[Version – 14 March 2019]

Dated: <date>

Project Management Services Agreement

Australian Catholic University Ltd ACN 050 192 660

<Project Manager> ACN 000 000 000

<Description of Project>

***[BCODE] [LCODE]***

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Project Management Agreement

Dated

Parties

1. **Australian Catholic University Limited** ACN 050 192 660 (**Principal**) of 40 Edward Street, North Sydney NSW 2060
2. **[Project Manager Name]** ABN [PM's ABN] (**Project Manager**) of [PM's Address].

Background

1. The Principal wishes to engage the Project Manager to perform and the Project Manager agrees to perform the Services in connection with the Project on the terms and conditions of this Agreement.
2. The parties wish to record the conditions of the engagement.

Operative provisions

# Defined Meanings and interpretation

## Definitions

In this Agreement, unless the context otherwise requires:

**Agreed Program** means the program for provision of the Services set out in Annexure C, and as specified from time to time by the Principal as being applicable to the Project from time to time;

**Agreement** means this document and the annexures thereto;

**Australian Privacy Principles** has the meaning given in s 14 of the *Privacy Act 1988* (Cth);

**Brief** means the document set out in or referred to in Item 1 of Annexure A which describes the nature, extent, requirements, quality, cost and timing of the Project;

**Business Day** means any day other than

### a Saturday, Sunday or public holiday, or

### 27, 28, 29, 30 or 31 December.

**Claim** includes any action, claim, demand, suit or proceeding whether for the payment of money (including for loss or for any adjustment to the Project Management Fee) or any other relief or remedy and whether it arises:

* + 1. under, arising out of or in connection with this Agreement; or
    2. otherwise at law, including:
       1. by statute;
       2. in tort for negligence or otherwise (including negligent misrepresentation); or
       3. for restitution, including restitution based on unjust enrichment.

**Confidential Information** means:

* + 1. information relating to the Principal or any business carried out by the Principal that comes to the knowledge of the Project Manager;
    2. the existence and subject matter of the Agreement;
    3. the terms of any agreement, contract or other arrangement between the Principal and a third party (including any Other Consultant);
    4. third party information disclosed in confidence;
    5. information that the Principal has indicated is confidential; or
    6. any other information the disclosure or use of which may be detrimental to the Principal (or person who has provided it to the Principal);

**Consequential Loss or Damage** means:

#### any loss, that does not arise according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered this Agreement, as the probable result of the relevant breach, act or omission; and

* + - 1. loss of profit, loss of goodwill, loss of revenue or loss of anticipated savings;

but Consequential Loss or Damage does not include:

* + - 1. additional internal administrative and management costs and expenses;
      2. expenditure or fees rendered unnecessary;
      3. costs of procuring replacement Services;
      4. cost of rectification of any work done in connection with the Services;
      5. cost and expenses associated with procurement of any alternate accommodation that may be required; or
      6. legal fees on a full indemnity basis.

**Date for Completion** means the date identified in item 16 of Annexure A, as may be amended in accordance with this Agreement;

**document** includes but is not limited to any document, drawing, plan, specification, chart, map or computer program and data whether in hard copy or electronic form;

**Insolvency Event** means:

### a party advises the other party in writing or its creditors generally that it is insolvent or is unable to proceed with this Agreement for financial reasons;

### execution is levied against a party by a creditor and cannot be satisfied within 21 days;

### a party is an individual person or a partnership including an individual person, and if that person:

#### commits an act of bankruptcy;

#### has a bankruptcy petition presented against him or her or he or she presents their own petition;

#### is made bankrupt;

#### makes a proposal for a scheme of arrangement or a composition; or

#### has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966 (Cth)*; or

### in relation to a party being a corporation:

#### notice is given of a meeting or creditors with a view to the corporation entering into a deed of company arrangement;

#### the corporation entering into a deed of company arrangement with creditors;

#### a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

#### an application is made to a court for the winding up of the corporation and is not stayed within 14 days;

#### a winding up order is made in respect of the corporation;

#### the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or

#### a mortgagee of any property of the corporation takes possession of that property;

**Intellectual Property** means all current and future intellectual property rights (including without limitation all copyright, trademark, design, patent and confidentiality rights) created for or on behalf of the Project Manager and the Project Manager’s right, title and interest in and to all materials or information prepared by or on behalf of the Project Manager as part of or in connection with the Services or this Agreement;

**Key Personnel** means the persons specified in Item 8 of Annexure A;

**Other Consultant** means any consultant, contractor or subcontractor engaged by the Principal or the Owner for the purposes of the Project (not including the Project Manager);

**Owner** means the registered proprietor or proprietors of the Site;

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth);

**Principal** extends to and includes its successors in title and assigns;

**Privacy Laws** means the *Privacy Act 1988* (Cth) and all other laws relating to or regulating the privacy of individuals or the collection, handling, use or disclosure of Personal Information (including the Australian Privacy Principles);

**Project** means the project, or any part thereof, as described in Item 2 of Annexure A;

**Project Manager** extends to and includes its successors in title and assigns;

**Project Management Fee** means the amount set out in Item 5 of Annexure A, as may be adjusted in accordance with this Agreement;

**Reimbursable Expenses** means those items of expenditure incurred by the Project Manager, listed in Item 5(b) of Annexure A, which are reimbursable by the Principal subject to the terms of this Agreement;

**Services** means the services described in the Brief and clause 5.2;

**Site** means the land described in Item 4 of Annexure A;

**Variation** has the meaning given to it in clause 16.1(a); and

**Wilful Misconduct** means an act or omission committed with reckless disregard for the consequences, and in circumstances where the party knows or ought to know that those consequences would likely result from the act or omission, and which is not due to an honest mistake, oversight, error of judgment accident or negligence

## Headings

Headings, sub-headings, bold print and capitals have been included for ease of reference. This Agreement must not be construed or interpreted by reference to such headings, sub-headings, bold print or capitals.

## Statutes

Reference to statutes includes consolidations, amendments, re-enactments or replacements of those statutes.

## Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all previous correspondence and negotiations concerning the engagement of the Project Manager for the Project.

