated in **schedule 1**.

"**Moral Right**" means any right arising under statute (including Part IX of the Copyright Act 1968) or other law in Australia.

"**Principal**" means the party named in **schedule 1**.

"**Project**" means the project described in **schedule 1**.

"**Reimbursable Expenses**" means those items (if any) identified in **schedule 3**.

"**Works**" means the work to be performed under the Construction Contract.

"**Services**" means the work or services described in **schedule 2**.

"**Schedule of Rates**" means the Schedule of Rates set out in **schedule 3**.

"**Site**" means the land where the Project is to be constructed described in **schedule 1**.

"**subcontractor**" means a subcontractor or subconsultant of the Building Designer.

1.2. Unless expressed to the contrary, in this Agreement:

- a) words in the singular include the plural and vice versa;
- b) any gender includes the other genders;
- c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- d) "includes" means includes without limitations;
- e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- f) a reference to:
 - i. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - ii. a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - iii. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - iv. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
 - v. a right includes a benefit, remedy, discretion and power; and
- g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3. Headings do no effect the interpretation of this document.

2. THE SERVICES

2.1. The Building Designer must perform the Services for the Principal, all things incidental to the Services and which are necessary to complete the Services, including all obligations specified in **schedule 2** in relation to the Services. The Building Designer acknowledges that the Services described in **schedule 2** are divided into discrete stages. The Building Designer agrees to submit to the Principal the client approval forms described in **schedule 2** and shall not proceed from completing one stage of the Services to carrying out the next stage without first obtaining approval from the Principal or the Principal's Delegated Authority identified in **schedule 1**. The Building Designer agrees that it shall have no entitlement to payment for a particular stage of the Services unless it has first obtained consent to proceed to that stage of the Services. Consent given by the Principal, or on its behalf, shall not limit or otherwise derivate from the Building Designer's obligations when performing the Services under this Agreement.

2.2. Without limiting the provisions in Clause 2.1, the Building Designer shall take all due care as is reasonable for design, construction and fit-out of the Project within the Project Budget and acknowledges that when required, the Building Designer shall engage, at its own cost, all consultants necessary to complete the design and Documentation for construction of the Project. Each consultant shall be engaged as a subcontractor and the Building Designer shall integrate and coordinate their work and will be responsible for the services provided by them.

2.3. The Building Designer must comply with directions as are reasonably given by the Principal in relation to this Agreement.

