

---

# CLIENT AND ARCHITECT AGREEMENT

USER GUIDE

---



Australian Institute of Architects

## Contents

---

Why use a formal agreement? _____	1
How to use the Client Architect Agreement 2009 _____	1
Special conditions _____	1
Guide letters _____	2
Execution (signing) page _____	2
Architect registration _____	4
Execution (signing) by the architect _____	5
Project scope _____	6
Initialling each page _____	6
Budget for the Cost of Works _____	6
Core Architectural Services _____	7
Additional Architectural Services _____	7
Cost _____	8
Time _____	8
Fees _____	9
Consultants _____	12
Intellectual Property _____	12
Insurance and Liability _____	14
Client Obligations _____	15
Architect Obligations _____	15
General Conditions _____	16
Dispute Resolution _____	16
Termination _____	17
Special Conditions _____	17
Guide Letters _____	18
1 Introductory Letter	
2 Sending Client and Architect Agreement Letter	
3 Non return of Client and Architect Agreement Letter	
4 Second non return of Client and Architect Agreement confirmation to proceed Letter	
5 Non agreement to engage cost consultant Letter	
Sample Completed CAA _____	25

---

## Why use a formal agreement?

---

To avoid later problems or disputes it is important for architects and their clients to discuss their requirements in detail so that both parties have a clear understanding of what will follow for the project. The initial meeting with your prospective client usually provides an ideal opportunity for you to explain the services available and how these services will assist the prospective client in achieving their goals. It is also essential at this time for you to describe the method of calculating the fees that will be charged for the services that you have agreed to deliver.

At this stage, you must also provide a contract for the commission—either because a formal agreement is required by most Architects Acts, or because a written agreement is highly recommended to avoid misunderstandings or resolve disputes during and after you have delivered your services.

## How to use the Client and Architect Agreement 2009

---

This guide is intended to give you, the architect, guidance on the contents and effect of the Client and Architect Agreement 2009 (**the CAA2009**) and suggestions on how you can complete the details in the contract's schedules. The CAA2009 can be used for projects of all sizes and complexity. Even so, the prospective client may wish to use a Standards Australia agreement, such as AS4122, or a bespoke contract specifically adapted for a large project—these are not discussed here.

By completing the schedules and both you and the client signing it, the CAA2009 sets out the contractual obligations and entitlements of each party. You are obliged to perform the scheduled services and do all the other things described. The client is obliged to pay you the amounts scheduled for the services you provide as described. Because you are obliged to do the things described in the CAA2009, it is important to make sure that any thing or service you are unwilling or don't agree to do is removed from the schedules.

The schedules and the execution page of the CAA2009 can be completed and amended by hand. They are also available in digital format, enabling each practice to add all relevant details and make additions and/or deletions. The digital versions of the schedules are available on <http://acumen.architecture.com.au/apps/notes/view/867>.

A series of draft letters form part of this Guide. As most practices will have their own way of preparing correspondence and the circumstances of each commission will vary, they are only intended to serve as a guide.

## Special conditions

---

The Institute acknowledges that varying circumstances and client or architect requirements may make it necessary for the parties to amend the CAA2009 other than by adding or deleting services listed in the Schedules. **Clause N** contains an order of precedence that enables a special condition inserted in **Schedule N** to vary the ordinary terms of the CAA2009.

It is recommended that you use **Schedule N** to insert special conditions and not some other method of amendment which may be less certain in effect.

However, before proposing changes to the text of the CAA2009, including deletions, you should get legal advice to ensure the CAA2009, as amended by the special condition proposed, retains its integrity so that it can be relied on by both you and your client.

Your client may also want to get legal advice on the contract and their lawyer may propose special conditions. If so, you should get your own independent legal advice and not rely on any assurances from your client or their lawyer.

## Guide letters

The suggested introductory guide letter is intended for you to send to the client immediately after the initial meeting. It is intended to be a confirmation of everything discussed with the client—and assumes you will forward a draft of the CAA2009 as an attachment to the letter.

The subsequent guide letters deal with the situation where an engagement is proceeding, but the formal agreement has not been signed and returned by the client, and confirms that the client does not intend to engage a cost consultant.

## Execution (signing) page

### The Client

By signing this Agreement the client authorises the architect to commence the services as soon as practicable.

Name \_\_\_\_\_

ABN (if any) \_\_\_\_\_ Client's representative \_\_\_\_\_

Address \_\_\_\_\_

Postcode \_\_\_\_\_

Telephone \_\_\_\_\_ Facsimile \_\_\_\_\_

If the client is an individual, individual trustee, partnership, or unincorporated association

Signed \_\_\_\_\_

or

If the client is an incorporated association

Signed \_\_\_\_\_ officer Signed \_\_\_\_\_ officer/secretary  
(cross out alternative not applicable)

or

If the client is a corporation, executed in accordance with s.127 of the Corporations Act 2001

Signed \_\_\_\_\_ director/sole director Signed \_\_\_\_\_ director/secretary  
(cross out alternative not applicable) (cross out alternative not applicable)

### Identity of client

For both you and the client to be able to enforce and rely on the terms of the CAA2009, it must be properly executed (signed) by each of you. To achieve this, the appropriate authorised person(s) must sign in their correct legal capacity. This capacity varies according to the type of legal entity each party is. So you can rely on the CAA2009 as a binding contract, the full name of the client should be shown, including whether it is an "Inc.", "Pty Ltd", "Ltd", or other entity type such as "Trustee for XX etc" or "XYZ Pty Ltd trading as ABC".

### ABN number

The client's ABN, if any, is required if the client is a business registered for GST and operating under the ABN. If any part of the project is to have percentage based fees apply, there is always the possibility that, for example, an overpayment of your fees based on the **Cost of Works** might have occurred as the project is concluded. If the client has an ABN, a tax invoice must be used to account for GST in the adjustment payment from you to the client.

### Client's address

The client's address to be shown here is the address for delivery of notices (which you need to give in writing) under the CAA2009. This enables the giving of notice by hand delivery, mail, or (if stated) facsimile.

For proper service of notices under the CAA2009, you should state the client's residential address, or the company's or incorporated association's registered office, as applicable.

### **E-mail**

The schedule deliberately does not provide for an email address. The reason is that if an email is stated in the CAA2009, a party may legally rely on email as a substitute delivery method for giving notices, but the risk is that it may not be received because the e-mail address might be rarely accessed, or subject to change, or delivery to it may be unreliable.

However, if the parties are confident that e-mail is an acceptable communication method, they may either insert the e-mail address, or establish a "pattern of dealing" by using e-mail to communicate after the CAA2009 is signed. If they do either, the parties need to be aware that communication by e-mail becomes an acceptable method of notification under the CAA2009 and at law it does not matter that the receiving party has not actually received the particular e-mail, or read it.

When relying on or using email to send notices or important correspondence under the CAA2009, you should always request a Delivery and Read Receipt confirmation via your email software.

### **Telephone numbers**

Using a fax number, for which you can receive delivery confirmation, is the most reliable method of giving notices and is good evidence of delivery.

### **Signatures**

The correct place for the client to sign and number of signatures required depends on the client's entity type according to the information shown in the left column of the page.

### **Client representative**

For the smooth operation of the CAA2009, have your client nominate only one representative (where shown) for the purpose of communications. If that representative has different contact details, they can be inserted alongside the person's name, or provided by separate correspondence.

### **Places to sign**

The first signature line option is for clients who are individuals, individual trustees, a partnership, or an unincorporated association. Under ordinary circumstances, for such clients, only one signature by an authorised person is required, although more than one person may sign.

You should satisfy yourself that at least one signatory has the authority to legally bind the client to the CAA2009. The authorised person, may not necessarily be the client representative.

The second signature line option is for incorporated associations, such as "XXX Inc". In this case 2 officers of the incorporated association must sign in the appropriate places and strike out what does not apply, for you to be able to rely on the CAA2009 as enforceable against the incorporated association.

The third signature line option is for companies, including corporate trustee companies, either "Pty Ltd" or "Ltd" and must contain the signatures of two directors, one director and the company secretary, or a sole director/secretary. If the latter, you should verify that the company is a sole director company before accepting that it is able to be signed by only one person, otherwise you may not be able to enforce the CAA2009 against the company.

## Date of signing

In every case, each signatory must insert the date they actually sign. The agreement comes into effect when the last signatory signs (whether that is the client's last signatory or your last signatory).

## Architect registration

The note under "The Architect" (reproduced in the extract below) is intended to alert the client that they may be entering into a formal engagement with a non-architect who is using this pro forma agreement. This includes an architect not registered in the state or territory of the site.

Entering into the CAA2009 when not registered as an architect in the state or territory could be used as documentary evidence that a non-registered person is claiming to be or representing themselves as a registered architect. This would be a breach of the Architects Acts in all states and territories and can attract civil penalties.

Provided that the non-registered person has not represented themselves as being registered, you may want to insert a special condition in the CAA2009 at **Schedule N** clarifying that wherever 'architect' appears it means the 'non-architect', and that **paragraph j of Clause J** is deleted, may suffice. But be wary that, merely clarifying your unregistered status may not be enough to avoid a breach of a relevant Architects Act if the services you carry out under the CAA2009 are considered to be architectural services, or because you have made representations to people other than the client that you are registered or are authorised to deliver architectural services.

Architects engaged under the CAA2009 should be only those currently registered as architects in the relevant state or territory. While requirements vary, mutual recognition principles should make it reasonably straightforward, for architects registered elsewhere, to register in the relevant state or territory.

If the parties are thinking of using the CAA2009 for engagement by a non-architect (including architects not registered in the state or territory), you should first consult with the Registration Board administering the applicable Architects Act.

### The Architect

This agreement has been developed as a formal basis for the relationship between a client and an architect. Under the Architects Acts in each state and territory, an architect is a person who is registered by the relevant Architects Registration Board (or equivalent).

The client should be aware that the person nominated as architect under this agreement may not be entitled to use the title 'architect' in the place the project is located. The client should check with the relevant Registration Board that the person named as architect is entitled to be described as an architect in that place.

Name	
ABN	Registration No.
Address	
	Postcode
Architect's representative	
Telephone	Facsimile

### Identity of architect

As noted above, for both you and client to be able to enforce and rely on the terms of the CAA2009, it must be properly executed (signed). To achieve this, the appropriate person(s) must sign in their appropriate legal capacity, as architect. This capacity varies according to the type of legal entity the architect is. For this reason, the full name of the architect's legal entity should be shown, including whether it is a "Pty Ltd", "Ltd" company or other entity type such as "Trustee for XX" or "ABC Pty Ltd trading as XYZ".

