**Diocese of Maitland-Newcastle (ABN 91 605 046 457)**

**and**

**Insert name and ABN of Contractor**

**CONTRACTOR DEED FOR A FIXED TERM**

**This Deed** is made on 2017

**Parties**

1. **Diocese of Maitland-Newcastle** (ABN 91 605 046 457) of 841 Hunter Street, Newcastle West (***the Client***)
2. **Insert name, ABN and address of Contractor** (***the Contractor***)

# The parties agree as follows:

Background

* + - * 1. The Client represents the Catholic Church in a region extending from Lake Macquarie to Taree and as far inland as Merriwa and Murrurundi.
        2. The Contractor Insert details of the Contractor’s business.
        3. In reliance on the information disclosed by the Contractor about itself, its business operations and expertise the Client has made an informed decision to engage the Contractor to provide the Services.
        4. The Client wishes to engage the Contractor, and the Contractor has agreed to provide the Services on the terms set out in this Agreement.

1. Appointment of Contractor and fixed term
   1. **Appointment**: The Client engages the Contractor to provide the Services in accordance with this Agreement.
   2. **Fixed term**: This Agreement commences on the Commencement Date and continues until terminated by either party in accordance with this Agreement or until the Project Termination Date, whichever occurs first.
2. General obligations of Contractor
   1. **Reporting obligations**: The Contractor must report to the Contact Person on a regular basis and as requested by the Client.
   2. **Service Provision**: The Contractor must provide the Services:

### with due skill, care and attention and to the best of its knowledge, ability and expertise and in accordance with all professional standards reasonably to be expected of the Contractor;

### in accordance with any reasonable instructions or directions given by the Client from time to time (however the Contractor will exercise its own discretion and judgment as to the manner and method of performing the Services); and

### in compliance with all applicable standards, awards, laws and regulations in Australia.

* 1. **Nominated Personnel**: The Contractor must ensure that the Services are only performed by the Nominated Personnel. The Contractor must not replace the Nominated Personnel without the consent of the Client, which consent must not be unreasonably withheld. The Client may, acting reasonably, request that the Contractor replaces any of the Nominated Personnel. The Contractor must comply with any request to replace the Nominated Personnel.
  2. **Provision of services to third parties**: The Contractor may provide services to third parties with the consent of the Client provided that:
     1. the provision of those services does not create any conflict of interest; and
     2. the provision of those services does not involve any unauthorised use of the Confidential Information.
  3. **Act in good faith**: The Contractor must act and ensure that its employees and subcontractors act with the utmost good faith in all of the Contractor’s dealings with the Client. The Contractor must not do anything that may be harmful to the reputation or standing of the Client or harmful to the interests of the Client.
  4. **Insurance:** The Contractor must ensure that it has and maintains sufficient appropriate insurance (including workers' compensation, public liability, product liability and professional indemnity insurance) from a reputable insurance company to fully satisfy its liabilities arising out of this Agreement, and must provide on request, certificates of currency or other evidence satisfactory to the Client of that insurance. If insurance cover is detailed in the **Schedule**, the Contractor must ensure that cover is for no less than the values stipulated in the **Schedule**.
  5. **Policies**: The Contractor must ensure that the Contractor and the Contractor's employees and subcontractors comply with the Client's policies and procedures.
  6. **Threatened litigation**: The Contractor must immediately notify the Client in writing if it becomes aware of any Claim or matter or thing which could result in any Claim being made against it or the Client arising out of or in any way connected with the provision of the Services.
  7. **Adverse matter**: The Contractor must immediately notify the Client in writing if it becomes aware of any matter or thing in connection with the Contractor or any of its employees or subcontractors which could adversely impact upon the reputation or standing of the Contractor or the Client.
  8. **Ethos and teachings:** The Contractor must respect and uphold the ethos and teachings of the Catholic Church and the values of the Client.