- 2.4. The Building Designer must comply with the requirements of:
- a) all relevant laws (including ordinances, regulations and by-laws);
 - b) all relevant Authorities; and
 - c) the Building Code of Australia and any other standards or codes which apply to the Services
- including ensuring the safety of its employees.
- 2.5. Errors and omissions in the Services must be rectified by the Building Designer at no cost to the Principal. If an error or omission in the Services causes the Principal to incur Loss, then the Building Designer indemnifies the Principal for that Loss, unless such error or omission in the Services is directly attributable to an act or omission of the Principal.
- 2.6. The Building Designer must at all times during the performance of the Services, inform itself of the Principal's requirements in relation to the Services and must, for that purpose, consult the Principal during the provision of the Services and attend meetings at the Principal's request to do everything reasonably expected to ensure the proper, effective and timely provision of the Services. The Building Designer must provide the Principal with 2 copies of relevant documents issued by the Building Designer and its subcontractors in relation to the Project.
- 2.7. The Building Designer must not subcontract the Services or a part of the Services without the prior written approval of the Principal. The Principal will not unreasonably withhold such approval if, in the opinion of the Principal, it is appropriate to subcontract the Services and if the identity and expertise of the subcontractor is satisfactory to the Principal. The Building Designer must provide the information required by the Principal in relation to a proposed subcontractor.
- 2.8. The Building Designer will not, by subcontracting the Services, be relieved of any of its obligations or liabilities under this Agreement.
- 2.9. The Building Designer must:
- a) obtain for the Principal the benefit of all warranties given by all subcontractors and suppliers in relation to the Services performed by them on the Project and materials provided by them which are used in the Project;
 - b) use its best endeavours to obtain all warranties reasonably required by the Principal.
- 2.10. Subject to any restrictions which arise by operation of law, the Building Designer must work whatever hours are necessary to fulfil its obligations under this Agreement.
- 3. CHANGES TO THE SERVICES**
- 3.1. The Building Designer must not vary the Services except in accordance with a written direction of the Principal.
- 3.2. The Principal may by notice in writing direct an addition, alteration or reduction in the scope of the Services and the Building Designer must comply with that direction.
- 3.3. The Principal will pay the Building Designer for additional services directed under **clause 3.2**, at the rates set out in the Schedule or Rates or, if no such rates are applicable, a reasonable rate determined by the Principal. The Principal will, at its option, either extend the Date for Completion by a reasonable period having regard to the nature of the additional work or, if it is reasonably possible to do so, include in the direction to perform additional work, an instruction to complete the Services, including any additional services, by the Date for Completion.
- 3.4. The Principal may direct that work be deleted from the Services. In that event, the Fee will be reduced by a reasonable amount for those services determined by the Principal having regard to the rates set out in the Schedule of Rates or, if no such rates are applicable, a reasonable rate determined by agreement.
- 3.5. If a direction is given under **clause 3.2** as a result of the Building Designer's failure to perform its obligations in accordance with this Agreement as determined by the Principal, then:
- a) no additional fees will be payable to the Building Designer;
 - b) any Loss incurred by the Principal as a result of that failure may be deducted from the Fee; and
 - c) the Principal may, in its discretion, retain another person to perform those or similar Services.
- 3.6. If the Building Designer considers that any services which it is instructed to undertake are additional services then it must notify the Principal, in writing, prior to the commencement of those services. If the parties agree that the services are additional then the Fee will be adjusted in accordance with this Agreement. If the parties do not agree that the services are additional then the Building Designer must carry out the services while reserving its rights to dispute the matter in accordance with this Agreement.
- 4. TIME**
- 4.1. The Building Designer must:
- a) commence the Services on or before the Commencement Date and, if a Date for Completion is specified in **schedule 1**, complete the Services on or before the Date for Completion;
 - b) perform the Services in accordance with any program or other timing requirements of the Principal and with due expedition and without delay;
 - c) notify the Principal of delays or potential delays to the performance of the Services; and
 - d) take all steps necessary to minimise the effect of delay to the Services.
- 4.2. If there is a date for Completion specified in **schedule 1**, the Principal may at any time and for any reason extend it. The Principal is not obliged under any circumstances to exercise this discretion for the benefit of the Building Designer (including where the Building Designer has not entitlement to an extension of time by reason of the failure to comply with notification provisions in **clause 4.3**).
- 4.3. The only circumstances under which the Building Designer will be entitled to an extension to a Date for Completion are where the Building Designer can demonstrate to the reasonable satisfaction of the Principal that it has been or will be delayed in reaching completion of the Services as a consequence of any of the following:
- a) any negligent, act or omission of the Principal; or
 - b) any risk specifically excepted elsewhere in this Agreement; or
 - c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; and
 - d) the Building Designer has, as soon as possible after it has been delayed, notified the Principal in writing providing detailed particulars of the cause of the delay, how the cause delayed the Services, the period of the delay and the Services which have or will be delayed.
- 4.4. The period of any extension of time to the Date for Completion to which the Building Designer is entitled under **clause 4.3** will be the reasonable period by which the Principal determines the Building Designer has been or will be delayed in reaching the Date for Completion as a consequence of the cause of delay.
- 4.5. This Agreement applies to Services performed prior to its execution.
- 5. STANDARD OF SERVICE**
- 5.1. The Building Designer must:
- a) perform the Services to the satisfaction of the Principal and to the standard of professional care, skill, judgement and diligence as in reasonably expected of a competent professional building designer experienced in providing the same or similar services for projects similar to the Project.
 - b) perform the services diligently and produce the Documentation so that the Services and the Documentation are reasonably accurate, comprehensive, co-ordinated, complete and contain all information necessary and reasonable to convey the design requirements to the Contractor for the purposes of construction;
 - c) exercise the skill and expertise reasonably expected of a building designer who performs services of the type of the Services;