**ABN number**

Because you (or your firm) is carrying on business as an architect and registered for GST, you must state your (or your firm's) ABN.

**Registration number**

As required by most state and territory Architect's Acts, you must as an architect include your registration number. Whether this is the number of a registered practice or of an individual architect in the practice depends on the Architects Act of the state or territory where the site is located. The required registration number may or may not be the registration number of the architect's representative.

**Architect's address**

This is the address for delivery of notices (giving notice in writing) under the CAA2009 enabling the giving of notice by hand delivery, mail, or (if stated) facsimile.

**E-mail**

The notes above about a client e-mail addresses apply here as well.

**Telephone numbers**

Similarly, the notes above about client telephone numbers apply here as well

**Architect's representative**

It is equally important for the smooth operation of the CAA2009 that your representative, and only one representative, is nominated where shown. If that person has different contact details, they can be inserted with the person's name, or provided by separate correspondence.

---

**Execution (signing) by the architect**

---

Just as the client can be an individual or other type of organisational entity, there are several alternatives for an architectural practice. So that the CAA2009 can be relied upon by both you and the client, the correct alternative should be completed and signed.

Note: unlike the options for the client, an architectural practice cannot at law be an unincorporated or incorporated association.

**Signatures**

As for the client, the correct place for you (or on behalf of your firm) to sign, and number of signatures required depends on the architect's entity type, according to the information shown in the left column of page 1.

**Places to sign**

The notes above relating to places to sign apply here as well, except that as noted above an architect cannot be an unincorporated or incorporated association.

**Date of signing**

Again, insert the date on which each signatory of the architect has signed.

Note: The agreement comes into effect when the last necessary signatory signs (whether that is the client's last signatory or the architect's signatory).

## Project scope

Briefly describe the scope of the project to identify it in relation to this agreement. It should state the address and the state of the site, if this is applicable.

<b>The Project</b>	The project scope, its location and the extent of work which requires the architectural services are as follows:
--------------------	--

## Initialling each page

**Clauses A** and **B** anticipate that some services will be crossed or struck out by hand amendment. It is important to accurately record the conditions of the CAA2009 and have you and the client initial each of the relevant pages to these clauses, even if no services are actually struck out. These pages provide a place for the initials.

For the same reason, it is important that each page of the **Schedules** is similarly initialled. These pages provide a place for the initials.

## Budget for the Cost of Works

You must insert only the budget (at the time of signing) for the **Cost of Works** here, with a clear understanding of what the **Cost of Works** is. Do not insert the **Total Project Cost**—see **clause C, C1** and **C2** for definitions. Note that the **Cost of Works** excludes GST.

It is especially important where fees are to be charged as a percentage of the **Cost of Works**.

As the note on the extracted page below states, the budget can be reasonably relied on by you and the client in determining fees, but eventually, in a full service arrangement, the **Cost of Works** at the completion of the project (as it is defined) will determine the final fee account.

<b>The Budget</b>	Agreed initial budget for the Cost of Works (refer Clause C.2):	\$	(excl GST)
-------------------	---	----	------------

This budget may be reasonably relied on by the client and the architect in determining the architect's fees. Estimates of the Cost of Works may be revised and the parties must agree any resultant changes to the scope of services and fees.

## Core Architectural Services and Additional Architectural Services

These clauses are intended to set out the services that will be provided by you.

For both clauses you can cross or strike out those services that you will not provide and insert additional services not listed in the respective sections to be added to **Schedule A** or **B**, as needed.

**Clause A** is divided into subclauses A.1 to A.6 and each subclause is divided into subheadings with bullet pointed lists of services below. **Clause B** is similarly divided into subclauses B.1 to B.6.



Note: You should not need to cross out the services under the subheading “Approvals” except in extraordinary circumstances, or unless you intend to strike out that whole subclause.

## A. Core Architectural Services

---

**Clause A** covers the common services provided by architects in an engagement.

**Design stages are:**

A1 Concept Design

A2 Design Development

A3 Town Planning/Development Approval

A4 Construction Documentation

Contract stages are:

A5 Contractor Selection

A6 Contract Administration

Note: Services you have not agreed to provide must be struck or crossed out. Strike outs may be of an individual bullet point item or of as much as you and the client agree. But the client can rely on and expect to receive the services which are not struck out, even if no fee basis is indicated in **Schedule E1** for them.

Additional services not listed in the CAA2009 (under any Section A heading) can be added to **Schedule A**, adjacent to the headings for A.1 to A.6

## B. Additional Architectural Services

---

This clause covers project-specific services which may be required in addition to the Core Architectural Services described in **Clause A**.

These additional services are often required by a client for a specific commission. For example, in this section a ‘Feasibility Study’ is envisaged. Here also is the specific service where you will assist with Town Planning/Development Application Negotiation.

**The additional services stages are:**

B1 Feasibility Study

B2 Record Documents

B3 Town Planning/Development Application Negotiation

B4 Illustration

B5 Trade Package Documentation

You and the client will need a detailed discussion to determine if any and which of the additional services are required and you will need to explain them in some detail to the client.

Note: Any or all additional services you will not provide must be struck out. The client can rely on and expect that you will deliver those services listed (and not crossed out) in **Clause B**, even if no fee basis is indicated in **Schedule E1** for them.

Additional services not listed in the CAA2009 (under any Section B heading) can be added to **Schedule A**, adjacent to the headings for B.1 to B.6.

You or the client may need to change the scope of services during the course of the project. **Clause B7** sets out what the parties need to do to achieve this change in scope.

## C. Cost

---

### Cost of Works

The cost of the project is considered in two distinct ways in the CAA2009. It is essential that the fundamental difference is understood by both you and the client.

The distinction starts from the principle that the architect is, and should be, responsible only for the costs which the architect's input of professional services will influence or in some cases, control. Such costs make up the **Cost of Works**.

The **Cost of Works** is explicitly defined in **Clause C2** of the CAA2009, as:

*the final cost of all work designed, specified or scheduled by the architect, including all work designed, specified and or scheduled by specialist consultants coordinated by the architect, including:*

*a the final adjusted contract price (excluding GST) in accordance with any building contract, plus*

*b the equivalent final cost (excluding GST) of any work or items supplied to the building contractor by the client (as if provided by the building contractor under the building contract), plus*

*c the final cost (excluding GST) of any part of the project provided under a contract other than the building contract.*

Essentially, these costs are those arising from **The Design** of the project. Note that they include the costs of architect-designed or coordinated work which is not, for client preference or other reason, delivered by the head contractor under the building contract. This means there is the possibility that items which are not part of the building contract (and hence not part of the adjusted contract price under that contract) will still be included in the **Cost of Works**.

Where you have agreed to a percentage fee basis, the **Cost of Works**, either as an estimate or eventually as a final cost, determines the architectural fees.

### Total Project Cost

Conversely, **Total Project Cost**, includes the **Cost of Works**, but encompasses the other costs over which, in delivering the professional services, you have no control or direct influence .

**Total Project Cost** is defined as:

*the **Cost of Works** plus all other costs to the client associated with the project...*

The definition follows with a not exhaustive list of what might be included as other costs, in that, such as legal fees, removal costs, contingencies for construction costs, consultants' fees, or finance charges.

**Total Project Cost** also includes examples of costs which, depending on the circumstances, may be caught by the definition of **Cost of Works**.

Referring to that definition, these examples of landscaping or loose furniture, fittings and equipment, would be included in the **Cost of Works** if you are responsible for their specification, scheduling or design, or a specialist consultant coordinated by you had been so responsible, unless otherwise agreed.

## D. Time

---

This clause deals with:

- the program for the architect's services
- protracted services due to factors beyond the architect's control (**Clause D.1**), and
- suspension of the services by either the architect or the client (**Clause D.2**).

**Clause D** provides that an initial program for your services must be agreed after the client provides its initial program for the project. Subsequently, changes to the program must be revised by agreement in writing.

**Clause D.1** provides that where the services are protracted by factors outside your control, you must inform the client in writing of the cause and anticipated delay. You may also be entitled to additional fees and a reasonable extension of the program under the contract.

**Clause D.2** provides that if you or the client suspends the services, you are entitled to have the client pay all your fees and disbursements already due at that time. If the client suspends, you are also entitled to be reimbursed associated costs of the suspension, but in either case, your other rights and entitlements during the suspension continue as if it had not occurred.

## E. Fees

---

This clause covers fees and fee payments.

In **Clause E**, the most common methods of charging your fees:

- a percentage of the **Cost of Works**
- a lump sum
- an hourly rate or
- a combination of these

are described alongside the conditions for payment of fees and it is stated that the amounts derived by these methods don't include GST.

However in relation to any one service, only one method would apply. A set of services may have some services priced by one method and other services on another. In this case you should show both fee bases and clearly insert a '+' sign between the two.

Fees for additional services required or requested after the CAA2009 is executed are by default to be priced at agreed hourly rates, unless you and the client agree otherwise in writing.

Where there is a discrepancy, between the allocation of percentage or lump sum fees to the individual services or stages of the project, or ambiguity or omission, the respective total shown in **Schedule E1** takes precedence.

### Percentage Fees

**Clause E** deals specifically with percentage fees. It provides that the fees are calculated and adjusted progressively against the budget for the **Cost of Works** as it develops. However, the fee (and hence the eventual amount of your fee) is subject to final adjustment in accordance with the final **Cost of Works** when that is determined.

It is very important that you and the client understand that your fee is based on the **Cost of Works** as defined and explained above, but also that the amount of the fees will be adjusted when the final **Cost of Works** is determined. The practical effect of this is that there may be an adjustment of the total fee amount either in your or your client's favour at the completion of the project.

As set out in **Schedule E1**, percentage fees can also apply to discrete items of the services, while other services can be charged on a lump sum basis, or on hourly rates.

## Lump Sum Fees

While lump sum fees are intended to apply irrespective of the adjustment of the **Cost of Works**, they are agreed on the basis of a defined project scope and extent of your services.

As set out in **Schedule E1**, lump sum fees can also apply to discrete items of the services, while other services can be charged fees on a percentage basis, or on hourly rates.

**Clause E.2** provides that if either the scope or extent of services changes, hourly rates will apply to the changed services, unless you and the client agree otherwise in writing.