1. Provision of the Services
   1. **The Services**: The Services to be provided by the Contractor are as detailed in **Item 4** of the **Schedule** and include any further services that are necessary and incidental to the services listed or as are agreed in writing between the parties.
   2. **Delivery of the Services**: The Contractor is expected and required to provide sufficient resources to deliver the Services to a satisfactory level and to provide its own office and equipment to deliver the Services.
   3. **Client’s Obligations:** The Client will provide a work space and access to systems and records which will allow the Contractor to provide the Services.
2. Payment for the Services and expenses
   1. **Fees**: The fees payable to the Contractor are set out in **Item 6** of the **Schedule**.
   2. **Expenses**: The Contractor is responsible for meeting its own expenses incurred in delivering the Services.
   3. **GST**: All fees or other amounts payable under this Agreement are exclusive of GST. In respect of any liability of a party (supplier) for GST on a supply made under this Agreement, the party receiving the supply will pay to the supplier, at the same time as any payment in respect of which the supply is made, an additional amount in respect of GST.
   4. **Invoicing**: Unless otherwise agreed between the parties in writing the Contractor must submit an invoice on a fortnightly basis (for the previous fortnight) in relation to payment of its fees. The invoice must include details of time spent on each project comprising the services. The invoice must comply with all requirements under GST Law. Subject to **Clause 4.5**, the Client will pay any valid tax invoice within 14 days of receipt.
   5. **Withholding of money to the Contractor**: Notwithstanding anything in this Agreement, the Contractor agrees that the Client may deduct or withhold from payment to the Contractor:
      1. any amounts due and owing by the Contractor to the Client;
      2. any deductions required under law; or
      3. any amounts invoiced by the Contractor where the Contractor has not fulfilled its obligations to rectify a Defect or the Contractor is otherwise in breach of this Agreement.
3. Warranties
   1. The Contractor warrants that:
      1. the Services will be provided with due skill and care;
      2. in providing the Services neither the Contractor nor any of its directors, officers, employees, contractors, servants or agents will be in breach of any obligation owed to any person or organisation;
      3. the Contractor has disclosed any business interests that would or might create a conflict of interest in providing the Services; and
      4. the Contractor has complied with all regulatory and other approvals required in order to provide the Services.
4. Confidentiality
   1. The Contractor's obligations of confidentiality as set out in this **Clause 6** apply during the Engagement and continue to apply at all times following termination of the Engagement.
   2. The Contractor must hold all Confidential Information in strict confidence.
   3. The Contractor must not at any time during the course of the Engagement or subsequently, except as specifically authorised by the Client, disclose, share copy or make use of in any manner, any Confidential Information of the Client or the Group or any information which the Client or the Group has received from others, which it is obliged to treat as confidential.
   4. The Contractor must not make a copy or summary of any Confidential Information unless required to do so in the course of the Engagement. If the Contractor is required to make a copy of any Confidential Information during the course of the Engagement, the record remains the property of the Client and the Group (or either of them as the case may be).
   5. The Contractor must take all necessary and reasonable steps to prevent Confidential Information being disclosed to any unauthorised person. The Contractor must take all reasonable steps to ensure that its employees and subcontractors are aware of and abide by obligations which enable the Contractor to comply with the obligations of confidentiality set out in this **Clause 6**.
   6. The Contractor indemnifies the Client and the Group (or either of them) for any loss which arises from any breach of the Contractor's obligations under this **Clause 6**.
   7. The Contractor must do anything required by the Client or the Group to restrain a breach or any infringement of this **Clause 6**.
   8. Without limiting any other obligation under this Agreement, the Contractor must not make use of the Confidential Information to the commercial, financial or competitive detriment or disadvantage of the Client or the Group.
   9. The Contractor must immediately notify the Client of any actual or suspected unauthorised use, copying or disclosure of Confidential Information.
   10. The Contractor must provide any assistance reasonably required by the Client or the Group in proceedings by the Client or the Group against any person for unauthorised use, copying or disclosure of Confidential Information.
   11. The Contractor must return the Confidential Information to the Client immediately on termination of this Agreement or earlier if requested to do so by the Client.
   12. The Contractor acknowledges that these obligations of confidentiality are reasonable and necessary to protect the business interests of the Client and the Group. The Contractor further acknowledges that the remedy of damages may be inadequate to protect the interests of the Client and the Group, and the Client and the Group (or either of them) is/are entitled to seek and obtain injunctive relief or any other relief in respect of a breach of these obligations.
   13. The Contractor acknowledges that a breach of any of these obligations of confidentiality is a very serious matter and may result in termination of this Agreement.