## Interpretation

In this Agreement unless the contrary intention appears:

### the singular includes the plural and vice versa;

### the word 'person' includes a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;

### the words ‘includes’ and ‘including’ mean includes and including without limitation;

### an agreement, representation or warranty undertaking in favour of two or more persons is for the benefit of them jointly and severally;

### an agreement, representation or warranty undertaking on the part of two or more persons binds them jointly and severally;

### a reference to:

#### a person includes the person’s successors, assigns and persons substituted by novation;

#### this or any other document includes the document as novated, varied or replaced; and

#### a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Agreement; and

### if a period of time is specified and dates from a given day or the day of an act or event it is to be calculated exclusive of that day; and

### a provision of this Agreement must not be construed to the disadvantage of a person merely because that person was responsible for the preparation of this Agreement or the inclusion of that provision in this Agreement.

## Nature of Project Manager’s obligations

* + 1. The parties acknowledge and agree that if the Principal is not the owner and registered proprietor of the Site that Owner will have the benefit of all the Project Manager’s obligations under or in connection with this Agreement, including without limitation obligations in connection with the quality of design, but will have no liability whatsoever to the Project Manager under or in connection with this Agreement.
    2. The Project Manager's liability to the Owner under or in connection with this Agreement will not be greater than the Project Manager's liability to the Principal under or in connection with this Agreement and under no circumstances will the Project Manager be obliged to compensate both the Owner and the Principal for the same loss.
    3. The liability of the Project Manager under this Agreement to the Owner in respect of any breach will be reduced to the extent that the Project Manager pays any sum to the Principal in respect of that breach.

# Order of Precedence

In the event of any inconsistency between the documents which form this Agreement, the documents comprising the Agreement will be construed in the following order of precedence:

### this document;

### Annexure A;

### Annexure B;

### the Brief; and

### the other annexures of this Agreement.

# Appointment and Term

## Appointment

The Principal acknowledges having engaged the Project Manager and in consideration for the Project Management Fee set out in Item 5 of Annexure A the Project Manager acknowledges having accepted this engagement to provide the Services for the Project as described in this Agreement and in accordance with the Brief.

## Term

If the commencement of such commission preceded the date of this Agreement the parties agree that any services provided by the Project Manager in relation to the Project prior to the date of execution of this Agreement are deemed to have been provided by the Project Manager as part of the Services pursuant to the terms of this Agreement.

# Information

### The Project Manager will immediately give notice to the Project Manager upon discovering any error, inconsistency, omission or defect in any information related to the Project provided to the Project Manager by the Principal or the Principal’s Representative.

### The Principal does not represent that information made available shows or explains completely the existing conditions at the Site. The Principal is not responsible for any interpretations, deductions and conclusions made by the Project Manager from the information made available and the Project Manager must accept full responsibility for any such interpretations, deductions or conclusions.

### Where there is an ambiguity, discrepancy or inconsistency between the documents, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, then, subject to clause 4(d), this Agreement will prevail over other documents. Any ambiguity, discrepancy or inconsistency will not as of right entitle the Project Manager to any variation, additional cost or expense under this Agreement or otherwise at law or in equity. If it is discovered by the Project Manager or the Principal, then the party discovering it must promptly give notice to the other.

### The Principal’s Representative must instruct the Project Manager as to the course it must adopt within 7 days of the notice under paragraph (c) and the Project Manager must comply with that instruction.

# Duties of Project Manager

## Scope of duties

The Project Manager must perform the Services set out in Annexure B in accordance with this Agreement.

## Incidental services

The Services to be provided by the Project Manager are not limited to those referred to in clause 5.1 but include all incidental services which are reasonably to be inferred from the documents comprising the Agreement or that would ordinarily be provided by a qualified, competent, professional project manager exercising all due skill, care and diligence in the performance of services comparable to the Services.

## Services and skills

### The Project Manager must:

#### provide the Services:

##### in accordance with the Agreed Program and a timely manner;

##### exercising skill, care and diligence to the standard expected of a specialist consultant providing services of a similar nature in respect of projects comparable to the Project;

#### exercise good faith in the best interests of the Principal.

### The Project Manager's Services must comply with:

#### the requirements of this Agreement (including the Brief);

#### the requirements of all relevant authorities, legislation, and building codes; and

#### all relevant Australian Standards.

### The Project Manager acknowledges and agrees that it has:

#### examined and carefully checked the Brief and all other documents that comprise this Agreement and that such documents are suitable, appropriate and adequate for the intended purpose of the Services; and

#### not relied upon any information, documentation, statement or representation of the Principal or its employees, agents or contractors in entering into or performing its obligations under this Agreement.

### Without limiting the generality of the foregoing, the Services provided by the Project Manager must as far as practical provide effective, efficient and economical solutions to satisfy the performance objectives and other requirements set out in the Brief. Where appropriate the Project Manager considers that an alternative proposal will be more effective, efficient and economical, the Project Manager must provide details of alternative proposals that satisfy these objectives and requirements for consideration by the Principal.

**5.3A Review of documentation by Project Manager**

If, in the performance of the Services, the Project Manager is required to review documents, then the Project Manager must:

(a) undertake a high level review of those documents before they are issued to or approved for construction by any Other Consultant; and

## (b) if it identifies or becomes aware of any matter which may materially adversely affect the Project, notify the Principal as soon as practicable setting out recommendations as to steps to be taken to avoid or minimise the adverse effect.

## Project Manager to inform the Principal

The Project Manager must from time to time keep the Principal fully informed regarding aspects of the Project which come to the knowledge of the Project Manager in the performance of its duties of which the Principal ought reasonably to be informed.

## Consultations with the Principal

The Project Manager must make its Key Personnel available:

### for consultation with the Principal (with or without other consultants) at locations as required by the Principal, including the Site, as reasonably required by the Principal for meetings with the Principal or the Principal’s Representative which the Principal or the Principal’s Representative consider are reasonably necessary to achieve the efficient completion of the Services; and

### to attend and make presentations as reasonably required by the Principal.

## Instructions from the Principal

Except where the Project Manager is required to act as an assessor or certifier, the Project Manager must at all times act in accordance with any instructions given by the Principal’s Representative.