<b>Schedule E1: Fees (excluding GST)</b>		Service	Percentage	Lump Sum	Hourly Rate	Amount of percentage fee allocated	Amount of lump sum fee allocated (excl.GST)
See Clauses E.1, E.2 & E.3							
		A.1 Concept Design	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		A.2 Design Development	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		A.3 Town Planning/Development Application	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		A.4 Construction Documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		A.5 Contractor Selection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		A.6 Contract Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		B.1 Feasibility Study	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		B.2 Record Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		B.3 Town Planning/Development Application: Negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		B.4 Illustration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		B.5 Trade Package Documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

## Hourly Rate Fees

If your services are to be charged at hourly rate fees, these rates must be set out in **Schedule E2** for each of the personnel or the services being provided. Where hourly rates arise during the course of the project, and are not set down, they need to be agreed in writing before the additional services are provided.

As set out in **Schedule E1**, hourly rate fees can also apply to discrete items of the services, while other services can be charged fees on a percentage basis, or on a lump sum basis.

**Clause E.3** also provides that hourly rates are subject to annual CPI adjustment and that if requested by the client, you must provide time sheets or other substantiation of hours being charged.

<b>Schedule E2: Hourly Rates (excluding GST)</b>		Personnel	Hourly rate
See clause E.3		Principal/Director	\$ per hour (excluding GST)
		Team Leader	\$ per hour (excluding GST)
		Senior Architect	\$ per hour (excluding GST)
		Architect	\$ per hour (excluding GST)
		Graduate	\$ per hour (excluding GST)
		Technician	\$ per hour (excluding GST)
		Assistant	\$ per hour (excluding GST)
			\$ per hour (excluding GST)

## Fee Invoices

**Clause E.4** describes how you must submit invoices, monthly or as otherwise agreed in writing. Where fees are being charged on a percentage basis or lump sum, the monthly amount must be agreed or determined based on the progress against the program either on the current estimate of the **Cost of Works** or on apportionment of the lump sum, as applicable.

Fees stated in the CAA2009 on any basis (whether percentage based, lump sum or at hourly rates) are exclusive of GST, which must be added to each relevant tax invoice.

## Disbursements

Disbursements in **Schedule E3** may be included on your tax invoice. Disbursements must be itemised and you must state that they are inclusive of GST after each of the subtotalled amounts to which GST is applied.

**Clause E.5** also says that you are entitled to a service fee for incurring the disbursements which are paid by and reimbursable to you. As indicated in **Schedule E3**, a service fee surcharge of 15% is to be added of the cost of the disbursement. Disbursements the client is to pay directly do not have a service fee applied.

### Schedule E3: Disbursements (including GST)

See clause E.6

Item	Client to pay	Reimbursable	Service fee	Rate or basis (incl. GST unless stated otherwise)
Fees, taxes, levies or charges paid to authorities	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Advertisements and notices	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Special presentation material, models, perspectives	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Rental of special equipment	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Electronic CAD data transfers and CAD file conversion	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Photographic records	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Courier and parcel postage services	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Copies of documents other than to client for client's own use	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Colour reproductions of documents	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Building contracts	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Travel time	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Vehicle use beyond 30km from office	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	
Interstate, intrastate, or overseas travel	<input type="checkbox"/>	or <input type="checkbox"/>	<input type="checkbox"/>	

## Payment of Invoices

**Clause E.6** provides that the client must pay within 14 days of the invoice date. Invoices unpaid by the due date are subject to 15% p.a. penalty interest calculated at the daily rate and applied to the number of days an invoice is outstanding.

Importantly, you are also entitled to suspend your services while a payment under a properly submitted invoice remains overdue, irrespective of whether you decide to charge penalty interest.

## F. Consultants

This clause describes the role of specialist consultants, who will engage them, and how they are paid. Part of the services you provide under **Clause A.1** is to give recommendations to the client about those consultants you consider necessary for the project, and the likely amount, or percentage basis, of their fees.

**Schedule F** (under **Section O**) contains a list of likely consultants with a number of blank spaces to add any other specialist consultants which you may consider necessary for the project.

If a specialist consultant is to be engaged directly by the client, **Clause F.1** sets out the terms of that engagement.

Under the terms of the CAA2009, the client directly engages a specialist consultant on the basis that you are not responsible (in relation to the contract between you and the client) for the services provided by a specialist consultant, but you undertake to coordinate the services of any specialist consultant as part of your normal services provided in **Section A** or those under **Section B**, as applicable. The client is to directly pay the specialist consultant's fees, but may check with you before doing so to confirm that the service invoiced by the specialist consultant has actually been provided.

**Clause F.2** covers the situation where the need for additional specialist consultants not specified in the CAA2009 arises during the course of the project. It states that the new specialist consultant can be engaged by the client on the same basis as the above, or, if you are to engage the specialist consultant, by adding their fee to the fee payable to you by the client.

### Schedule F: Specialist Consultants

See clause F.1

Consultant	Client to engage		Architect to engage		Notes
Quantity surveyor/cost consultant	<input type="checkbox"/>	or	<input type="checkbox"/>		
Structural/civil engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Mechanical engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Electrical engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Hydraulic engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Fire services engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Certification (building surveyor)	<input type="checkbox"/>	or	<input type="checkbox"/>		
Land surveyor	<input type="checkbox"/>	or	<input type="checkbox"/>		
Planning consultant	<input type="checkbox"/>	or	<input type="checkbox"/>		
Geotechnical engineer	<input type="checkbox"/>	or	<input type="checkbox"/>		
Landscape architect	<input type="checkbox"/>	or	<input type="checkbox"/>		
Interior design consultant	<input type="checkbox"/>	or	<input type="checkbox"/>		

## G. Intellectual Property

This section covers copyright, moral rights and issues around electronic data transfer.

### Copyright

Under **clause G.1** you retain copyright and give the client an express licence to use **The Design**. **The Design** is defined as the design concepts, drawings and documents. The client may pass on the licence to those parties who are needed to construct and maintain the building.

Note: The licence you give to the client is to use **The Design** only for the project on the site for which it was intended, subject to the conditions set out in the paragraphs below.

These conditions are intended to minimize the risks to your copyright where your client, for example, applies for development or planning approval using your drawings and intends or may sell the property with the approval, without the client using **The Design** to construct the building.

**Paragraph a** makes it clear that there is no 'implied' copyright licence only the licence that is expressly given under the CAA2009 and on those terms set out.

**Paragraph b** gives you a discretionary right to revoke that licence for as long as a payment of your validly submitted invoice is overdue and unpaid.

**Paragraph c** has the effect that the express licence is automatically revoked in the event of any action by the client, or third parties (such as a liquidator, mortgagee, or landlord), which changes the client's ownership or legal interest in the site. You can reinstate the licence at your discretion after receiving a written request by the client.

Note: You cannot unreasonably refuse to reinstate the licence if the client requests in writing. Whether you are acting unreasonably in refusing will depend on the circumstances and will vary from project to project. Such circumstances might be whether full or up-to-date payment has been received, or the stage of the project at which the revocation of licence occurred.

Finally, you need to be aware that under **Clause G.1c**, when all your services are complete and you have received full payment of all validly submitted invoices, the licence to the client becomes irrevocable.

## G2 Moral rights

This clause confirms your right (or your architectural firm's right) to be attributed for **The Design** according to the form of attribution you state in **Schedule G**, in any **Public Information** distributed by either you or the client about the project.

To enable this form of attribution, without impinging on the moral rights of the project's "authors" as the *Copyright Act 1968* requires, you must obtain the necessary consents from all authors of **The Design**.

"Public information" is defined as any 2 or 3 dimensional representation of the project or any part of it, which is provided to persons other than you and client, or your respective representatives.

## G3 Electronic Data Transfer

Under **paragraphs a to c**, this clause provides that the client agrees that you can issue data electronically (in digital format); but that you are not responsible for accuracy, completeness or contamination. If included in **Schedule E3**, the client will reimburse you the cost of electronic data preparation and file conversion (as needed).

## H. Insurance and liability

---

In **Clause H.1** of the CAA2009 you agree to maintain insurance cover for public liability, professional indemnity and workers compensation. The latter two insurances may be required by law in the relevant state or territory.

For professional indemnity and public liability, you can specify dollar value levels of cover for each in **Schedule H**. If your client wishes to specify one or both levels of cover, you may negotiate with your client what that should be and, of course, you should consider your current level of insurance cover.

### Liability to your client

**Clause H.2** can operate to limit the type, amount of and period of time in which a client can claim against you. With **paragraph a**, you can put a 'cap' on your liability exposure to your client by specifying an amount in **Schedule H.2**.

**Paragraph b** limits the type of liability to the client's *direct* loss or damage—not indirect consequential or special losses, including those described in the brackets of the paragraph.

**Paragraph c** limits the length of time you remain liable to your client to 3 years after completion of your services. After these 3 years, your client cannot make a claim against you in respect of the services you provided under the CAA2009.

Architects should be aware that a contractual limitation of liability or capped amount stated in **paragraph a** is only effective in relation to liability to the client for professional services you delivered under the CAA2009. **Clause H.2** cannot and does not limit or avoid your liability to third parties who are injured or suffer some loss because of some negligence in delivering your professional services.

The limitation you and your client agree to insert in **Schedule H.2** will reflect a commercial decision reached by negotiation. There is no accepted method or mathematical formula for setting the cap or limit of liability. It is a question of balancing your interests against the client's considering the size and complexity of the project, the size of your fee and the likely risks arising out of you delivering your professional service (including honestly assessing your level of expertise). Consider:

1. A *lower* limit generally offers you greater protection, but may be less acceptable to your client. A *higher* limit may allow the client to receive more in damages, but may also expose you to the risk of paying for your liability to the client out of your own (or the firm's) pocket, especially if your professional indemnity (PI) insurance is for less than the limit stated.
2. A reasonable compromise would be to insert the amount of your PI cover limit. This way there won't be a 'gap' between what you become liable to pay to your client in damages and what your insurer has agreed to cover you for.

You need to consider the number of projects you are undertaking within the insured period, the limits on liability (or no liability) and the risk that you might become liable for more than one project at the same time. These considerations are also relevant to your policy's 'per claim' cover limit.