- d) only retain employees and subcontractors who are suitable and competent to perform the Services they are retained to perform;
- e) co-operate with the Contractor in the provision of the Services;
- f) perform all Services so as to enable the Principal to comply with the requirements of relevant Authorities and with the Construction Contract and in particular so as not to expose the Principal to an allegation that it has breached the Construction Contract; and
- g) when acting as superintendent and administering the Construction Contract, or subcontractor agreements, administer those agreements in accordance with their terms, including by:
- i. complying with all relevant time limits, and if no time is stated, by acting promptly; and
 - ii. acting honestly.
- 5.2. Any approval or expression of approval or satisfaction given by the Principal to any work performed by the Building Designer as part of the Services will not diminish or extinguish the responsibilities of the Building Designer under this Agreement, affect any warranty given by the Building Designer under this Agreement or at common law or amount to a waiver of any right of the Principal.
- 5.3. The Building Designer acknowledges that the Principal will rely on the advice and work provided by the Building Designer as part of the Services.
- 5.4. The Documentation produced by the Building Designer must:
- a) be such that it allows for competitive tendering;
 - b) as it is developed, be such that it will result in the Works being designed and constructed for a cost which is reasonably consistent with the Project Budget;
 - c) be comprehensive, co-ordinated and complete so that construction can commence and clarification or requests for information proceed within normal building contract practice; and
 - d) be co-ordinated by the Building Designer with the design of the Project, including design work by subcontractors.
- 5.5. If the Building Designer is required to repeat a part of the Services because the Documentation does not permit the Works to be constructed in accordance with the Project Budget, then the repeat services will be undertaken without cost to the Principal, except to the extent that the budget overrun is attributable to the Principal.
- 5.6. Where there is an error, ambiguity, inadequacy or deficiency ("Error") in the Documentation, then no additional fee will be paid to the Building Designer for any change or revision to the Documentation which is necessary as a consequence of the Error.
- 5.7. The Building Designer must notify the Principal of potential overruns to the Project Budget as they are identified by the Building Designer during design development.
- 6. PAYMENT**
- 6.1. As consideration for the performance of the Services by the Building Designer, the Building Designer will be paid the Fee (as it is adjusted under this Agreement) and the Reimbursable Expenses.
- 6.2. All expenses incurred in carrying out the Services will be the responsibility of the Building Designer. No payment for disbursements (other than the Reimbursable Expenses) or additional costs will be paid unless the Principal gives prior written approval. The Reimbursable Expenses payable shall be limited to the actual expense incurred by the Building Designer without allowance for a service or other fee.
- 6.3. After the Building Designer has completed "Sketch Design" and provided to the Principal a preliminary project budget estimated (as described in **schedule 2**), the parties may, by agreement, adjust the Fee to reflect the variance between the preliminary project budget estimate and the Project Budget. Failing such agreement, the Fee shall remain as nominated in **schedule 3**.
- 6.4. Subject to the Building Designer complying with **clause 2.1**, the Fee will be paid by the Principal in accordance with the following procedure:
- a) 10% upon the Building Designer completing Stage A Sketch Design (as described in **schedule 2**) and submitting a claim for payment which amount shall be claimed monthly on the final day of each month for service to that date completed;
 - b) 15% upon the Building Designer completing Stage B Detailed Design (as described in **schedule 2**) and submitting a claim for payment which amount shall be claimed monthly on the final day of each month for service to that date completed;
 - c) 40% upon the Building Designer issuing the Tender Documentation, completing Stage C (as described in **schedule 2**) and submitting a claim for the payment which amount shall be claimed monthly on the final day of each month for service to that date completed;
 - d) 30% for Stage D Contract Administration (as described in **schedule 2**), which amount shall be claimed monthly on the final day of each month for Services carried out up to that day and calculated by applying the proportion of the Services completed during the payment period to that proportion of the Fee payable for Contract Administration; and
 - e) 5% upon the Building Designer submitting to the Principal evidence that a final certificate has been issued to the Contractor under the Construction Contract and completing Stage E (as described in **schedule 2**).
- 6.5. The Building Designer must submit claims for payment at the times described in **clause 6.4**. Each payment claim must contain sufficient detail for the Principal to calculate the amount payable to the Building Designer.
- 6.6. The Principal must pay the Building Designer the amount calculated by the Principal as owing under **clause 6.5** within 14 days of receiving the Building Designer's payment claim.
- 6.7. Payment is not evidence of the value of the Services or an admission of liability or that the Services are satisfactory, but is payment on account only.
- 6.8. The Principal may withhold payment until the Building Designer has produced evidence of insurance in accordance with **clause 9**.
- 7. RIGHT OF SET OFF**
- 7.1. Without limiting the Principal's rights under a provision in this Agreement or at law, the Principal may deduct from money otherwise due to the Building Designer any sum which the Principal asserts is payable by the Building Designer to the Principal which arises in relation to this Agreement.
- 7.2. Nothing in this clause will affect the right of Principal to recover from the Building Designer the whole of any money or any balance that remains owing.
- 8. GST**
- 8.1. In this clause:
- "GST" means GST within the meaning of the GST Act and includes penalties and interest.
- "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- 8.2. Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.
- 8.3. Except where this Agreement specifies otherwise, an amount payable by a party under this Agreement in respect of a taxable supply by the other party represents the value of the supply of the net amount under **clause 8.5**.
- 8.4. The recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.
- 8.5. This Agreement requires a party to pay for, reimburse or indemnify against any expense or liability ("reimbursable expense") incurred by the other party ("payee") to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which