5. Intellectual Property
   1. The Contractor acknowledges and agrees that it is a condition of Engagement that the Client is the owner of all Intellectual Property rights in all documents, materials or other things created or contributed to by the Contractor (or its employees or subcontractors) in the course of the Engagement or that make use of Client resources.
   2. If for any reason any creation or contribution of any documents, materials or other things results in any right, title or interest vesting in the Contractor, the Contractor must unconditionally and irrevocably assign all of the Contractor's right, title and interest to the Client (or any person nominated by the Client) and do all things necessary for this to occur.
   3. The Contractor must, at the expense of the Client, do each of the following:
      1. Sign any necessary documents and do all things that the Client may require for perfecting the assignment of the Intellectual Property rights under **Clause 7.2**.
      2. Assist in all administrative and legal procedures before any relevant authority, court or other relevant body brought by, for or against the Client (or any person to whom the Client directs the Contractor make an assignment under **Clause  7.2**) involving any Intellectual Property rights owned by or assigned to the Client pursuant to these provisions.
   4. Any act to be done or document to be signed by the Contractor pursuant to **Clause 7.2** may be done or signed by a director or secretary of the Client, or another person authorised in writing by the Client, and the Contractor irrevocably appoints each director, secretary or other nominee to be the Contractor’s attorney for that purpose.
   5. The Contractor warrants that the Contractor has obtained from each person who is providing or who will provide any of the Services on behalf of the Contractor, a written consent to any act that the Client may take in connection with any copyright works created by the person that would, but for this consent, amount to an infringement of the person’s Moral Rights.
6. Relationship of the parties
   1. The Contractor acknowledges that it will provide the Services as an independent contractor and nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, joint venturer or partnership between the Client and the Contractor, or between the Client and any of the Contractor's employees, agents or sub contractors.
   2. The Contractor is solely responsible for meeting all taxation payments due under law and any minimum superannuation guarantee contributions for its employees and all other employment entitlements. The Contractor indemnifies the Client against any claims or orders for the payment of taxation or superannuation and any related costs or fines by the Australian Taxation Office or any other relevant body, relating to the Contractor or its employees.
   3. The Contractor must not hold itself out, and must ensure that its employees and subcontractors do not hold themselves out, as an employee, servant or agent of the Client.
   4. The Contractor must not direct the client’s employees, represent the Client or enter into any agreements on behalf of the Client.
7. Assignment
   1. The rights and obligations of the Contractor under this Agreement are personal to the Contractor and except with the prior written consent of the Client, the Contractor must not assign, transfer, encumber, sub-licence or otherwise deal with or change its interest in this Agreement. Any purported assignment without the prior written consent of the Client is void.
   2. This Agreement and all rights under it may be assigned or transferred by the Client and continue for the benefit of any of its successors and assigns and remain binding on the Contractor notwithstanding any assignment or transfer.
8. Indemnity
   1. The Client indemnifies and agrees to keep indemnified the Contractor from and against any and all loss, damage or liability incurred or suffered (including legal fees and costs on a solicitor and own client basis) by the Contractor if the Contractor becomes liable to pay damages arising out of or as a consequence of any breach of this Agreement by the Client other than a breach caused by any negligent act or omission of the Contractor or its servants or agents.
   2. The Contractor indemnifies and agrees to keep indemnified the Client from and against any and all loss, damage or liability incurred or suffered (including legal fees and costs on a solicitor and own client basis) by the Client if the Client becomes liable to pay damages arising out of or as a consequence of any breach of this Agreement by the Contractor other than a breach caused by any negligent act or omission of the Client or its servants or agents.
9. Defects
   1. The Contractor must rectify any Defect caused by it or for which it is responsible during the provision of the Services. Rectification must be undertaken as follows:-
      1. as soon as reasonably possible after the Contractor or the Client becomes aware of the Defect;
      2. where appropriate, in conjunction and in accordance with the Client's instructions;
      3. irrespective of whether or not the Contractor has completed the provision of the Services; and
      4. at the Contractor's expense.
10. Termination of Agreement
    1. **Termination**: This Agreement terminates in any one of the following ways:
       1. **Termination by effluxion of time:** The Agreement automatically terminates as set out in **Clause 1.2** unless sooner terminated below;
       2. **Termination by notice:** This Agreement may be terminated by either the Contractor or the Client giving to the other, written notice of termination as specified in **Item 7** of the **Schedule**;
       3. **Termination by the Client for cause**: The Client may terminate the Agreement with immediate effect by giving written notice of termination to the Contractor if:

#### The Contractor breaches any of the provisions of **Clause 6** (Confidential Information) or **Clause 7** (Intellectual Property);

#### The Contractor breaches any other provision of this Agreement and fails to remedy the breach within 14 days after receiving written notice specifying the breach and requiring it to be remedied;

#### The Contractor ceases to carry on business;

#### Any step is taken to enter into any arrangement between the Contractor and its creditors;

#### The Contractor becomes unable to pay its debts as they become due and payable;

#### Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Contractor's assets;

#### The Contractor is guilty of any act, neglect or default or conduct which in the reasonable opinion of the Client has had or is likely to have, the direct or indirect effect of causing material damage or discredit to the Client or the business engaged in by the Client; or

#### The Contractor or any of its officers or employees who provide any of the Services are convicted of any criminal offence other than a summary offence.

* + 1. **Termination by the Contractor for cause**: The Contractor may terminate the Agreement with immediate effect by giving written notice of termination to the Client if:

#### The Client breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving written notice specifying the breach and requiring it to be remedied;

#### The Client ceases to carry on business;

#### Any step is taken to enter into any arrangement between the Client and its creditors;

#### The Client becomes unable to pay its debts as they become due and payable; or

#### Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Client's assets other than for the purpose of reconstruction or amalgamation.

1. Obligations on termination
   1. On termination of the Engagement for any reason, the Contractor must immediately do each of the following:
      1. **Repay sums owing**: Repay all amounts the Contractor owes to the Client whether the amounts are then due to be paid or not. Amounts not paid immediately may be deducted by the Client from any payments due to the Contractor on termination (except amounts the Client may not by law withhold).
      2. **Return property:** Return to the Client any property of the Client in the Contractor's possession, custody or control, including without limitation security devices, files, papers and reports and Confidential Information. If any Confidential Information is not capable of being returned or at the Client’s request, the Contractor must delete or destroy the Confidential Information without keeping any copies of it.
      3. **Set off:** The Client may set off against any money due to the Contractor the value of any property that the Contractor has failed to return to the Client (except for amounts, if any, the Client is not entitled by law to set off).
      4. **Provide passwords:** Provide to the Client all relevant passwords, if any, to computers, systems or computer files concerning the business of the Client used or provided in connection with the provision of the Services.
   2. **Effect of termination on Agreement**: Any provision of this Agreement which is still to be performed or which, by its terms must continue to be observed, continues to have effect after termination of the Agreement. Without limitation, **Clauses 6**, **7**, **10** and **13** survive.
   3. **Accrued Rights**: Termination of this Agreement does not affect any accrued rights or remedies either party may have.
2. General Contract Conditions
   1. **Variation**

Any variation to the terms and conditions of the Engagement must be agreed in writing between the Client and the Contractor.