3. Conversely, you may want to limit your liability to your client to an amount less than the amount of PI insurance you currently hold. This may be appropriate after you assess the client itself, the nature and complexity of the project and any particular expertise demanded by the project brief.
4. Not specifying an amount in **Schedule H.2**, or inserting '\$0', 'N/A' or 'Nil', means that your liability to the client is not capped or limited. In this case it would be open to a court to award damages against you in whatever amount the court considered just. If so, you may find yourself liable to your client for amounts that could be greater than your PI cover—which you will have to pay out of your own pocket.

Note: For a limit of liability or cap to be effective, a dollar figure for that limit of liability must be stated in **Schedule H.2**, otherwise **paragraph a** cannot operate to limit the amount of your liability to the client.



The *Trade Practices Act* and parallel state and territory fair trading legislation have been replaced by the Australian Consumer Law (**the ACL**) in 2010. The ACL applies to all persons, corporations and partnerships who conduct business in Australia. Sections 60 and 61 of the ACL contain warranties implied by the law that all businesses give to their customers (clients) in conducting their business. To the extent that any part of the services you provide fall within the ACL warranties you impliedly give to the client, **paragraph d** limits your liability, so that: you only need to supply your professional services again to the client, or effectively 'refund' the cost of those services that need to be provided to the client again.

#### Schedule H: Insurances & Liability

	Details		
See Clause H.1	Professional Indemnity Insurance	Not less than	\$
See Clause H.1	Public Liability Insurance	Not less than	\$
See Clause H.2	Architect's liability to client	Not more than	\$

## I. Client Obligations

**Paragraphs a to j** of this **clause I** list the general obligations of the client to you and specific obligations not set out elsewhere in the CAA2009.

The client's specific obligations (not described elsewhere in this guide) are summarised as:

- a appoint the architect as the client's agent as needed to carry out the services to be provided...
- c provide information needed by the architect
- d cooperate fully to ensure efficient and satisfactory progress...
- g allow reasonable access to photograph or otherwise record the project during and after completion
- h allow the architect to publicise the project for its marketing purposes, unless agreed otherwise...
- j notify the architect in writing of any project details to be kept confidential

## J. Architect Obligations

**Paragraphs a to j** of **Clause J**, sets out your obligations to the client not specifically described elsewhere in the CAA2009.

These are summarised as:

- a providing the relevant services to the standard of care of the skill and professionalism of a reasonably competent architect
- b acting as the client's agent for the project and as required by a relevant building contract
- c coordinating the preparation of any **Cost of Works** estimates, with the cost consultant, if any
- d coordinating and integrating specialist consultant's work
- e maintaining accurate records and keeping the client informed of progress at all stages, whether by meetings, reports or other means
- f promptly notifying in writing if the client's instruction or another requirement changes the scope of services or requires services not provided for in the CAA2009

- g for such services not provided for, giving the client an estimate of the fees involved and the likely impact on the estimated **Cost of Works** or the program
- h promptly notifying in writing if any ethical or regulatory matter may give rise to a conflict of interest with the client
- i if a conflict of interest does arise, promptly notifying in writing and suspending the services until either the conflict is removed or the CAA2009 is terminated, and
- j maintaining registration as an architect in the state or territory of the project.

## K. General Conditions

---

**Paragraphs a to i of clause K** set out the general conditions of the CAA2009. These are expressed to override anything elsewhere expressed, or implied, in the CAA2009.

Summarised, you and your client agree that:

- a you are not responsible for ensuring that the construction works comply with the contract documents, but if engaged to administer a building contract, must tell the contractor as to the requirements of the contract documents according to the contract terms
- b you give no express or implied warranties that **The Design** is fit for the client's purposes
- c natural materials change due to use or climatic conditions
- d the scope of the architect's services specifically does not include asbestos, other hazardous materials or site contaminants
- e the client is responsible for maintenance after completion of the project, including its systems, finishes and equipment
- f neither party can transfer their obligations or entitlements under the agreement without prior consent of the other, except as set out in Section G, or by operation of law
- g the law applicable to the agreement is the law in the state or territory where the project is located
- h nothing makes ineffective, or reduces, your protection at law from liability in the state or territory of the applicable law, and
- i the agreement supersedes any prior agreements and applies to any services you provided before the agreement was signed.

**Paragraph i**, to be effective for the benefit of both you and the client, requires that this agreement (including special conditions) needs to accurately reflect the requirements communicated and agreed between the parties before it is signed.

## L. Dispute Resolution

---

This clause sets out the procedure for dealing with disputes under the CAA2009 between you and the client. If a dispute arises, both you and the client must continue to perform your respective obligations.

**Paragraph a** provides that either you or the client can give written notice to the other of the details of the dispute, requiring both parties to meet within seven days of the notice. At this meeting, both parties must make a bona fide attempt to resolve the dispute.

If not resolved at that meeting, paragraph b provides that either party may refer the dispute to mediation by delivering a written proposal of mediation to the other.

**Paragraph c** sets out the requirements for the proposal: it must state the name of

an IAMA accredited mediator in the relevant state or territory, who is independent of both parties and willing to act.

Under **paragraph d**, you and the client must agree in writing to the mediator within seven days after either party delivers the proposal. If the parties don't or can't agree, either party (usually the proposer) must ask the Chapter President of the IAMA to nominate the suitable mediator.

**Paragraph d** requires that the mediation must follow the rules of the IAMA for mediation, but neither party will be required to pay more than half of the costs of mediation.

If the mediation is unsuccessful, under **paragraph f**, you or the client may then take legal action outside this procedure to resolve the dispute.

## M. Termination

---

Under this clause, either party may give the other written notice that you or they intend to terminate the CAA2009 30 days after the date the notice is delivered. The contract does not require a party to give a reason for deciding to terminate.

Under **paragraph a**, on termination (unless the parties otherwise agree in writing) the client must pay:

1. the outstanding balance of all invoices submitted before the notice to terminate was delivered; and
2. your fee for all services reasonably undertaken and reimbursable expenses reasonably incurred by you, after the notice was delivered.

Upon payment of the fees, you must issue to the client one copy of **The Design** (as defined in **Clause G.1**) as it is at the date of termination.

Remember that under **Clause G.1**, if the contract is terminated, all services you are required to deliver under it are taken to have been completed. So once you receive payment of all amounts invoiced and payable, the client gets an irrevocable licence to use **The Design**.

## N. Special Conditions

---

This clause facilitates the inclusion of special conditions that the parties insert in **Schedule N**. The effect of this clause is that a special condition inserted in **Schedule N** takes priority over any other condition in the CAA2009.

For this reason, the Institute recommends that you do not amend the CAA2009 except by inserting special conditions in this **Schedule N** and that both parties get their own legal advice to assist preparing and including appropriate special conditions.

# 1 INTRODUCTORY LETTER (DELETE BEFORE PRINTING)

*Italic underlined text is for you to delete, modify, or accept according to the circumstances of the project and change to regular text.*

Insert Date

Insert Client Name

Insert Client Address

PRIVATE & CONFIDENTIAL

Dear Insert Client Name,

**Re: Fee proposal for provision of Architectural Services**

Insert project name here

*It was a pleasure to discuss/meet with you about your project.*

Further to our recent discussions/meeting, we include in this letter:

- a summary of our assessment of the preliminary project brief and area analysis;
  - a preliminary assessment of an indicative *Cost of Works*, and
  - a fee proposal for our services as your architect,
- all for your consideration.

A draft Client and Architect Agreement, enclosed with this letter, provides detailed information on the services provided and contractual conditions associated with our engagement as your Architect.

## Preliminary Brief and Area Analysis

We have summarised our understanding of your preliminary brief in accordance with our recent discussion with us to evaluate the approximate size and complexity of the project.

*(For a relatively simple project you might choose to insert here a description of the project identifying the key components to be designed and/or coordinated by the architect, and to summarise the estimated built area associated with the project. The summarised area can be determined by completion of an "Indicative Area Costs Worksheet")*

For example:

Two storey residence including:

Open plan living and kitchen area with walk-in pantry

Laundry

Powder room

Study

Master bedroom with WIR and ensuite

Two children's bedrooms with shared bathroom

Rumpus room

Double lock-up garage attached to house

Swimming pool and outdoor BBQ area

Estimated area                      400m2 including garage

*For a more complex project you may wish to refer to a brief which is appended to this letter.*

Note: The approximated areas outlined above represent indicative estimates only and are likely to change as the brief and design evolve.

## Guide Letters

---

### Indicative Cost of Works:

*(For a relatively simple project, utilising the "Indicative Area and Costs Worksheet" you can determine an indication of the "Cost of Works". Include indicative costs for ALL of the works that are likely to be designed and/or coordinated by the architect.)*

You will recall our discussion of what the Cost of Works includes and that our fees, among other things, are not part of it. It is very important that we proceed with a mutual understanding of what the Cost of Works covers.

Clause C of the Client and Architect Agreement sets out the definition of the Cost of Works. If you are unclear on what parts of your Total Project Cost are included in the Cost of Works and which parts are not, please ask us.

On our current understanding of your brief, and the quality and size of the project, our preliminary assessment of an indicative Cost of Works is \$XXXXXX (ex GST).

In deriving this preliminary assessment of the indicative Cost of Works we have considered market trends for projects which are similar in nature, but indicative costs are not a guarantee of the actual costs for your project.

This preliminary indication of cost is provided to assist you in understanding your brief and your Cost of Works budget as it relates to your Total Project Budget, discussed below.

*As discussed, we highly recommend the engagement of a quantity surveyor or professional cost consultant to assist you in managing your budget by providing more accurate estimates as the project takes shape.*

### Total Project Budget:

The Total Project Budget (also defined in clause C of the Client and Architect Agreement) includes the Cost of Works plus all other costs that relate to the project including (but not limited to) our fees *and those of other professional consultants*, fees for statutory approvals, *loose furniture, work under other contracts not coordinated by the architect, such as furniture supply, landscaping*, etc.

As discussed, you are responsible for managing the Total Project Budget, because it has components we are unable to control, manage, or take responsibility for. One of these is the addition of GST to those components which are expressed as ex GST, such as the Cost of Works and our fees.

However, we recommend that you include in the *Total Project Budget* a "contingency sum" of say XXXX%, to allow for unforeseen expenses that may eventuate as the project proceeds.

A few examples of expenses which might arise that you do not presently expect could be:

- you might later decide to have us carry out extra services you have not presently anticipated,
- the services of another specialist consultant may prove desirable or necessary, or
- during the construction of the project, you may decide you want to change something which involves extra cost to you (variations).