## Performance of obligations

In the performance of its obligations under this Agreement the Project Manager must not to do or omit to do anything without the Principal's prior approval which:

### delays or causes the suspension of the Project;

### causes the Principal to incur additional costs; or

### puts the Principal in breach of any contract into which it has entered in respect of the Project.

## Conflict of interest

The Project Manager must not undertake work for any other person which might reasonably be regarded as placing it in a position of conflict of interest in relation to the Principal or the Project. As soon as any facts or circumstances likely to cause a conflict of interest in respect of any of the Project Manager's duties under this Agreement arise the Project Manager must forthwith notify the Principal in writing of the conflict and provide details of the facts or circumstances. The Project Manager must cooperate with the Principal to resolve the conflict of interest as and when it arises. The Principal must treat any information so provided as confidential other than as is reasonable in the circumstances.

## Indemnity

The Project Manager indemnifies and must keep indemnified the Principal from and against any claim, demand, action or proceedings of any kind that may be brought (whether during or after completion of the Project) against the Principal in respect of loss, injury or damage to property or persons to the extent that such arise out of any negligent act, error, omission or statement by the Project Manager, its servants, agents or employees in the performance of its duties under this Agreement. The Project Manager’s liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the loss, injury, death or damage.

## Project Manager's limitation of liability

(a) Subject to clause 5.10(b), the liability of the Project Manager to the Principal in connection with this Agreement is capped in the amount specified at Item 11 of Annexure A.

(b) The limitation of liability in clause 5.10(a) does not apply to, limit or restrict in any way the liability of the Project Manager to the Principal:

(i) for any loss or liability arising out of fraud, Wilful Misconduct or abandonment or breach of intellectual property by the Project Manager or persons under its responsibility or control;

(ii) for loss incurred by the Principal or to a third party for personal injury or death to the extent caused by the Project Manager to the extent that liability cannot be excluded by law; or

(iii) for loss of a sort which is covered by an insurance policy required to be effected under this Agreement, for an amount in excess of the cap in Item 11 of Annexure A in which case:

(A) the Project Manager's liability to the Principal is limited to the amount that the Project Manager, in the absence of any cap, is entitled to recover; or

(B) the Project Manager would have been entitled to recover under an insurance policy required to be effected under this Agreement but for any breach of the relevant insurance policy by the Project Manager or failure by the Project Manager to effect and/or maintain that policy.

## Consequential Loss

### Neither party will be liable to the other for Consequential Loss or Damage, however and whenever arising and whether arising under this Agreement or as a result of the performance of the Services under this Agreement, and whether based on negligence, breach of contract, or otherwise.

## Amending documents

The Project Manager must, on written request by the Principal’s Representative use its reasonable endeavours to amend the documents prepared by the Project Manager to achieve previously notified Project budgetary or cost limitations. The Project Manager will be entitled to an additional fee only where the amendment arises from an act, default or omission of the Principal, its agents or other Project Managers or from a matter which is beyond the control of, and could not reasonably have been foreseen by, the Project Manager, or where modified to suit an alternative method of construction proposed by the Principal's contractor.

## Project Manager’s occupational health and safety obligations

The Project Manager must ensure that persons employed or engaged in the performance of the Services are provided with safe systems of work, adequate welfare facilities and such instruction, training and supervision as is necessary to enable the Services to be provided without risk to health and safety of any person or the environment. Accordingly, the Project Manager must implement adequate health and safety and environmental policies and procedures and, at the request of the Principal, provide evidence in writing of:

(a) those policies and procedures; and

(b) the Project Manager’s compliance with those policies and procedures.

The Project Manager must comply with the requirements of all relevant laws, statutes, regulations, codes of practice and Australian Standards relating to the protection and preservation of the health and safety of the persons employed or engaged in the performance of the Services.

## Security of Payment Legislation

## If the security of payment legislation applies, the Project Manager must ensure that, within 1 business day after any notice is given or received under therelevant security of payment legislation by the Project Manager in connection with the Project, the Services or this Agreement, a copy of that notice is given to the Principal. In this paragraph, “security of payment” legislation refers to the applicable security of payment legislation in the state or territory in which the Site is located.

# Other Consultants

## Appointment of Consultants

The consultants appointed or to be appointed by the Principal to assist with the Project are named in Item 7 of Annexure A. The Principal reserves the right at any time to terminate the engagement of any consultants and to appoint other consultants.

## Co-ordination

The Project Manager must use all reasonable endeavours to:

### co-ordinate with all other consultants;

### not unreasonably interfere with or disrupt, delay or hinder the other consultants or prevent the execution of their work or services; and

### at all times advise the Principal on and support the coordination and integration of the Services performed by the Project Manager with the work performed and provided by all other consultants.

## Consultations with other consultants

The Project Manager must be available for consultation with the other consultants upon reasonable notice at the Site or at another location nominated by the Principal.

# Responsibilities of the Principal

## Instructions to Project Managers

The Principal must consider promptly all submissions made by the Project Manager to the Principal’s Representative and must give its decision and instructions on such submissions to the Project Manager so as not to delay the Project Manager in fulfilling its obligations under this Agreement.

All such instructions must be in sufficient detail so as to define clearly the requirements of the Principal.

## Representative of the Principal

The Principal may from time to time nominate a person to act as its representative for the purposes of this Agreement. Until otherwise advised, the representative of the Principal is specified in Item 8 of Annexure A.

# Personnel of Project Manager

## Approved personnel

The Project Manager will provide competent, professional and qualified personnel (including any substitutes approved by the Principal, approval of whom will not be unreasonably withheld) to perform the work comprising the Services, such personnel to include the Key Personnel previously approved by the Principal. The Key Personnel and their respective roles at the date of this Agreement are listed at Item 8 of Annexure A.

In respect thereof:

### the Project Manager will take reasonable steps to retain the Key Personnel throughout the Project;

### no Key Personnel will be replaced during the continuance of this Agreement unless:

#### the Principal’s Representative approves the substitute;

#### that person dies, retires or resigns (other than to accept other employment with the Project Manager or any associate of the Project Manager) or otherwise suffers from ill health or some serious domestic problem; or

#### that person’s section of the work under this Agreement has been completed; and

### any vacancy of Key Personnel must be promptly filled by the Project Manager with a competent and qualified person reasonably approved by the Principal.