the payee is entitled in respect of the reimbursable expense ("net amount").

- 8.6. A party is not obliged, under **clause 8.4**, to pay an amount for GST in respect of a taxable supply to it, until given a valid tax invoice for the supply.

9. RISK AND INSURANCE

- 9.1. The Building Designer indemnifies the Principal and its officers, agents and contractors against all Loss incurred by or awarded against the Principal arising directly or indirectly from any:
- breach by the Building Designer of this Agreement; or
 - act or omission (including any negligence, unlawful conduct or wilful misconduct) by the Building Designer or its subcontractors relating to this Agreement or arising as a consequence of the performance or non-performance of the Services.
- 9.2. The Building Designer must maintain the professional indemnity insurance with an insurer from the Commencement Date until ten years after either the completion of the Services or the earlier termination of this Agreement, to the amount in **schedule 1** in respect of legal liability arising from breach of professional duty including vicarious liability for the breach of professional duty by subcontractors.
- 9.3. The Building Designer must require each of its subcontractors:
- before commencing the Services takes out insurance referred to in **clause 9.2** sufficient to protect the interest of the Principal, Building Designer and all of the subcontractors for the matters referred to in **clause 9.2** in so far as they relate to the Services to be performed by the subcontractor;
 - to maintain the insurance for the period provided in **clause 9.2**; and
 - to produce on demand by the Principal or Building Designer sufficient evidence that the insurance has been effected and is current.
- 9.4. The Building Designer must produce on demand by the Principal sufficient evidence that the insurance required under **clause 9.2** has been effected and is current. If the Building Designer fails to do so, the Principal may itself effect the insurance. The cost of doing so and maintaining such insurance will be a debt due from the Building Designer to the Principal.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. The Building Designer warrants that unless provided elsewhere in this Agreement, that it is the legal and beneficial owner of all rights in the Documentation provided by the Building Designer and shall indemnify the Principal against any design, material, document and method of working provided by the Building Designer infringing Intellectual Property Rights.
- 10.2. The Building Designer as beneficial owner hereby grants to the Principal (or shall procure that the beneficial owner who can grant the same shall grant to the Principal), an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents for any purpose related to the Project and completed Project, including (without limitation) the execution, completion, repair, maintenance, modification, extension, mortgaging, advertisement, reinstatement, letter and sale thereof. The licence or licences shall carry the right to grant sub-licences and shall be transferable to third parties. For the purposes of this clause 10.2 "Documents" shall mean the drawings, models, specifications, schedules, reports, details, plans, calculations, software and other similar documents and information provided or to be provided on behalf of the Building Designer, including all Documentation in connection with the Project.
- 10.3. The Building Designer represents and agrees that it is at the date of this Agreement, the legal and beneficial owner of all rights in the Documentation and that it has not previously assigned, transferred or licenses any of its right title and interest in that Documentation.
- 10.4. The Building Designer indemnifies the Principal and its officers, employees, agents and contractors against all Loss incurred or awarded against the Principal arising directly or indirectly from use by the Building Designer, its employees, subcontractors or

agents of any Documentation or of any material, if that use infringes the Intellectual Property Rights of any person (including the Principal).

- 10.5. The Building Designer must protect and keep safe and secure all materials and documentation provided by the Principal to the Building Designer and on completion of the Services must promptly return to the Principal those materials and documentation.