We understand that more detailed consideration of your Total Project Budget may require an adjustment to the funds available for the Cost of Works.

### Proposed Fees for Architectural Services:

Fees for Core Architectural Services:

The scope of these services is listed in Clause A, and in Schedule A of the draft Client and Architect Agreement.

*We propose a Percentage Fee Agreement of XX % of the Cost of Works (excluding GST as outlined above) for which a preliminary estimate is:*

*XX % of \$XXXX (preliminary assessment of indicative Cost of Works excluding GST) = \$YY (Ex GST)*

The breakdown of these fees, related to specific stages of the delivery of Core Architectural Services is defined in Schedule E.1 of the attached Client and Architect Agreement.

Fees for Additional Architectural Services:

As discussed with you, we have identified that the following architectural services are required in addition to the Core Architectural Services. These are shown in Clause B and Schedule A of the Client and Architect Agreement.

These services will attract the fees as outlined in Schedule E.1, and/or E.2 of the Client and Architect Agreement.

## Guide Letters

---

When considering your Total Project Budget you will need to consider our fees for both Core and Additional Architectural Services.

### Secondary Consultants:

In our discussions with you, we have identified the need for specialist consultants to assist in the delivery of the project and these are listed in Schedule F of the Client and Architect Agreement.

This Schedule indicates the specialist consultants who, as discussed, are to be engaged by you on the terms outlined in clause F.1, and their fees will need to be considered in your Total Project Budget.

We will make recommendations if the need for additional specialist consultants arises during the course of the project, and if they are engaged, clause F.2 will govern the arrangements.

### Disbursements:

We have discussed with you the items for which you would reimburse us their cost and those which would also attract a service fee. Those we have presently identified are set out in Schedule E.3 of the Client and Architect Agreement.

For those disbursements listed with a service fee applicable, clause E.6 of the Client and Architect Agreement provides that the service fee payable in addition to the invoiced cost of a disbursement is 15%.

If these disbursements are likely to be significant in the circumstances of your project you may wish to consider their likely total amount in your Total Project Budget.

### Programme for delivery of services:

We estimate that the design and documentation stages of the project will be delivered over about XX to XX months. However, this will depend on several factors critical to the timeframe for delivery of these stages, such as the time it takes to obtain planning approval. We are not in a position to estimate how long the planning approval will take.

As well, there are the necessary approvals for building work to commence, and the selection of the contractor. Again, we are not in a position to estimate the time involved before the construction can begin.

Following this, we expect that when construction work starts, it will take about XX to XX months to reach the stage where you can occupy the project.

### Engaging us to work further with you

We confirm our enthusiasm for providing architectural services for your project and look forward to exploring the opportunities that your project provides.

However, before we do further work we request that you formally confirm our engagement.

As discussed and noted above, we propose our engagement is formalised by signing the Australian Institute of Architects Client and Architect Agreement, as enclosed with this letter in draft form. We encourage you to read it carefully, refer it to your lawyer if you wish, and/or discuss with us any issues you may have.

We look forward to your confirmation, which will lead to our preparation of a copy of the *Client and Architect Agreement* for signing, but please do not hesitate to call us if you have any questions.

Yours sincerely,

\_\_\_\_\_  
Pty Ltd Architects

\_\_\_\_\_  
Director / Principal / etc

## **2 SENDING CLIENT/ARCHITECT AGREEMENT LETTER (DELETE BEFORE PRINTING)**

*Italic underlined text is for you to delete, modify, or accept according to the circumstances of the project and then change to regular text.*

*Insert Date*

*Insert Client Name*  
*Insert Client Address*

PRIVATE & CONFIDENTIAL

Dear *Insert Client name*

Re: *Insert project name here*

Further to our *phone call/email/meeting* of *date* we confirm our engagement as your architects, and thank you for this commission.

Enclosed are two copies of the agreement we discussed with you. Please sign both copies and return one to us, the other is for your records.

As soon as we receive our copy of the signed Agreement, we will be in a position to commence our services to you.

Should you have any queries in relation to the Agreement, please contact me.

We look forward to working with you on your project.

Yours sincerely,

\_\_\_\_\_**Pty Ltd Architects**

### **Descriptive Explanation (DELETE BEFORE SENDING)**

- this letter should be sent as soon as possible after verbal agreement of key contract issues, e.g. maximum one week later
- it is advisable to have at least one follow up meeting or discussion to reach agreement on the contract conditions before sending out
- ensure your client is comfortable with the Client and Architect Agreement and its conditions

### **3 NON RETURN OF EXECUTED CLIENT/ARCHITECT AGREEMENT LETTER (DELETE BEFORE PRINTING)**

*Italic underlined text is for you to delete, modify, or accept according to the circumstances of the project and then change to regular text.*

*Insert Date*

*Insert Client Name*  
*Insert Client Address*

PRIVATE & CONFIDENTIAL

Dear *Insert Client name*

Re: *Insert project name here*

Following your confirmation of our engagement as architects for this project, we note that you have not returned to us as requested, one signed copy of the Client and Architect Agreement .

Your return of the signed Agreement will enable us to commence work on your project.

If you have any concerns regarding the Agreement, please do not hesitate to contact me.

Yours sincerely,

Yours sincerely,  
\_\_\_\_\_**Pty Ltd Architects**

#### Descriptive Explanation (DELETE BEFORE SENDING)

- If required, this letter should be sent a week to ten days after the Client and Architect Agreement letter was sent
- It is probably best used as a formal record of a conversation.



## **4 SECOND NON RETURN OF CLIENT AND ARCHITECT AGREEMENT CONFIRMATION TO PROCEED LETTER (DELETE BEFORE PRINTING)**

*Italic underlined text is for you to delete, modify, or accept according to the circumstances of the project and then change to regular text.*

*Insert Date*

*Insert Client Name*  
*Insert Client Address*

PRIVATE & CONFIDENTIAL

Dear *Insert Client name*

Re: *Insert project name*

Thank you for proceeding with the above *project*.

We confirm that on *insert date* we *sent/handed* you two copies of the Client and Architect Agreement, requesting that you return a signed copy to us.

Further to your *email/phone call/meeting/fax* on *date* we confirm your instructions to proceed with this project in accordance with this Client and Architect Agreement.

On the basis that we are proceeding with the commission, we would appreciate the return of one signed copy of the Agreement at your earliest convenience.

We look forward to working with you on your project.

Yours sincerely,  
\_\_\_\_\_**Pty Ltd Architects**

### **Descriptive Explanation (DELETE BEFORE SENDING)**

- this letter should be sent as a last resort, as although there is nothing more certain than an executed Client and Architect Agreement, this letter confirms the client's instruction to go ahead with reference to the Client and Architect Agreement, if the client still declines to sign and return a copy
- verbal contact should be made with client
- keep written records of all verbal communications – dates and content surrounding this event
- it is suggested this letter be sent in hard copy and in PDF or JPG format if being sent by email
- with the first and every invoice, reference should be made to the Client and Architect Agreement

## **5 NON AGREEMENT TO ENGAGE COST CONSULTANT (DELETE BEFORE PRINTING)**

*Italic underlined text is for you to delete, modify, or accept according to the circumstances of the project and then change to regular text.*

*Insert Date*

*Insert Client Name*  
*Insert Client Address*

PRIVATE & CONFIDENTIAL

Dear *Insert Client name*

Re: *Insert project name here*

Further to our recommendation to engage a cost consultant for your project, we confirm your instructions not to engage this expert.

Cost consultants specialise in appropriately estimating construction costs in advance. We are not expert in this skill. We consider that engaging a cost consultant is fundamental to effective cost management, particularly through the design and documentation stages of our service.

Not engaging a cost consultant significantly increases the likelihood of cost overruns that could lead to project delays and/or costs associated with re-documentation. We therefore confirm that we are proceeding with your knowledge of these risks.

We look forward to working with you on your project.

Yours sincerely,

\_\_\_\_\_  
**Pty Ltd Architects**

### Descriptive Explanation (DELETE BEFORE SENDING)

- the issue of a cost planning consultant should be discussed very early in the fee negotiation stages and before a Client and Architect Agreement is prepared
- it is recommended that the agreed cost consultant be an independent and qualified estimator or quantity surveyor rather than a builder, project manager or other allied building industry party
- a cost consultant is preferable on every project
- if a client is reluctant to engage a cost consultant directly, it is recommended that the architect engages him or her directly and sets the Core Architectural Services fees accordingly
- it is recommended this letter be sent before the Client and Architect Agreement is signed so as to allow time for the client to consider their position

**DISCLAIMER**

***The completed example of the contract on following pages is included as a guide to the format for completion for execution (signing) of the contract, not for any of the content of the schedules or selection of the services to be performed.***

***The circumstances portrayed in it are purely hypothetical and any relationship to real clients, architects, site, project or any other matter, is unintended.***

## Agreement made between:

### The Client

By signing this Agreement the client authorises the architect to commence the services as soon as practicable.

Name MR JOHN SMITH & MS SARA SMITH  
ABN (if any) — Client's representative SARA SMITH  
Address 5/121 CAMPBELL ROAD  
SURRY HILLS NSW Postcode 2050  
Telephone 02 8620 5102 ~~Facsimile~~ MOBILE 0499 627 774  
Signed [Signature] SARA SMITH  
Signed \_\_\_\_\_ officer Signed \_\_\_\_\_ officer/secretary  
(cross out alternative not applicable)  
Signed \_\_\_\_\_ director/sole director Signed \_\_\_\_\_ director/secretary  
(cross out alternative not applicable) (cross out alternative not applicable)  
Date 27.04.09 Date 27.04.09

If the client is an individual, individual trustee, partnership, or unincorporated association

or

If the client is an incorporated association

or

If the client is a corporation, executed in accordance with s.127 of the Corporations Act 2001

## AND

### The Architect

This agreement has been developed as a formal basis for the relationship between a client and an architect. Under the Architects Acts in each state and territory, an architect is a person who is registered by the relevant Architects Registration Board (or equivalent).

The client should be aware that the person nominated as architect under this agreement may not be entitled to use the title 'architect' in the place the project is located. The client should check with the relevant Registration Board that the person named as architect is entitled to be described as an architect in that place.