## Skills of personnel and capacity to perform Services

### The Project Manager warrants that all Key Personnel will have the necessary skills, competence and experience to undertake the duties of the Project Manager.

### From time to time the Principal may direct the Project Manager to provide a detailed program and schedule of resources setting out how the Project Manager intends performing the Services and the Project Manager must promptly with that direction.

### If the Project Manager becomes aware of any matter which may materially adversely affect the performance of its obligations under this Agreement and the Services, not later than 5 days after becoming so aware it must notify the Principal in writing of the matter and provide detailed particulars and recommendations as to how to minimise the effects.

## Removal of Personnel

The Principal may require the Project Manager to remove any person:

### from the Site at the Principal’s absolute discretion; and

### from work in relation to the Services if the person, in the Principal’s reasonable opinion, is incompetent or otherwise not performing the Services in accordance with this Agreement.

The Project Manager must promptly arrange for the removal of any person the subject of a direction of the Principal under this clause 8.3 and their replacement with a person approved by the Principal, such approval not to be unreasonably withheld.

# Payment of Project Manager

## Project Management Fee

### In consideration for the performance by the Project Manager of its Services, the Principal will pay the Project Manager the Project Management Fee set out in Item 5(a) of Annexure A and reimburse the Project Manager the Reimbursable Expenses set out in Item 5(b) of Annexure A in accordance with this Agreement.

### Other than adjustments expressly permitted by the Agreement, the Project Management Fee and Reimbursable Expenses constitute the Project Manager's total remuneration for the performance of the Services and are:

#### inclusive of, and make due allowance for, all costs and expenses incurred or to be incurred by the Project Manager in performing its obligations arising out of the Agreement; and

#### not subject to any adjustment for rise and fall.

### The Project Manager will not be entitled to a Reimbursable Expense unless it obtains prior written approval from the Principal, which approval will not be unreasonably withheld.

## Progress claims

### On or before the day of each calendar month specified in Item 9 of Annexure A, the Project Manager must submit to the Principal’s Representative a detailed progress statement, in a form reasonably approved by the Principal’s Representative, showing the value of the Services performed by the Project Manager, calculated where applicable on the basis of the Services completed as a percentage of the total Services to be completed by the Project Manager and applied to the Project Management Fee.

### Where applicable, incomplete Services must be included in such progress statements by taking into account the extent to which such Services have been completed.

### Within 14 days after receipt by the Principal of a detailed progress statement, the Principal will determine and then certify the value of the Services completed by the Project Manager and the amount the Principal proposes to pay. If the amount the Principal proposes to pay is less than the amount claimed, it will provide reasons for the difference and the Project Manager will amend and re-submit an amended tax invoice within 7 days of receipt of the Principal’s proposed payment.

## Progress payments

Subject to the Principal's rights under this Agreement, the Principal must make a progress payment equal to the value certified in clause 9.2 less the value of previous progress payments, within the time provided in Item 10 of Annexure A or where no time is provided, 30 days after the receipt of a detailed progress statement.

Progress payments are not evidence against, or an admission by, the Principal that any of the Project Manager's Services have been provided in accordance with this Agreement, but must be taken to be payments on account only.

## Correction

The Principal may in any payment under this clause correct any error which has been discovered in a previous payment.

## Set off

Without limiting the Principal’s rights under any other provision of this Agreement the Principal may at any time deduct from money due to the Project Manager:

### any debt or other money due from the Project Manager to the Principal in connection with this Agreement; or

### any other claim to money which the Principal may have against the Project Manager under this Agreement, whether for damages or otherwise.

Nothing in this clause 9.5 restricts the right of the Principal to recover from the Project Manager the whole of any moneys, debts or any balance that remains owing after deduction.

## Principal’s Liability

The Principal’s liability to the Project Manager under this Agreement is limited to the payment of the Project Management Fee, any Reimbursable Expenses and any interest accrued on unpaid amounts at the rate specified in this Agreement.

## Interest Payable

If the Principal fails to pay any sum due to the Project Manager pursuant to this clause by the due date for payment, the Project Manager will be entitled to be paid interest on any unpaid amount from 14 days after the due date for payment until the date on which full payment is made at 8 per cent per annum.

## Stages

The Project Manager agrees that the Services are, unless otherwise expressly advised in writing, to be provided in the following stages:

### [Concept design, town planning/ development approval;

### Schematic design;

### Design development;

### Construction documentation phase services;

### Construction; and

### Defects liability,]

and the Project Manager will have no authority to proceed from one stage to the next unless instructed in writing by the Principal to so proceed. Should the Project Manager proceed to a stage without the Principal’s written instruction, the Project Manager will only become entitled to payment in respect of the Services provided for that stage if it is subsequently instructed in writing to proceed with that stage.

# Confidentiality

### **10.1 Obligation**

### The Project Manager must regard all information in relation to the Project as confidential. The Project Manager must not disclose any such details and information to a third party other than to persons engaged in the performance of the Services or for the purposes of performing the Services, without the prior written approval of the Principal.

### The Project Manager must ensure its sub-consultants, subcontractors and employees and the employees of its sub-consultants and subcontractors comply with this clause 10.

### The obligation imposed upon the Project Manager under this clause 10 is ongoing and will survive the completion, expiry or termination of this Agreement.

### The Project Manager must not issue any information, publication, document or article for publication in any media without the prior written approval of the Principal. Such approval may be withheld by the Principal at its sole discretion.

### This clause will not apply in the following circumstances:

#### the information in question was in possession of the Project Manager prior to acquisition from the Principal’s Representative and/or Principal;

#### the information in question was already public knowledge when disclosed to the Project Manager;

#### disclosure to lawyers, taxation accountants or other professional service advisors;

#### the Project Manager obtained the information in question from a third party without an obligation to maintain confidentiality with regard to that information;

#### disclosure is required by the law;

#### disclosure to third parties (including subconsultants or subcontractors of the Project Manager) which is necessary for the performance of the Services; or

#### disclosure is reasonably necessary for the Project Manager to seek professional advice or to defend itself from any suit or claim.