11. RECORDS

- 11.1. The Building Designer must keep accurate records of the performance of the Services, which must be available for inspection by the Principal and its representatives for a period of seven years after the completion of the Services or earlier termination of the Agreement.
- 11.2. The Building Designer must not and must do everything reasonably expected to ensure that its employees do not:
- use or disclose to any person or make public any information obtained by it relating to the Project except if it is necessary for the performance of the Services or as required by law; or
 - issue any press release or communicate with the press, radio or television media in any way in relation to the Project without the prior written approval of the Principal.

12. TERMINATION

- 12.1. Either party may terminate this Agreement by giving the other party ten Business Days notice in writing.
- 12.2. If the Principal terminates this Agreement under **clause 12.1**, the Principal must pay the Building Designer the sum legally due under this Agreement as being due to the Building Designer to reflect the value to the Principal of the Services provided up to the date of termination, and that amount will be in full and final satisfaction of the Fee in relation to this Agreement.
- 12.3. A party ("**Terminating Party**") may immediately terminate the agreement evidenced by this Agreement by writing notice to the other party ("**Defaulting Party**") if:
- the Defaulting Party is the Principal, and the Principal does not pay any money due for payment under **clause 6** on the due date and the Principal does not pay that money within a further period of ten Business Days after the Building Designer serves written notice on the Principal requiring payment;
 - the Defaulting Party is the Building Designer, and the Building Designer does not carry out an obligation under this Agreement and in the case of a default which is capable of remedy, does not remedy that default within five Business Days after the Principal serves written notice on the Building Designer requiring it to be remedied;
 - an Insolvency Event occurs in relation to the Defaulting Party;
 - the Defaulting Party ceases or threatens to cease to carry on its business or a substantial part of its business; or
 - the Defaulting Party is a natural person and dies.
- 12.4. As soon as is reasonably practicable after termination under **clause 12.3**, the Principal must pay the Building Designer the sum certified by the Principal as being due to the Building Designer to reflect the value to the Principal of the Services provided up to the date of termination, less any Loss incurred by the Principal as a consequence of a breach of this Agreement by the Building Designer.
- 12.5. The sum payable under **clause 12.4** will be in full and final satisfaction of and compensation for any claim in respect of the Fee.
- 12.6. All rights vested in the Principal by this clause are without prejudice to any other rights and remedies of the Principal. Any obligations imposed by this clause on the Principal to make payment are subject to any of the Principal's rights of set-off or counter claim.

13. DISPUTES

- 13.1. If a difference or dispute (together called a "Dispute") between the parties arises out of or relates to this Agreement, or the breach, termination, validity or subject matter of it, or as to any claim or tort, in equity or pursuant to any domestic or international statute of law, then one party shall give the other notice of the dispute in writing adequately identifying and providing details of the Dispute ("Notice of Dispute").
- 13.2. Despite the existence of a Dispute, all parties will, subject to this Agreement, continue to perform this Agreement.
- 13.3. Within ten Business Days of receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree a resolution or methods of resolution.
- 13.4. If the Dispute is not resolved within five Business Days (or any further period as the representatives may agree is appropriate) following the clause 13.3 meeting, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to litigation.
- 13.5. The mediation will be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.
- 13.6. This clause does not merge upon completion.
- 13.7. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by clause 13 for any purpose other than an attempt to settle a Dispute between the parties.
- 13.8. After expiration of 90 days from the giving of the written notice under clause 13.1 a party which has complied with the provisions of clauses 13.1 to 13.7, may, in writing, terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to litigation.

14. NOTICES

- 14.1. A notice, demand, certification, process or other communication relating to this Agreement must be in writing in English and may be given by an agent of the sender.
- 14.2. In addition to any other lawful means, a communication may be given by being:
- personally delivered;
 - left at the party's current address for notices;
 - sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
 - sent by fax to the party's current numbers for notices.
- 14.3. The particulars for delivery of notices are contained in schedule 1.
- 14.4. Each party may change its particulars for delivery of notices by notice to the other party.
- 14.5. Subject to clause 14.6, a communication is given if posted:
- within Australia to an Australian address, three Business Days after posting; and
 - in any other case, ten Business Days after posting.
- 14.6. Subject to clause 14.7, a communication is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- 14.7. If a communication is given:
- after 5.00 pm in the place of receipt; or
 - on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt;
- it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

- 14.8. Any process of other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by the clauses 14.5 to 14.9 in accordance with any applicable law.
- 14.9. Notices referred to in this Agreement must be given within the times provided for in this Agreement.