Name GOODARCH Pty Ltd.  
ABN 12 345 67890 Registration No. NOMINATED ARCHITECT 1234  
Address 427 GOOGLE STREET  
SYDNEY NSW Postcode 2000  
Telephone 02 9812 3456 Facsimile 02 9812 3466  
Architect's representative AMANDA JOHNSON  
Signed \_\_\_\_\_  
Signed [Signature] director/sole director Signed [Signature] director/secretary  
(cross out alternative not applicable) (cross out alternative not applicable)  
Date 28 APRIL 2009 Date 30 APRIL 2009

If the architect is an individual, individual trustee, or partnership

or

If the architect is a corporation, executed in accordance with s.127 of the Corporations Act 2001

## FOR

### The Project

The project scope, its location and the extent of work which requires the architectural services are as follows:

NEW 4-BEDROOM RESIDENCE AND SEPARATE DOUBLE GARAGE/STUDIO AT 27 SEAVIEW DRIVE, BATEMANS BAY

### The Budget

This budget may be reasonably relied on by the client and the architect in determining the architect's fees. Estimates of the *Cost of Works* may be revised and the parties must agree any resultant changes to the scope of services and fees.

Agreed initial budget for the *Cost of Works* (refer Clause C.2): \$ 720,000.00 (excl GST)

## Contents

<b>A.</b>	<b>Core Architectural Services</b>	<b>4</b>
A.1	Concept Design	4
A.2	Design Development	4
A.3	Town Planning/Development Application	4
A.4	Construction Documentation	4
A.5	Contractor Selection	5
A.6	Contract Administration	5
<b>B.</b>	<b>Additional Architectural Services</b>	<b>5</b>
B.1	Feasibility Study	5
B.2	Record Documents	5
B.3	Town Planning/Development Application: Negotiation	6
B.4	Illustration	6
B.5	Trade Package Documentation	6
B.6	Other Services	6
B.7	Changes to Services	6
<b>C.</b>	<b>Cost</b>	<b>6</b>
C.1	Total Project Cost	6
C.2	Cost of Works	6
<b>D.</b>	<b>Time</b>	<b>7</b>
D.1	Protracted Services	7
D.2	Suspended Services	7
<b>E.</b>	<b>Fees</b>	<b>7</b>
E.1	Percentage Fees	7
E.2	Lump Sum Fees	7
E.3	Hourly Rate Fees	7
E.4	Fee Invoices	7
E.5	Disbursements	7
E.6	Payment of Invoices	7
<b>F.</b>	<b>Other Specialist Consultants</b>	<b>8</b>
F.1	Specialist Consultant Engagement	8
F.2	Additional Specialist Consultants	8
<b>G.</b>	<b>Intellectual Property</b>	<b>8</b>
G.1	Copyright	8
G.2	Moral Rights	8
G.3	Electronic Data Transfer	8
<b>H.</b>	<b>Insurances and Liabilities</b>	<b>8</b>
H.1	Insurances	8
H.2	Limited Liability	8
<b>I.</b>	<b>Client Obligations</b>	<b>9</b>
<b>J.</b>	<b>Architect Obligations</b>	<b>9</b>
<b>K.</b>	<b>General Conditions</b>	<b>9</b>
<b>L.</b>	<b>Dispute Resolution</b>	<b>10</b>
<b>M.</b>	<b>Termination</b>	<b>10</b>
<b>N.</b>	<b>Special Conditions</b>	<b>10</b>
<b>O.</b>	<b>Schedules</b>	<b>11</b>

## Defined Terms

The following terms are defined terms under this Agreement:

### Total Project Cost (as set out in Clause C.1)

The **Total Project Cost** is inclusive of GST and is defined as the **Cost of Works** plus all other costs to the client associated with the project, including but not necessarily limited to:

- removal and relocation costs
- design and construction contingencies, including escalation costs
- architectural, consultant and other professional fees
- authority fees and charges
- legal fees
- landscaping
- loose furniture, fittings and equipment
- finance charges, marketing and promotional costs

### Cost of Works (as set out in Clause C.2)

The **Cost of Works** is exclusive of GST and is defined as the final cost of all work designed, specified or scheduled by the architect, including all work designed, specified and/or scheduled by specialist consultants coordinated by the architect, including:

- a the final adjusted contract price (excluding GST) in accordance with any building contract, plus
- b the equivalent final cost (excluding GST) of any work or items supplied to the building contractor by the client (as if provided by the building contractor under the building contract), plus
- c the final cost (excluding GST) of any part of the project provided under a contract other than the building contract.

### The Design (as set out in Clause G.1)

The architect retains copyright in **The Design**. **The Design** means, design concepts, drawings and documents provided under this agreement.

### Public Information (as set out in Clause G.2)

**Public Information** means any information containing a 2- or 3-dimensional representation of the project, or a part of it published, exhibited or communicated to persons other than the client or architect or their representatives.

## A. Core Architectural Services

*Core architectural services are the professional services required by most clients for a building project from the initial design to completion of construction. The majority of projects require all core architectural services. Some projects may not require them all, or may require additional services as described in Clause B.*

The architect will provide the following services in relation to the project *[strike out those services not required]*:

### A.1 Concept Design

#### Pre-design

- obtain the client's design brief and other requirements
- arrange, attend and record meetings with the client
- provide recommendations for the appointment of other specialist consultants as required, including their fees
- attend the site and assess site conditions and constraints
- make initial inquiries regarding authority regulations and requirements
- review the project budget

~~other Pre-design services as shown in Schedule A~~

#### Design

- arrange, attend and record meetings with the client, authorities, other consultants and other relevant parties
- undertake preliminary assessment of authority regulations and requirements
- prepare sketches, diagrams and other information to adequately explain the concept
- prepare design briefs for other consultants
- coordinate preparation of a preliminary estimate of the *Cost of Works*
- undertake preliminary selection of materials and finishes
- other Design services as shown in Schedule A

#### Approvals

- obtain the client's approval of the design concept
- obtain the client's approval to proceed with Design Development
- obtain the client's approval to prepare the Town Planning/Development Application, where required

### A.2 Design Development

#### Developed Design

- develop the approved Design Concept and present documents and other information to adequately explain the developed design
- arrange, attend and record meetings with the client
- arrange, attend and record meetings with authorities, other consultants and other relevant parties
- coordinate the work of other specialist consultants
- provide schedule of proposed materials and finishes

- review the developed design against the budget and coordinate the preparation of an updated estimate of the *Cost of Works*

~~other Design Development services as shown in Schedule A~~

#### Approvals

- obtain the client's approval of the developed design
- obtain the client's approval to submit Town Planning/Development Application, where required
- obtain the client's approval to proceed with Construction Documentation

### A.3 Town Planning/Development Application

- confirm statutory authority requirements
- attend pre-application meetings with relevant authorities prior to submission of formal application
- prepare application, including plans, diagrams, analyses, studies, reports and other information for the submission
- assist the client in coordinating required specialist consultants
- assist the client with lodging formal application

~~other Town Planning/Development Application services as shown in Schedule A~~

### A.4 Construction Documentation

#### Documents

- arrange, attend and record meetings with the client
- coordinate and integrate the work of other specialist consultants
- prepare drawings including plans, elevations and sections, together with other details and schedules to enable statutory approval to construct the project
- prepare specifications in accordance with the drawings and the client's requirements describing the quality of materials, finishes and quality of work necessary to obtain statutory approval
- submit required documents for statutory approval
- prepare further drawings, specifications and schedules to enable the construction of the project
- coordinate the preparation of a pre-tender estimate of the *Cost of Works*
- provide recommendations to the client on the preferred method of building contractor selection

~~other Construction Documentation services as shown in Schedule A~~

#### Approvals

- obtain the client's approval to submit for statutory approval
- obtain the client's approval of all construction documents
- obtain the client's approval to proceed with Contractor Selection



## A.5 Contractor Selection

Undertake one of the following two methods for the selection of a building contractor *[strike out the option not selected]*:

### Tender

- assist client in determining the preferred tender process
- prepare tender documents and issue to all tenderers
- respond to inquiries from tenderers
- receive and open the tenders
- together with the cost consultant, if any, assess the tenders
- negotiate with the preferred tenderer if required to obtain an offer acceptable to the client
- prepare reports on tenders and recommendation for client acceptance
- ~~other services as shown in Schedule A, or~~

### ~~Negotiated Offer~~

- ~~• assist client in determining the preferred negotiation process~~
- ~~• issue relevant documents to the prospective contractor to describe the scope of the works~~
- ~~• arrange and coordinate negotiations and enquiries with the prospective contractor~~
- ~~• together with the cost consultant, if any, assess all submissions from the prospective contractor required to establish the contract price and final project scope~~
- ~~• prepare report and provide recommendations for client acceptance~~
- ~~• other services as shown in Schedule A~~

### Approvals

- obtain the client's approval to prepare the contract documents

## A.6 Contract Administration

### Pre-construction

- prepare the contract documents
- arrange for signing and execution of the building contract documents by the building contractor and owner

### Construction

- report regularly to the client regarding time, cost and progress of the project
- visit the site periodically to observe the general conformance of the construction works with the building contract documents and instruct the building contractor regarding design quality control, materials selections and performance in regard to the building contract documents
- arrange, attend and arrange for recording of site meetings at regular intervals
- review shop drawings and submissions by the building contractor
- provide the building contractor with instructions, supplementary details and clarification of the contract documents

- coordinate the construction services provided by other specialist consultants
- assess and determine variations and obtain client approvals where required
- assess and determine the building contractor's progress claims and issue progress certificates
- assess the building contractor's claims for extensions of time
- adjust prime cost and provisional sums and other monetary sums
- instruct the building contractor in regard to incomplete work and rectification of any defects
- assess and determine practical completion and issue the notice of practical completion
- other Construction services as shown in Schedule A

### Post-construction

- during the defects liability period, instruct the building contractor in regard to incomplete work and rectification of defects
- if required, advise the client and coordinate the procedure for the rectification of any defective work by others
- assess and determine final completion and issue the final certificate
- other Post-construction services as shown in Schedule A

## B. Additional Architectural Services

*This Clause describes project specific services that may be required in addition to the Core Architectural Services described in Clause A.*

The architect will provide the following additional services in relation to the project *[strike out those services not required]*:

### ~~B.1 Feasibility Study~~

- ~~• establish with the client the project objectives and constraints~~
- ~~• arrange, attend and record meetings with the client, consultants and other relevant parties~~
- ~~• review statutory planning controls and guidelines~~
- ~~• analyse site opportunities and constraints~~
- ~~• prepare relevant functional relationship and spatial diagrams~~
- ~~• determine key financial indicators for the project~~
- ~~• provide report of findings and recommendations~~
- ~~• other Feasibility Study services as shown in Schedule A~~

### B.2 Record Documents

- ~~• undertake detailed photographic survey of existing site and buildings~~
- coordinate survey of existing site and building conditions by specialist consultants
- ~~• undertake detailed existing building measurement~~
- prepare drawings showing existing buildings, visible services and finishes





~~prepare Record documents showing completed buildings, visible services and finishes~~

~~other Record documents services as shown in Schedule A~~

### B.3 Town Planning/Development Application: Negotiation

- arrange, attend and record meetings with the client
- as directed by the client, negotiate and attend meetings with relevant authorities, adjoining owners or other relevant parties
- prepare additional drawings and documentation and/or amend existing drawings and documentation to comply with additional authority requirements
- submit additional or revised documentation to the relevant authority for endorsement
- assist the client in preparing instructions for relevant specialist consultants
- prepare additional documentation or evidence for planning courts or tribunals
- attend hearings and give evidence at planning courts/tribunals

~~other Town Planning/Development Application: Negotiation services as shown in Schedule A~~

### B.4 Illustration

~~provide 2D marketing drawings~~

- provide 3D illustrations
- provide digital animations

~~other Illustration services as shown in Schedule A~~

### B.5 Trade Package Documentation

~~assist client appointed programmer (or programmer appointed by selected building contractor/construction manager/ project manager) in preparation of agreed program trade documentation packages~~

~~provide documentation, including relevant drawings, specifications and schedules in trade package format~~

~~provide matching specification for each trade package~~

~~provide set of standard preliminaries suitable for inclusion with all Trade Package Documentation~~

~~coordinate client appointed consultants in preparing Trade Package Documentation for specialist sections of the works~~

~~assist client appointed building contractor/construction manager/ project manager in responding to queries from trade contractors~~

~~other Trade Package Documentation services as shown in Schedule A~~

### B.6 Other Services

- Other Services as shown in Schedule A

### B.7 Changes to Services

The agreed services may be changed by mutual agreement in writing in accordance with Clause I and Clause J.

## C. Cost

The client and the architect must agree an initial budget for the **Cost of Works**. The client agrees that their initial agreed budget for the **Total Project Cost** appropriately takes into account the initial budget for the **Cost of Works**.

Estimates of the **Cost of Works** may be revised during the project and such revisions must be in accordance with client or consultant advice, tenders or offers received and any adjustments during construction.

As revised estimates of the **Cost of Works** are prepared, the client and the architect must agree the adjusted budget for the **Cost of Works**. As revised estimates of the **Cost of Works** are prepared, the client agrees that the adjusted budget for the **Total Project Cost** appropriately takes into account the agreed adjusted budget for the **Cost of Works**.

Estimates of the **Cost of Works** are not a guarantee of the actual cost, a quotation or a tender.

### C.1 Total Project Cost

The **Total Project Cost** is inclusive of GST and is defined as the **Cost of Works** plus all other costs to the client associated with the project, including but not necessarily limited to:

- removal and relocation costs
- design and construction contingencies, including escalation costs
- architectural, consultant and other professional fees
- authority fees and charges
- legal fees
- landscaping
- loose furniture, fittings and equipment
- finance charges, marketing and promotional costs

The architect is not responsible for monitoring or controlling the **Total Project Cost** for the client.

### C.2 Cost of Works

The **Cost of Works** is exclusive of GST and is defined as the final cost of all work designed, specified or scheduled by the architect, including all work designed, specified and/or scheduled by specialist consultants coordinated by the architect, including:

- a the final adjusted contract price (excluding GST) in accordance with any building contract, plus
- b the equivalent final cost (excluding GST) of any work or items supplied to the building contractor by the client (as if provided by the building contractor under the building contract), plus
- c the final cost (excluding GST) of any part of the project provided under a contract other than the building contract.

At the execution of this Agreement the initial budget for the **Cost of Works** (excluding GST) is as stated on page 1.





## D. Time

The client must inform the architect of their initial program for the project and from this, the client and the architect must agree an initial program for the architect's services.

The initial program may be revised during the project by mutual agreement in writing.

### D.1 Protracted Services

If the architect's services are protracted by any cause beyond the architect's control:

- a the architect must notify the client in writing of the cause and anticipated extent of the protraction, and
- b the architect is entitled to additional fees and to a reasonable extension of the agreed program.

### D.2 Suspended Services

Where the architect's services are suspended for any reason by the client or the architect, the architect is entitled to payment of all fees and Disbursements due.

Where the architect's services are suspended by the client, the architect is also entitled to reimbursement of any associated costs.

In either case, all other rights and entitlements of the architect continue as though the suspension had not taken place.

## E. Fees

Fees for the architect's services will be on the basis of at least one of the following:

- a percentage of the *Cost of Works*
- a lump sum fee
- an hourly rate fee
- if applicable, a combination of these

The agreed basis of fees is set out in Schedule E1.

All fees are GST exclusive, with accounts submitted under this agreement to be tax invoices as applicable.

Additional services required by the client after this agreement is signed will be assessed at an agreed hourly rate, or as otherwise agreed in writing.

The total percentage or lump sum fee shown in Schedule E1 takes precedence over any error, omission or ambiguity in the amounts allocated to individual services or invoiced at stages prior to the final invoice.

### E.1 Percentage Fees

Where Percentage Fees apply, the total percentage fee is allocated to specific architect's services as shown in Schedule E1.

Percentage Fees are calculated and adjusted progressively against the budget for the *Cost of Works* adjusted in accordance with Clause C, subject to final adjustment against the *Cost of Works*, when determined.

### E.2 Lump Sum Fees

Where Lump Sum Fees apply, the total lump sum is allocated to specific architect's services as shown in Schedule E1.

If Lump Sum Fees apply and the project scope or any of the architect's services under this agreement are changed, the resulting work is subject to the hourly rates shown in Schedule E2, or as otherwise agreed in writing.

### E.3 Hourly Rate Fees

Where hourly rate fees apply, the respective rates for different services or different personnel are shown in Schedule E2.

Hourly rates are subject to annual review in line with the Consumer Price Index.

For fees calculated on the basis of agreed hourly rates, the architect must provide, if requested, time sheets or other records to substantiate all hours claimed.

### E.4 Fee Invoices

Fee Invoices may include, but are not necessarily limited to:

- a amounts due for services provided up to the day before the date of invoice, and
- b amounts for reimbursement of Disbursements due in accordance with Clause E6.

Fee Invoices may be submitted monthly or as otherwise agreed in writing.

### E.5 Disbursements

Disbursements not included in the agreed fees for architect's services are to be paid directly by the client, or paid by the architect and reimbursed by the client, as shown in Schedule E3.

If reimbursement of the architect relates to a Disbursement and a service fee is also shown in Schedule E3, the amount reimbursable to the architect will be the Disbursement plus 15%.

### E.6 Payment of Invoices

Amounts due under an invoice must be paid within 14 days of the date of the invoice.

Amounts due under an invoice and not paid within the above period will be subject to interest at a rate of 15% per annum.

Interest will be applied pro rata on the outstanding balance by dividing the rate by 365 to obtain a daily rate and multiplying that percentage by the number of days the balance is outstanding.

The architect is entitled to suspend provision of services if any payment in relation to a properly submitted invoice is overdue.



## F. Other Specialist Consultants

*Most projects require additional specialist consultant services in support of the architectural services provided under this agreement.*

### F.1 Specialist Consultant Engagement

The architect and the client agree the project will require the services of the specialist consultants specified in Schedule F.

Schedule F indicates those specialist consultants to be engaged directly and paid by the client as well as those to be engaged directly and paid by the architect as part of the architectural fees provided for in Clause E of this agreement.

In relation to any specialist consultant engaged directly and paid by the client, the client will engage each such consultant on the basis that:

- a the architect is not responsible for the services provided by the specialist consultant;
- b the architect is responsible for coordination of the specialist consultant's services, and
- c the client is to pay the specialist consultant all its fees and Disbursements, but the client may seek the architect's confirmation that the consultant services invoiced have been provided.

### F.2 Additional Specialist Consultants

Where the architect and the client agree that additional specialist consultant services are required beyond those specified in this agreement, such additional consultants may be:

- a engaged directly and paid by the client, subject to Clause F1, or
- b engaged directly and paid by the architect, in which case the associated fees will be charged in addition to the architectural fees provided for in Clause E of this agreement.

## G. Intellectual Property

### G.1 Copyright

The architect retains copyright in *The Design*. *The Design* means, design concepts, drawings and documents provided under this agreement.

The architect grants the client an express but revocable licence to use *The Design* for the project on the site for which it was intended, subject to the conditions that:

- a no licence is granted or implied under this agreement other than the express licence;
- b the licence may be revoked by the architect in writing if any invoice that the architect is entitled to submit under this agreement is overdue, in which case the licence is automatically reinstated on the architect's receipt of all overdue amounts, and
- c the licence is automatically revoked by any event or action by the client or a third party that changes the client's ownership or legal interest in the site in any way, in which case the client may request in writing the architect's consent to reinstate the licence and such consent must not be unreasonably withheld.

On completion of all services under this agreement, and on full payment of all invoices that the architect is entitled to submit under it, including after Termination under Clause M, the licence becomes irrevocable.

### G.2 Moral rights

The architect must be attributed in any *Public Information* about the project promulgated by, or on behalf of, the client or architect, whether the project is complete or not.

The form of attribution must be as stated in Schedule G, and the architect must obtain any consent of the authors of the project required by the *Copyright Act 1968* to enable this form of attribution.

*Public Information* means any information containing a 2- or 3-dimensional representation of the project, or a part of it published, exhibited or communicated to persons other than the client or architect or their representatives.

### G.3 Electronic Data Transfer

The client agrees that:

- a the architect may issue data electronically to it and to others involved in the project;
- b the architect is not responsible for the accuracy, completeness or any contamination of electronically transmitted data;
- c the cost of electronic data preparation and file conversion is to be reimbursed by the client, as shown in Schedule E3.

## H. Insurances and Liabilities

### H.1 Insurances

The architect must maintain:

- a professional indemnity insurance, not less than the value shown in Schedule H
- b public liability insurance, not less than the value shown in Schedule H
- c insurance to cover liability to employees, to statutory requirements.