## Return or destruction

The Project Manager must immediately on the earlier of completion of the Services and any termination of the Agreement, and on the written request of the Principal at any time:

### return and procure the return to the Principal of, or if so required by the Principal, destroy, all Confidential Information in the possession or under the control of or obtained or accessed by the Project Manager;

### if any Confidential Information is stored in a medium which can, by any method or process, be accessed to create or recreate an original or copy, destroy that method or process so that the Confidential Information is incapable of being accessed; and

### certify in writing to the Principal that all Confidential Information has been returned or destroyed in accordance with this clause 10.2.

## Privacy

The Project Manager:

### agrees to be bound by and must comply with, and must ensure that its subcontractors are bound by and comply with, the Australian Privacy Principles and all relevant Privacy Laws with respect to any act done, or practice engaged in, by the Project Manager or its subcontractors in connection with the Services; and

### releases the Principal from any Claim, and must indemnify the Principal on demand from and against any Claim or loss (including any claim made by or liability to a third party) suffered or incurred by the Principal in connection with any act done or practice engaged in by the Project Manager or any of its subcontractors in connection with the Services which contravenes one or more of the Australian Privacy Principles or any relevant Privacy Law.

# Assignment and Subcontracts

## Assignment by Project Manager

The Project Manager must not subcontract any part or the whole of the Services or assign its rights and obligations under this Agreement without the prior written approval of the Principal. Such approval may be given or refused or given subject to conditions at the absolute discretion of the Principal.

## Provision of Subcontracts

Any subcontract entered into by the Project Manager relating to a part or the whole of the Services must include provisions substantially in accordance with the terms of this Agreement and reserve any rights to the Principal that are available to the Principal under this Agreement.

## Subcontracting not to relieve Project Manager

Approval to subcontract will not relieve the Project Manager from any liability or obligation under this Agreement. Notwithstanding anything to the contrary, the Project Manager will be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Project Manager.

# Intellectual Property Rights

## Copyright

Copyright in any documents will remain vested in the person who prepared the documents but the Principal is hereby granted an irrevocable royalty free licence together with the right to sub-licence to use all such documents in connection with the Project or any works which may be carried out on the Site at any time, or any extension of the Site including without limitation construction by a building contractor, maintenance, refurbishment and similar works, notwithstanding any dispute which may arise between the Principal and the Project Manager.

## Moral Rights

The Project Manager acknowledges and agrees that it will obtain or has obtained from each of its employees, sub-consultants or contractors involved in performing the Services:

### all copyright in the documents and the design; and

### written consent for the benefit of the Project Manager in relation to any Moral Right in respect of any Work made, created or developed as part of any of the Project.

## Copyright indemnity

The Project Manager indemnifies and will keep indemnified the Principal for any loss, damage, expense or liability the Principal may suffer which is caused by or is related to:

### a breach of this clause 12; and

### any employee of the Project Manager or employee of any sub-consultant or contractor of the Project Manager attempting to otherwise enforce their Moral Rights pursuant to the *Copyright Act 1968* (Cth).

## Definitions

In this clause 12:

**Moral Right** has the meaning given to it by section 189 of the *Copyright Act 1968* (Cth); and

**Work** has the meaning given to it by section 189 of the *Copyright Act 1968* (Cth).

## Agreement as to rights

The Project Manager agrees that it is entitled to provide to the Principal the rights granted to the Principal pursuant to this clause 12.

# Liability and Insurance

## Professional indemnity insurance

### The Project Manager must effect and maintain professional indemnity insurance against damage, injury or loss of any nature suffered by the Principal arising from breach of professional duty by the Project Manager for an amount not less than the amount set out in Item 12 of Annexure A.

### The policy of professional indemnity insurance must be renewed by the Project Manager as necessary to ensure that there is always a current policy in place to cover all claims made against the Project Manager for a period of 10 years after the completion of the Services to be provided by the Project Manager under this Agreement and which otherwise complies with the requirements of this clause.

### The Project Manager must produce evidence of the existence of insurance in conformity with the requirements of this clause forthwith upon the request of the Principal. In the absence of such request, the Project Manager must produce such evidence annually on the anniversary date of this Agreement except where it has taken out a pre-paid specific Project policy against claims made within 4 years after completion of the provision of the Services under this Agreement.

## Public liability insurance

### The Project Manager must obtain and maintain a public liability policy of insurance to cover the acts or omissions of the Project Manager, its employees and all of the Project Manager's sub-contractors employed from time to time for whose acts and omissions the Project Manager is legally liable in relation to the Services for their respective rights and interests and their liabilities to third parties. The policy must also cover the Project Manager's liability to the Principal for loss of or damage to property and the death of or injury to any person (other than liability, which is required by law to be insured under a workers compensation policy of insurance).

### The public liability policy of insurance must be for an amount not less than the sum stated in Item 13 of Annexure A.

### The public liability policy must be maintained until the date of issue of the certificate of final completion of the Project or until the completion of the provision of the Services under this Agreement, whichever is the later.

## Insurance of employees

### The Project Manager must insure against liability for death of or injury to persons employed by the Project Manager including liability by statute and at common law. The insurance cover must be for the amount required by the laws for the time being in force in the state or territory specified in Item 14 of Annexure A and must be maintained until the date of completion of the Project Manager's Services.

### The Project Manager must take all reasonable steps to ensure that every sub-consultant and sub-contractor that it engages is similarly insured.

## Approval of insurers and terms of policies

### Insurances under this Agreement must be effected by the Project Manager before the commencement of the Services with a reputable insurance provider and approved by the Principal in writing, such approval not to be unreasonably withheld, and taking into account prevailing market conditions.

### No part of the Project Manager's remuneration under this Agreement will be payable to the Project Manager until it has provided evidence to the Principal that it has effected the insurances required by this clause 13.

## Recourse to insurance

If either party becomes aware of any circumstances in respect of which the Project Manager, the Principal or any third party is entitled to make a claim under an insurance policy effected pursuant to this clause 13, that party must inform the other party of those circumstances as soon as possible.

## Failure to insure

If the Project Manager fails to have insurance or provide evidence of insurance as required by this clause 13, the Principal may in its discretion take out the insurance and the premiums paid will be a debt due from the Project Manager to the Principal.