15. GENERAL

- 15.1. The Building Designer as between the parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidence or effected by it.
- 15.2. Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.
- 15.3. This Agreement may only be varied or replaced by a document duly executed by the parties.
- 15.4. A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- 15.5. A party will not be liable for any Loss incurred by any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 15.6. Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.
- 15.7. Excepted as expressly stated otherwise in this Agreement, the Principal may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.
- 15.8. This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
- 15.9. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- 15.10. The Building Designer must not assign or deal with any right under this Agreement without the prior written consent of the Principal. Any purported dealing by the Building Designer in breach of this clause is of no effect. The Principal may assign its interest under this Agreement at any time by notice in writing to the Building Designer.
- 15.11. An obligation of two or more persons binds them separately and together.
- 15.12. This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- 15.13. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party will be liable to any other party in respect of those matters.
- 15.14. No oral explanation of information provided by any party to another:
- affects the meaning or interpretation of this Agreement; or
 - constitutes any collateral Agreement, warranty or understanding between any of the parties.
- 15.15. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination of this Agreement. It is not necessary for a party to incur an expense before enforcing a right of indemnity conferred by this Agreement.
- 15.16. This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

SCHEDULE 1

General Details

DATE OF THIS AGREEMENT

PRINCIPAL:
(clause 1.1)

**THE ROMAN CATHOLIC TRUSTS CORPORATION FOR
THE DIOCESE OF MELBOURNE**

ABN:

Address:

383 Albert Street, East Melbourne, Victoria 8002

Postal Address:

383 Albert Street, East Melbourne, Victoria 8002

Telephone No:

Facsimile No:

Name of Delegated Authority (clause 2.1):

THE BUILDING DESIGNER:
(clause 1.1)

ABN:

Address:

Postal Address:

Telephone No:

Facsimile No:

COMMENCEMENT DATE:
(clause 1.1)

PROJECT BUDGET:
(clause 1.1)

DATE FOR COMPLETION:
(clause 1.1)

PROJECT:
(clause 1.1)

SITE:
(clause 1.1)

PROFESSIONAL INDEMNITY INSURANCE:
(clause 1.1)

Amount:

\$3,000,000

SCHEDULE 2**The Services
(clause 1.1)****THE SERVICES**

The Building Designer shall engage consultants necessary to provide the Services and to complete design for construction of the Project, including but not limited to, engaging consultants (acting as subcontractors) to carry out quantity surveying, mechanical, electrical, hydraulic, civil, structural engineering services.

The Building Designer will provide the following services at each stage of the Project.

PRE-CONSTRUCTION STAGE**Stage A Sketch Design****Stage A1** *Pre-design stage*

- obtain the Principal's design brief and other requirements;
- provide recommendations for fees and for the engagement of subcontractors (including consultants);
- inspect the site and assess site conditions and constraints;
- undertake preliminary analysis of authority regulations and requirements;
- provide a preliminary project budget estimate;
- other; and
- obtain the Principal's approval (in the form of Annexure 1) to prepare sketch design and to proceed to Stage A2.

Stage A2 *Design stage*

- arrange and attend meetings with the client, authorities and others as required;
- prepare sketch drawings including sketches, diagrams and other information to adequately explain the design;
- prepare design briefs for subcontractors (including consultants);
- prepare preliminary costings;
- prepare preliminary selections of materials and finishes;
- other; and
- obtain the Principal's approval (in the form of Annexure 2) to proceed with Stage B Final Detailed Design.

Stage B Detailed Design

- develop the approved sketch design into a final design solution with drawings at an appropriate scale and other details or documents to adequately explain the design;
- procure and co-ordinate the design work undertaken by subcontractors with the architectural design;
- provide schedule of materials and finishes;
- review the final design against the Project Budget and prepare updated cost estimate;
- prepare the necessary documents for planning applications;
- assist in obtaining approval by negotiating, attending meetings;
- take all necessary steps required to obtain a Town Planning Permit, including preparing the application, lodging and all negotiations and revisions carried out in the ordinary course of obtaining a Town Planning Permit (excluding preparing for and attending appeals, which shall be an additional service subject to the provisions in clause 3);
- other; and
- obtain the Principal's approval (in the form of Annexure 3) to proceed with Stage C Documentation.