* 1. **Entire Agreement**

This Agreement embodies the entire agreement between the Client and the Contractor and it supersedes and replaces any prior agreement, arrangement or understanding of any kind between the Client and the Contractor with respect to its subject matter.

* 1. **Further acts**

Each party must sign all documents and do all things that another party from time to time may reasonably request to effect, perfect or complete this Agreement and all transactions incidental to it.

* 1. **Governing law**

This Agreement is governed by, and shall be construed, in accordance with the laws of New South Wales. The parties agree to submit to the non-exclusive jurisdiction of the Courts exercising jurisdiction in New South Wales and any Court having jurisdiction to hear appeals from these Courts.

* 1. **Waiver**

A delay or omission by either party to exercise a right exercisable under this Agreement does not impair the right or is not a waiver or acquiescence in any default. Any acquiescence in any default does not impair any right of the Client or the Contractor, concerning any subsequent default.

* 1. **Notice**

### Any demand, notice, consent or other communication to be made or given under this Agreement must be in writing and signed by the party giving it and must be served either by delivery, by facsimile or by prepaid registered mail, to the address of the party specified or at the last known address of the party. All notices are deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted. Notices sent by facsimile are deemed to be delivered on the date of transmission with a positive transmission report receipt.

1. Definitions & interpretation
   1. In this Agreement the following expressions have the following meanings:

**Agreement** means this document (which has been expressed in the form of a deed).

**Business Day** means between 8.30am and 5pm on a day (not being a Saturday, Sunday or Public Holiday) on which banks are open for general banking business in New South Wales.

1. **Claim** means and includes any dispute or matter which is or may be litigated, arbitrated or otherwise resolved through a formal dispute resolution process.
2. **Commencement Date** is the date on which the Contractor is to commence to provide Services to the Client as specified in **Item 1** of the **Schedule**.
3. **Confidential Information** means any information, whether or not marked as confidential, received, held or developed by the Client and the Group or either of them and which is not publicly available and relates in any manner to the operations of the Client and the Group or either of them or their suppliers or clients including but not limited to each of the following:
   1. The Client’s (or the Group's) Intellectual Property, including future and possible Intellectual Property.
   2. Personnel, policies, business plans, marketing strategies, products, services, product and service development, finances, funding, pricing policies, or other transactions or affairs of the Client or the Group.
   3. Customer lists and databases, supplier information, partners, alliances of the Client or the Group.
   4. Trade secrets, know-how, secret or confidential operations, processes, approaches or techniques developed by the Client or the Group in the course of its business and operations.
   5. Any other information that is or may be commercially valuable to the Client or the Group or its suppliers or customers.

Information is not Confidential Information in any of the following circumstances:

* + 1. At the time of disclosure, the information was in the public domain.
    2. It can be established by reasonable proof that the information was in the possession or knowledge of the Contractor without it being derived from any information obtained from the Client or the Group.
    3. The information is information that is agreed between the Client and the Contractor in writing as being information that is not to be treated as Confidential Information.