# Suspension of Work

## Suspension by the Principal

The Principal may at any time order the Project Manager to suspend provision of the Services in respect of the Project or any phase thereof for such time as the Principal may think fit and the Project Manager must comply with such a suspension order in accordance with the detailed provisions of the suspension order, or failing such specific direction, as soon as practicable.

## Recommencement of work

The Principal must advise the Project Manager when the reasons for any suspension no longer exist and the Project Manager must recommence provision of the Services as soon as practicable thereafter.

## Costs of Suspension

Any suspension directed by the Principal pursuant to clause 14.1 will not entitle the Project Manager to the payment of any additional fees, costs or expenses, except those costs and expenses which have been reasonably incurred by the Project Manager in implementing the suspension or in re-commencing the provision of the Services following the receipt of a direction from the Principal pursuant to clause 14.2, but only to the extent that the suspension is attributable to any act, default, or omission of the Principal. The Principal will not be liable for any fees, costs or expenses to the extent that the suspension is attributable to any breach of this Agreement or any act, default or omission of the Project Manager. The Project Manager must take all reasonable steps to minimise the additional costs and expenses incurred as a result of a direction to suspend the Services.

# Timely provision of Services

## Timely Provision of Services

The Project Manager must perform the Services in accordance with the Agreed Program and in a timely manner satisfactory to the Principal.

The Project Manager must complete the Services in accordance with this Agreement by the Date for Completion (if any).

## Delay

### The Project Manager must give immediate notice to the Principal of any event or circumstance, which is causing or is likely to cause delay and/or disruption to the provision of the Services.

### The Project Manager must take all proper and reasonable steps to prevent or minimise the risk of, or the consequences of, any delay to the Services or the Project, to the extent supported by the Services (irrespective of the cause).

### The Project Manager must consult with the Principal to determine what steps the Project Manager must take in order to overcome any inability to comply with clause 15.1 and minimise any delay to the Project.

### If the Project Manager is or will be delayed by an event or circumstance which prevents it from performing the Services in accordance with clause 15.1, where requested by the Project Manager in writing, the Principal may extend the Date for Completion by a reasonable period determined by the Principal. Without limitation to this clause 15.2(d), the Principal may extend the Date for Completion for the Principal’s sole convenience.

## Acceleration

### The Principal may direct the Project Manager to accelerate the performance of the Services.

### The Project Manager must at its own cost accelerate the performance of the Services if it is failing to maintain progress in accordance with clause 15.1.

### If the Principal directs acceleration other than under clause 15.3(b) and the Project Manager performs the Services in accordance with the Principal’s direction, the Project Manager will be entitled to be paid an amount to be agreed with the Principal for those reasonable costs or expenses incurred necessarily by the Project Manager in excess of those costs or expenses which would have been reasonably incurred by the Project Manager had the direction to accelerate not been made.

# Variations

## Variations permitted

### The Principal may from time to time and at any time during the currency of this Agreement give written directions to the Project Manager to do all or any one or more of the following things:

#### vary the nature and extent of the Services;

#### increase, change, decrease or omit any part of or the whole of the Services; or

#### carry out additional Services.

Where such written directions necessitate a material change to the services there will be a variation (**Variation**) for the purposes of this Agreement and the Project Manager must carry out such Variations and be bound by the same terms and conditions as if the Variations were part of the Services originally included in this Agreement.

### If the Project Manager receives a direction from the Principal’s Representative which it considers constitutes a Variation, but is not specifically marked as such, the Project Manager must within 7 days of receipt of the direction provide a variation quotation in respect of the proposed or contemplated change of scope. If the Project Manager fails to notify the Principal’s Representative accordingly within the time specified the Project Manager will be barred from pursuing any claim for an adjustment to the Project Management Fee on account of the Variation.

### The Project Manager must not make nor approve any material alteration to, addition to or omission from the tender drawings or the specifications for the Project without the prior written consent of the Principal. In any such request to the Principal for a Variation, the Project Manager must in its application provide the following information:

#### details of the proposed Variation;

#### reason for the proposed Variation;

#### estimated cost of the proposed Variation; and

#### assessment of the impact (if any) which the undertaking of the proposed Variation would have on the construction programme for the Project.

### No Variation will vitiate this Agreement, but the monies otherwise payable under this Agreement will be increased or decreased having regard to the value (if any) of the Variation determined pursuant to clause 16.2.

### The Principal is not to be liable for fees and/or Reimbursable Expenses to the Project Manager for Variations in respect of which the Principal has not provided its prior written approval.

## Valuation of Variations

### Wherever fair and reasonable in the Principal's opinion, a Variation must be valued by the Principal on the basis of the proportion that the Variation represents in relation to the original Services to be provided by the Project Manager expressed as a percentage and applied to the Project Management Fee and adjusted upwards or downwards, as necessary, to take into account any economies or diseconomies of scale and any other relevant factors.

### If the Principal decides the method of valuation in clause 16.2(a) is not appropriate, the Principal may request the Project Manager to submit an estimate of its fee for the Variation as a basis for negotiation and agreement on the valuation of the Variation or, alternatively, the Principal may agree to value the Variation on the basis of the rates set out in Item 6 of Annexure A.

### If the Principal decides it is appropriate, a Variation may be valued on the basis of any combination of the above mentioned methods.

# Termination

## Insolvency

If an Insolvency Event occurs the other party may, notwithstanding that there has been no breach of contract and in addition to any other rights, by notice in writing forthwith terminate this Agreement.

## Termination by the Principal

The Principal may by notice in writing to the Project Manager terminate this Agreement:

### if the Project Manager commits a substantial breach of this Agreement and the breach has not been remedied within 7 days of the Principal having provided notice of the breach to the Project Manager; or,

### for the Principal’s convenience upon giving 30 days notice in writing to the Project Manager at any time.

## Termination by Project Manager

The Project Manager may by notice in writing to the Principal terminate this Agreement forthwith if there is a failure to pay any instalment of the Project Management Fee by the due date for payment or the Principal otherwise breaches this Agreement and such default continues for a period of 30 days after the Project Manager has demanded payment in writing or otherwise given notice in writing of the breach to the Principal indicating an intention to terminate this Agreement if payment is not made or the breach remedied as the case may be.