Stage C Documentation

- prepare recommendation to the client on the preferred method tendering;
- prepare drawings at an appropriate scale including plans, elevations and sections, together with other details and schedules to enable the project to be tendered.
- co-ordinate and integrate the work of subcontractors with the architectural drawings;
- prepare a specification describing the quality of materials, finishes and workmanship necessary to complete the project in accordance with the drawings, the Principal's requirements and which are adequate to obtain all necessary approvals and permits from all relevant Authorities;
- submit documents for building approval;

- prepare pre-tender cost estimate;
- other; and
- obtain the Principal's approval (in the form of Annexure 4) of documents, to call tenders and to proceed to Stage D.

CONSTRUCTION STAGE**Stage D Contract Administration***Tendering*

- call tenders;
- respond to enquiries from tenderers;
- close and assess the tenders;
- negotiate with the preferred tenderer; and
- prepare tender documentation.

Administration

- prepare the contract documents for signing by both parties;
- undertake periodic site inspections, check work in progress regarding design quality control, materials selections and performance as described in the contract documents;
- review shop drawings and other submissions by its subcontractors and Contractor;
- provide supplementary details and information;
- provide instructions to clarify the contract documents where required;
- administer variations and obtain Principal approvals;
- arrange and attend site meetings and other meetings as required;
- provide the Principal with monthly reports regarding time, cost and progress;
- assess progress claims and issue progress certificates;
- assess and approve claims for extensions of time;
- adjust prime cost and provisional sums and other monetary sums included in the contract documents;
- co-ordinate subcontractors;
- prepare defects list prior to practical completion;
- inspect rectification and issue notice of practical completion; and
- prepare and submit to the Principal at Practical Completion a Project Summary Report which includes a complete financial summary of the final contract amount.

General

- provide the Contractor with 5 copies of all Principal supplied documents required under the Building Contract plus provide 2 additional copies to the Principal.

PRACTICAL COMPLETION AND DEFECTS LIABILITY STAGE**Stage E Continued Contract Administration**

- assess the final contract account;
- inspect the works and prepare final defects listing;
- issue the final certificate on completion of all defects and outstanding work;
- prepare and submit to the Principal at the time of issuing the final certificate, a Project Summary Final Report which includes a complete financial summary of the Project; and
- other Provide disk of all "as built" drawings, floor plans and elevations in AutoCad format to DBMAS
.....;

* Strike out service which will not be provided and include any other service which is to be provided.

SCHEDULE 3

**Fee
(clauses 1.1 and 6)**

The Fee is the lump sum of \$ _____ (maximum of 10% of the estimated construction cost) _____ paid in accordance with clause 6.

RATES

(This Schedule of Rates will only be used for valuing additional work and alterations to the Fee)

Work	Rate
Principal	
Architect	
Technician	

REIMBURSABLE EXPENSES

The Building Designer will be reimbursed for only the following disbursements:

- Fees, taxes, levies or charges paid to authorities
- Advertisements and notices
- Preparation of submissions and attendance at appeals
- Special presentation material, models, videos, perspectives

- Rental of special equipment
- Photographic records
- Air freight and courier services
- Provision of documents other than to client for client's own use
- Provision of building contracts (excluding all photocopying fees which are included in the Lump Sum Fee)
- Other

* Strike out Reimbursable Expenses that will not be paid and include any Reimbursable Expenses to be paid.

EXECUTED as an AGREEMENT

Signed for and on behalf of **THE ROMAN CATHOLIC**)
TRUSTS CORPORATION FOR THE DIOCESE OF)
MELBOURNE)
by)
..... who certifies he / she is)
the)

for **THE ROMAN CATHOLIC TRUSTS CORPORATION**)
FOR THE DIOCESE OF MELBOURNE in the presence of)

.....
Witness

.....
Name of Witness (print)

THE COMMON SEAL of)
is affixed in the presence of:)

.....
Company Secretary / Director

.....
Director

.....
Name of Company Secretary / Director (print)

.....
Name of Director (print)

ANNEXURE 1

AUTHORITY TO PROCEED TO STAGE A2 – DESIGN STAGE

PARISH/SCHOOL:

PROJECT DESCRIPTION:

TOTAL PROJECT BUDGET:

PROJECT BUDGET BREAK UP:

• Construction Works	\$.....
• Services	\$.....
• Furniture and Equipment	\$.....
• Authority Approval Fees	\$.....
• Insurance (CCI)	\$.....
• D.B.A.S. Fee	\$.....
• Other	\$.....
• Architect/Consultant Fee	\$.....
TOTAL	<u>\$.....</u>
	<u>.....</u>

I certify that the Building Designer has:

- Completed the Services set out in Stage A1 (described in Schedule 2); and
 - made all necessary enquiries expected of a professional consultant carrying out the Services when preparing the information in this document,
- and the information in this document is, to the best of my knowledge and belief, true and correct.