1. **Contact Person** means the person or persons nominated by the Client in **Item 5** of the **Schedule** as replaced, substituted or added to by the Client from time to time.
2. **Defect** means each of the following:
   * 1. error, omission, fault, problem, mistake or breakdown;
     2. breach of any law, regulation, standard or Client policy;
     3. poor or less than satisfactory supply of the Services.
3. **Engagement** means the engagement by the Client of the Contractor under this Agreement.
4. **Project Termination Date** means the date on which Engagement under this Agreement automatically terminates (if not sooner terminated under **Clause 12)**, and unless the parties agree otherwise in writing, is the date specified in **Item 2** of the **Schedule**.
5. **Group** means and includes any one or more of the following:
   1. the Client;
   2. any entity that controls, is controlled by or is under common control with the Client*;* and
   3. any other entity that is connected with the Client or any other member of the Group by a common interest in an economic enterprise, for example, a partner or another member of a joint venture.
6. **GST** means the tax imposed by the GST Law and any other consumption tax imposed by any government (of any country) whether at point of sale or at some other specified occurrence by whatever name, which operates during the term of the Agreement or any renewal or holding over period and includes (without limitation) a goods and services tax, a broad-based consumption or indirect tax or value added tax.
7. **GST Law** means the law relating to GST as specified in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
8. **Intellectual Property** means each of the following owned or used by or on behalf of the Client and the Group or either of them or developed in connection with the business or operations of the Client and the Group or either of them before, during or after the Engagement:
   1. Know-how;
   2. Trade marks, whether registered or unregistered;
   3. Domain names;
   4. Business names;
   5. Confidential Information;
   6. Copyright, moral rights, inventions, patents, patent applications, designs; and
   7. Any other intellectual property.
9. **Moral Rights**means those moral rights defined under the *Copyright Act 1968 (Cth)* and its equivalent in other jurisdictions*.*

**Services** means the services set out in **Item 4** of the **Schedule** and any other services agreed upon from time to time by the parties.

* 1. In this Agreement:
     1. references to a party include as the context requires respective executors, administrators, successors and permitted assigns;
     2. references to a person includes any other entity recognised by law and vice versa;
     3. headings, underlinings and marginal notes are only included for ease of reference and do not affect interpretation;
     4. references to legislation or legislative provisions include modifying, consolidating or replacing legislation or legislative provisions;
     5. a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
     6. references to parties, clauses, schedules, annexures, appendices or exhibits are references to parties, clauses, schedules, annexures, appendices or exhibits to this Agreement unless otherwise stated;
     7. where reference is made to a clause number and the clause number comprises a heading, such reference includes subclauses relating to the clause number;
     8. references to months and years means calendar months and years;
     9. where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
     10. a reference to $ or "dollar" is to Australian currency unless the context states otherwise;
     11. words denoting the singular number include the plural and vice versa;
     12. if any part of this Agreement is void or unenforceable or would be so unless severed, then that part is severed and the rest of the document will continue to have full force and effect so as to give effect to the intentions of the parties;
     13. if the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, that act, matter or thing may be done on the next Business Day;
     14. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Document or any part of it; and
     15. "include" or "including" are not words of limitation.

Schedule

| **Item No.** | **Description** | **Details** |
| --- | --- | --- |
| **1** | **Commencement Date** | Insert |
| **2** | **Project Termination Date** | Insert, recommended date being not more than 12 month’s after the Commencement Date |
| **3** | **Nominated Personnel** | Insert the name and address of any nominated personnel, such as a Director if the Contractor is a Corporation |
| **4** | **Services** | List the services the Contractor is to provide |
| **5** | **Contact Person** | Insert the person the Contractor is to report to |
| **6** | **Fees** | Insert GST exclusive fees There shall be no payment for public holidays or periods when the Client’s offices are closed. |
| **7** | **Termination Notice** | The Contractor or the Client may terminate this Agreement by giving to the other, notice as follows:**1 week's notice in writing** |
| **8** | **Insurances** | The Contractor is required to provide the Client with evidence of insurance coverage as follows:  **Public Liability** Not less than $20m (Delete or vary as appropriate) **Product Liability** Not less than $20m (Delete or vary as appropriate) |

**EXECUTED AS A DEED**

|  |  |  |
| --- | --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed and date  In House Counsel or  Vice Chancellor Administration  (Not binding unless signed by a holder of these positions)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name and title of signatory – please print  For and on behalf of **Diocese of Maitland-Newcastle**  **EXECUTED** by **Insert name and ABN of Contractor** or in the presence of its duly authorised officers in accordance with section  127 of the *Corporations Act   2001*:    Signature of director and date  Name of director – please print | ) ) ) ) ) ) ) ) ) ) | Signature of director/secretary and date  Name of director – please print |