## Post termination obligations

If this Agreement is terminated under clauses 17.1, 17.2 or 17.3 :

### subject to clause 17.4(e), the Project Manager must in the case of termination under:

#### clauses 17.1 and 17.2, immediately cease the performance of the Services; and

#### clause 17.3, cease performance of the Services after expiry of the 30-day period.

### the Principal must pay to the Project Manager any part of the Project Manager's remuneration which has accrued prior to the date of termination.

### except as provided in this clause 17.4, the termination is without prejudice to any rights which may have accrued to either party prior to the date of termination;

### should the Project Manager's commission be terminated the Project Manager must:

#### deliver to the Principal’s Representative all documents, books, records, plans, drawings, papers, models and information of any kind relating to the Project which are the property of the Principal or the Principal’s Representative subject to the right of the Project Manager to retain one file copy and a continuing duty of confidentiality;

#### provide to the Principal’s Representative a copy (at the Principal's cost) of all documents relating to the Project produced by the Project Manager, pursuant to its commission under this Agreement, prior to the date of the Project Manager's termination. If required by the Principal’s Representative, the Project Manager must provide a copy of all documents in electronic form; and

#### if required by the Principal’s Representative, assign to the Principal all rights and benefits under contracts with third parties which relate to the Services or the Project.

### to the extent permitted by its professional indemnity insurance policy (required pursuant to clause 13.1) the Project Manager must, if reasonably requested so to do by the Principal’s Representative (whether during or after the term of this Agreement) cause its personnel (so far as they are able so to do) engaged in the performance of its duties under this Agreement, to assist the Principal in resolving any dispute (including arbitration proceedings) between it and contractors on the Project. The Project Manager must be remunerated for such services at the hourly rates indicated inItem 6 of Annexure A payable monthly in arrears.

# Applicable law

This Agreement must be governed by and construed with reference to the laws for the time being in force in the jurisdiction specified in Item 14 of Annexure A and the parties hereby submit to the non-exclusive jurisdiction of the relevant courts of the jurisdiction specified in Item 14 of Annexure A.

# Notices

## Method of giving

Any notice or communication in writing to be given by either party to the other under this Agreement must be delivered, forwarded or transmitted to the recipient at its address set out in Annexure A (or such other address as may have been notified in writing for that purpose) in one of the following ways:

### by delivery, in which case the notice is received at the time of delivery;

### by prepaid post or registered mail, in which case the notice is deemed to have been received at the time when it would have been delivered in the ordinary course of post;

### by facsimile transmission, in which case the notice is deemed (until the contrary is proved) to have been received at the time shown in the transmission confirmation report containing the recipient's identification code and indicating that the transmission was error free; or

### by email transmission, in which case the notice is deemed (until the contrary is proved) to have been received at the time shown in an electronic mail received receipt indicating that the email was received by the intended recipient.

## Receipt after business hours

Any notice received or deemed to have been received after 5.00 pm on any business day and before 9.00 am on the following business day is (in the absence of any earlier response from the recipient) deemed to have been received at 9.00 am on that following business day.

## Execution by the Principal

Any notice given by the Principal to the Project Manager may be signed by its representative referred to in clause 7.2 or by an agent of the Principal.

## Execution by Project Manager

Any notice given by the Project Manager to the Principal must be signed by a Director for the time being of the Project Manager.

# Resolution of Disputes

## Notice of dispute

If any dispute or difference arises between the parties either during or after the completion of the Project or after the termination of this Agreement as to the construction of this Agreement or as to any matter arising under this Agreement, then either party may give to the other notice in writing setting out the particulars of the dispute (**notice of dispute**).

## Private negotiation

Within 10 days of the service of a notice of dispute senior executives of the parties (**Representatives**) must confer at least once to attempt to resolve the dispute or to explore other methods of resolving the dispute. At each such conference each party must be represented by a person having authority to resolve the issues in dispute.

## Process

If the dispute is not resolved within the 10 day period referred to in clause 20.2 (or within any further period agreed by the Representatives in writing) the parties must ensure that the Representative within a further 10 days (or within any further period agreed by the Representatives in writing) use their best endeavours to agree on a process for resolving the whole or any part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or appraisal, or mini-trial. The parties must ensure that the Representatives also use their best endeavours to agree on:

* + 1. the procedure and timetable for any exchange of documents and other information relating to the dispute;
    2. procedural rules and a timetable for the conduct of the selected mode of proceeding;
    3. a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute; and
    4. whether the parties should seek the assistance of a dispute resolution organisation.

## Exchange of information

The purpose of any exchange of information or documents or the making of any offer of settlement under 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 this clause for any purpose other than an attempt to settle the dispute between the parties.

## Commencement of litigation

If:

* + 1. a party has failed to appoint a Representative as required; or
    2. the time established by or agreed under clause 20.3 for agreement on a dispute resolution process has expired,

any party which has complied (and whose Representative has complied) with this clause may, by notice to the other parties, terminate the process and commence litigation or arbitration.

## Services of Project Manager to continue

Notwithstanding the existence of a dispute, the Project Manager must at all times continue to fulfil its obligations under this Agreement and must comply with all directions given to the Project Manager by the Principal in accordance with this Agreement.

## Rights not affected

The respective rights and obligations of the parties under this Agreement are not affected by the existence of a dispute pursuant to this clause 20.

# Goods and Services Tax

## GST exclusive

The parties acknowledge that unless specified otherwise, any Consideration payable under this Agreement has been negotiated without any allowance for a *GST* and is the *Value* of a *Taxable Supply*.

## GST amounts

A *Recipient* under this Agreement must, in addition to any Consideration, pay or reimburse the *Supplier* any amount of *GST* for which the *Supplier* is or may become liable with respect to the *Taxable Supply* to which that *Consideration* relates, so that the net amount retained by the *Supplier* after payment of that *GST* is the same as if the *Supplier* was not liable to pay *GST* in respect of that *Taxable Supply*.