### H.2 Limited Liability

To the maximum extent permitted by law:

- a subject to b, c and d below, the architect's total liability to the client under this agreement (including the performance or non-performance of the architect's services), whether under the law of contract, in tort, in equity, under statute or otherwise, is limited to the amount specified in Schedule H;
- b the architect has no liability to the client in respect of any indirect, consequential or special losses, (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
- c the architect has no liability in respect of the architect's services after the expiration of 3 years from the completion of the architect's services, and



- d if any of this clause is void as a result of section 68 of the *Trade Practices Act 1974* (Cth), or parallel state and territory legislation, then the architect's liability for a breach of a condition or warranty is limited to the:
- supplying of the relevant architect's services again; or
  - payment of the cost of having the architect's services supplied again.

## I. Client Obligations

The client must:

- a appoint the architect to act as its agent for the project as necessary for the architect to carry out the services;
- b agree with the architect in accordance with Clause C.1, a reasonable budget for the *Cost of Works*;
- c provide all information required by the architect to complete the services described in this Agreement;
- d cooperate fully with the architect to ensure efficient and satisfactory progress through all stages of the project;
- e pay in accordance with Clause E, all fees due plus the applicable GST for the services and Disbursements specified in this Agreement, and any subsequently required services or Disbursements, and pay interest on overdue accounts;
- f engage directly any specialist consultants specified in Schedule F after consultation with the architect on the terms set out in Clause F.2, and pay all fees and expenses associated with their engagement;
- g allow the architect reasonable access to photograph or otherwise record the project before or after completion;
- h allow the architect to publicise the project for marketing purposes unless agreed otherwise;
- i attribute the architect in accordance with Clause G.2, and
- j notify the architect in writing of any details of the project required to be kept confidential.

## J. Architect Obligations

The architect must:

- a provide the services described in this agreement with the skill and professionalism of a reasonably competent architect;
- b act as the client's agent for the project and as required under the selected building contract;
- c together with the cost consultant, if any, coordinate the preparation of all estimates of the *Cost of Works*;
- d coordinate and integrate the work of all specialist consultants engaged for the project;

- e maintain accurate records and keep the client informed of progress by way of meetings, reports and other means at all stages;
- f notify the client promptly in writing when an instruction from the client or any other requirement changes the scope of services or requires services not provided for by this agreement;
- g for any required services not provided for by this agreement, provide the client with:
  - an estimate of fees, and
  - the likely impact on the estimated *Cost of Works* or on the program;
- h notify the client promptly in writing of any matter connected with the architect's services, ethical or regulatory, that may give rise to a conflict of interest;
- i if a conflict arises, notify the client promptly in writing and suspend the services until the conflict is removed, or the agreement is terminated, and
- j maintain registration with the Architects Registration Board (or equivalent) in the state or territory where the project is located.

## K. General Conditions

Despite anything expressed or implied elsewhere in this agreement, the architect and the client agree that:

- a the architect is not responsible for ensuring the constructed project complies with the building contract documents, but when engaged for contract administration services, is required to instruct the building contractor regarding requirements of the building contract documents, according to the contract terms;
- b the architect gives no express or implied warranty that the project or *The Design* is fit for the client's purpose;
- c any natural materials selected for a project may change in appearance or dimension following exposure to use or climatic conditions and this is normal behaviour for such materials;
- d the scope of the architect's services does not include any services in relation to asbestos, other hazardous materials, or any other site contaminant;
- e upon completion the client is responsible for ongoing and regular maintenance of the project, including its systems, finishes and equipment;
- f except by the operation of law and as set out in Clause G, neither party can assign or transfer their entitlements or obligations under this agreement without the prior written consent of the other party;
- g the applicable law of this agreement is the law of the state or territory in which the site of the project is located, unless it is outside Australia, in which case it is the law of the state or territory of the architect's address stated in this Agreement;
- h nothing makes ineffective, or reduces, any protection at law from liability which the architect is entitled to in the state or territory of the applicable law;
- i this agreement supersedes all prior agreements relating to the architect's services for the project, and applies to all services provided by the architect before the formal execution of this agreement.



## L. Dispute Resolution

If a dispute arises out of or in relation to this agreement the client and architect must continue to perform their obligations under the agreement.

When a dispute arises:

- a either party may deliver a notice in writing to the other party outlining the details of the dispute and requiring a meeting within seven days of the date of the notice to make a bona fide attempt to resolve the dispute;
- b if the dispute is not resolved by the meeting, either party may submit the dispute to mediation by delivering to the other a written proposal of mediation;
- c a proposal of mediation must state the name of a mediator accredited by the Institute of Arbitrators and Mediators Australia (IAMA) in the state or territory of the law that applies, who is independent and willing to act;
- d if the parties do not agree on the mediator in writing within seven days after the proposal is delivered, the President of the Chapter of the IAMA in the place of the law that applies, must be requested to nominate the mediator;
- e the mediation must then proceed in accordance with the rules of the IAMA for mediation except that in no case will one party be required to pay more than half of the costs of mediation, and
- f if the parties are unable to resolve the dispute by mediation, confirmed by the mediator in writing, either party may take legal action to resolve the dispute.

## M. Termination

Either party may terminate this agreement after giving the other party 30 days notice in writing without being required to give any reason.

On Termination of this agreement, unless otherwise agreed in writing:

- a the client must:
  - pay the outstanding balance of all properly submitted invoices delivered prior to the notice, and
  - pay the architect for all services reasonably undertaken and any reimbursable expenses, including those shown in Schedule E3, reasonably incurred by the architect since the delivery of the notice, and
- b the architect must, on receipt of payment, issue to the client a copy of *The Design* as it exists up to the date of termination.

## N. Special Conditions

Any special conditions applicable to this agreement are nominated at Schedule N and take precedence over any other condition in this agreement.



## O. Schedules

### Schedule A: Other Architectural Services

See Clauses A.1-B.6

Other services not listed in Clauses A.1-B.6 (if any)	
A.1 Concept Design	• LANDSCAPE CONCEPT DESIGN
A.2 Design Development	•
A.3 Town Planning/Development Application	•
A.4 Construction Documentation	•
A.5 Contractor Selection	•
A.6 Contract Administration	•
<del>B.1 Feasibility Study</del>	•
B.2 Record Documents	•
B.3 Town Planning/Development Application: Negotiation	•
B.4 Illustration	•
<del>B.5 Trade Package Documentation</del>	•
B.6 Other Services	• FURNITURE & ARTWORK SELECTION

### Schedule E1: Fees (excluding GST)

See Clauses E.1, E.2 & E.3

Service	Percentage	Lump Sum	Hourly Rate	Amount of percentage fee allocated	Amount of lump sum fee allocated (excl.GST)
A.1 Concept Design	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.70% + \$5,000	
A.2 Design Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2.70%	
A.3 Town Planning/Development Application	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	0.80%	
A.4 Construction Documentation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5.35%	
A.5 Contractor Selection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	0.65%	
A.6 Contract Administration	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3.80%	
<del>B.1 Feasibility Study</del>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
B.2 Record Documents	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		\$3,200
B.3 Town Planning/Development Application: Negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
B.4 Illustration	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		\$1,800
<del>B.5 Trade Package Documentation</del>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
B.6 Other Services	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
<b>Total (percentage and/or lump sum)</b>	(lump sum amounts exclude GST)			16.00%	\$10,000

### Schedule E2: Hourly Rates (excluding GST)

See Clause E.3

Personnel	Hourly rate	
Principal/Director	\$ 280.00	per hour (excluding GST)
<del>Team Leader</del>	\$	per hour (excluding GST)
Senior Architect	\$ 220.00	per hour (excluding GST)
Architect	\$ 190.00	per hour (excluding GST)
Graduate	\$ 140.00	per hour (excluding GST)
<del>Technician</del>	\$	per hour (excluding GST)
<del>Assistant</del>	\$	per hour (excluding GST)
INTERIOR DESIGNER	\$ 190.00	per hour (excluding GST)

*[Signature]*

*[Signature]*

### Schedule E3: Disbursements (including GST)

See Clause E.6

Item	Client to pay	Reimbursable	Service fee	Rate or basis (incl. GST unless stated otherwise)
Fees, taxes, levies or charges paid to authorities	<input checked="" type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advertisements and notices	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AT COST + SERV. FEE
Special presentation material, models, perspectives	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<del>Rental of special equipment</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Electronic CAD data transfers and CAD file conversion	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AT COST + SERV. FEE
<del>Photographic records</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Courier and parcel postage services	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	AT COST
Copies of documents other than to client for client's own use	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AT COST + SERV. FEE
<del>Colour reproductions of documents</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Building contracts	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	AT COST
Travel time	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$100.00/HR OR PART
Vehicle use beyond 30km from office	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$0.70/KM
<del>Interstate, intrastate, or overseas travel</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

### Schedule F: Specialist Consultants

See Clause F.1

Consultant	Client to engage	Architect to engage	Notes
Quantity surveyor/cost consultant	<input checked="" type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
Structural/civil engineer	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	BRACE & BEAM P/L
Mechanical engineer	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Electrical engineer	<input type="checkbox"/> or <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<del>Hydraulic engineer</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
<del>Fire services engineer</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
Certification (building surveyor)	<input type="checkbox"/> or <input type="checkbox"/>	<input checked="" type="checkbox"/>	BILL DREGGS & ASSOC.
Land surveyor	<input type="checkbox"/> or <input type="checkbox"/>	<input checked="" type="checkbox"/>	THEO DELITE P/L
<del>Planning consultant</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
Geotechnical engineer	<input type="checkbox"/> or <input type="checkbox"/>	<input checked="" type="checkbox"/>	DOUG WHOLES P/L
<del>Landscape architect</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
<del>Interior design consultant</del>	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> or <input type="checkbox"/>	<input type="checkbox"/>	

### Schedule G: Form of attribution

See Clause G.2

Attribution of the architect must be as shown below

GOODARCH ARCHITECTS & PLANNERS



**Schedule H:  
Insurances**

See Clause H.1

**Details**

Professional Indemnity Insurance	Not less than	\$ 5,000,000.00
Public Liability Insurance	Not less than	\$ 10,000,000.00
Architect's total liability to client	Not more than	\$ 500,000.00

**Schedule N:  
Special Conditions**

See Clause N

**Clause No**

**Details**

NONE

Example only

BA

88