.....

BUILDING DESIGNER

I authorise the Building Designer to proceed to Stage A2 of the services described in Schedule 2
 Based on the information supplied, and certification given by the Building Designer in this
 Document.

.....

PRINCIPAL'S DELEGATED AUTHORITY

ANNEXURE 2

AUTHORITY TO PROCEED TO STAGE B – DETAILED DESIGN

PARISH/SCHOOL:

PROJECT DESCRIPTION:

TOTAL PROJECT BUDGET:

PROJECT BUDGET BREAK UP:

• Construction Works	\$.....
• Services	\$.....
• Furniture and Equipment	\$.....
• Authority Approval Fees	\$.....
• Insurance (CCI)	\$.....
• D.B.A.S. Fee	\$.....
• Other	\$.....
• Architect/Consultant Fee	\$.....
TOTAL	<u>\$.....</u>

I certify that the Building Designer has:

- Completed the Services set out in Stage A2 (described in Schedule 2); and
 - made all necessary enquiries expected of a professional consultant carrying out the Services when preparing the information in this document,
- and the information in this document is, to the best of my knowledge and belief, true and correct.

.....

BUILDING DESIGNER

I authorise the Building Designer to proceed to Stage B of the services described in Schedule 2
 Based on the information supplied, and certification given by the Building Designer in this
 Document.

.....

PRINCIPAL'S DELEGATED AUTHORITY

ANNEXURE 3

AUTHORITY TO PROCEED TO STAGE C – DOCUMENTATION

PARISH/SCHOOL:

PROJECT DESCRIPTION:

TOTAL PROJECT BUDGET:

PROJECT BUDGET BREAK UP:

• Construction Works	\$.....
• Services	\$.....
• Furniture and Equipment	\$.....
• Authority Approval Fees	\$.....
• Insurance (CCI)	\$.....
• D.B.A.S. Fee	\$.....
• Other	\$.....
• Architect/Consultant Fee	\$.....
TOTAL	<u>\$.....</u>
	<u>.....</u>

I certify that the Building Designer has:

- Completed the Services set out in Stage B (described in Schedule 2); and
 - made all necessary enquiries expected of a professional consultant carrying out the Services when preparing the information in this document,
- and the information in this document is, to the best of my knowledge and belief, true and correct.

.....

BUILDING DESIGNER

I authorise the Building Designer to proceed to Stage C of the services described in Schedule 2
 Based on the information supplied, and certification given by the Building Designer in this
 Document.

.....

PRINCIPAL'S DELEGATED AUTHORITY

ANNEXURE 4

AUTHORITY TO PROCEED TO STAGE D – CONTRACT ADMINISTRATION

PARISH/SCHOOL:

PROJECT DESCRIPTION:

TOTAL PROJECT BUDGET:

PROJECT BUDGET BREAK UP:

• Construction Works	\$.....
• Services	\$.....
• Furniture and Equipment	\$.....
• Authority Approval Fees	\$.....
• Insurance (CCI)	\$.....
• D.B.A.S. Fee	\$.....
• Other	\$.....
• Architect/Consultant Fee	\$.....
TOTAL	<u>\$.....</u>
	<u>.....</u>

I certify that the Building Designer has:

- Completed the Services set out in Stage C (described in Schedule 2); and
 - made all necessary enquiries expected of a professional consultant carrying out the Services when preparing the information in this document,
- and the information in this document is, to the best of my knowledge and belief, true and correct.

.....

BUILDING DESIGNER

I authorise the Building Designer to proceed to Stage D of the services described in Schedule 2
 Based on the information supplied, and certification given by the Building Designer in this
 Document.

.....

PRINCIPAL'S DELEGATED AUTHORITY