## Time of payment

The *Recipient* must pay to the *Supplier* the amount of any *GST* owing in accordance with this Agreement at the same time and in the same manner as the *Recipient* is required to pay for the *Taxable Supply* to which that amount of *GST* relates.

## Tax invoice

The *Recipient* will not be obliged to pay any amount of GST to the Supplierunder this Agreement unless the *Supplier* has first issued to the *Recipient* a *Tax Invoice* which complies with the GST Act.

## Reimbursements

If this Agreement requires the *Recipient* to pay, reimburse or contribute to an amount paid or payable by the *Supplier*, in respect of an *Acquisition* from a third party for which the *Supplier* is entitled to an *Input Tax Credit*, the amount for payment, reimbursement or contribution will be:

### the *Value* of the *Acquisition* by the *Supplier*; plus

### if the *Supplier's* recovery from the *Recipient* of the *Value* of the *Acquisition* will be a *Taxable Supply*, the GST payable in respect of that *Taxable Supply*.

## Other Supplies

This clause 20.7 applies to *Consideration* for *Taxable Supplies* relating to the breach, termination of, and obligations arising from this Agreement.

## Definitions

In this clause 20.7:

**Consideration** means any amount payable or treated as payable (whether or not monetary) for a supply made under this Agreement;

**GST** means a tax, any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or any other Act relating to the imposition or administration of a goods and services tax;

**Recipient** means in relation to a supply made under or in relation to this Agreement the entity to which the supply was made;

**Supplier** means in relation to a supply made under or in relation to this Agreement the entity which made the supply;

**Value** has the meaning given to that term in the GST Act, and in relation to a Taxable Supply or a Creditable Acquisition, means the GST-exclusive amount of that Taxable Supply or Creditable Acquisition; and

Any expression in italics has the meaning given to that term in the GST Act.

# General

### Where this Agreement allows the Principal a discretion as to whether to do or not to do any act, matter or thing of any kind, or confers on the Principal a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute, unless this Agreement states otherwise, and the Principal is not obliged to give its reasons.

### Each party must pay its own costs of preparing and executing this Agreement.

### In relation to its subject matter, the Agreement:

#### constitutes the entire agreement between the parties; and

#### supersedes and cancels any prior contract, understanding, negotiation, deed, arrangement, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or agent of a party).

### If the Project Manager has performed Services in connection with the Project prior to the date of execution of this Agreement (**Prior Services**):

#### those Prior Services are taken to form part of the Services and to have been performed subject to the terms of this Agreement;

#### payments made by the Principal to the Project Manager in connection with the Prior Services are taken to have been payments made by the Principal under the Agreement on account of the Project Management Fee; and

#### any contract between the parties in relation to the Prior Services is taken to have terminated on the date of execution of this Agreement.

### No waiver by the Principal of a breach of this Agreement by the Project Manager constitutes a waiver for any subsequent or continuing breach by the Project Manager.

### If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.

### A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 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.

### Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

### This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document. A duly signed and legible copy of this Agreement may delivered by a party by facsimile, email or other means of electronic transmission, will be binding and of the same legal effect as though a copy of this Agreement with original ink signatures had been delivered by that party.

### This Agreement will not create a partnership, joint venture or agency relationship between the parties.

Execution Page

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

**Executed** as an Agreement.

|  |  |  |
| --- | --- | --- |
|  |  | |
| **Executed** for and on behalf of **Australian Catholic University Limited (ABN 15 050 192 660)** by its authorised representative: |  | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Authorised Representative | |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Authorised Representative (Block Letters) | |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title of Authorised Representative | |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | |  |

|  |  |  |
| --- | --- | --- |
| **Executed** for and on behalf **[Project Manager Name] ([PM's ABN] )** by its authorised representative: |  | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Authorised Representative |  | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Authorised Representative (Block Letters) | |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title of Authorised Representative | |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | |  |

Annexure A

Item

|  |  |  |  |
| --- | --- | --- | --- |
|  | The Brief is comprised in the following documents: (clause 1) | [Insert documents comprising the Brief or otherwise state: Project Management - Scope of Services.] | |
|  | The Project is: (clause 1) | [insert short description of the Project] | |
| 1. 2 | The Principal’s Representative is: (clause 1) | [ACU Representative ]  Senior Project Manager  Australian Catholic University | |
|  | The Site is: (clause 1) | [Site address] | |
|  | (a) The Project Management Fee is:  (clauses 3.1 and 9.1) | Lump sum of $[#]  (excluding GST) | |
|  | (b) The expenses and disbursements to be reimbursed to the Project Manager will be:  (clause 9.1(c)) | Disbursements will be limited to expenses and disbursements with the prior approval of the Principal's Representative in writing. | |
|  | The relevant hourly rates for the Project Manager are: (clause 16.2(b)) | Director $ per hour  Senior Project Manager $ per hour  Junior Project Manager $ per hour  Technical Staff $ per hour  The above hourly rates are exclusive of GST. | |
|  | Other consultants appointed by the Principal: (clause 6.1) | Structural Engineering  [insert] | |
|  | The Project Manager's approved personnel (clause 8.1) | [Approved personnel] | |
|  | Progress claims for payment will be made: (clause 9.2) | 20th Day of the Month | |
|  | The Principal will make a progress payment within: (clause 9.3) (if no time is specified 30 days from the date of receipt of the progress claim) | If the Project is located in:  Victoria or South Australia – 30 days  NSW, ACT or Queensland – 21 days |
|  | Project Manager limitation of liability  (clause 5.11) | $5 million |
|  | Amount of professional indemnity insurance will not be less than: (clause 13.1) | [Insert amount of PI insurance required in accordance with the amount prescribed in Professional Indemnity Insurance Table.] | |
|  | The amount of public liability insurance will not be less than: (clause 13.2) | $20m | |
|  | The law applicable is that of the state or Territory of: (clauses 13.3 and 18) | New South Wales New South Wales / Australian Capital Territory / Queensland / Victoria | |
|  | Address for Notices: (clause 19.1) | Principal: 40 Edward St North Sydney NSW 2060 Project Manager: [PM's Address] | |
|  | The Date for Completion: (clause 15.1) | [insert] | |

Annexure B – Project Management Scope of Services

Annexure C – Agreed Program