



Australian
Institute of
Architects

**2019
Client Architect
Agreement
Limited Services
(CAALS2019)**

USER GUIDE

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This guide is intended to give you, the Architect, guidance on the contents and effect of the 2019 Client Architect Agreement for Limited Services (**the CAALS**), suggestions on how you can complete the details in the contract's Schedules and practical guidance on delivering your services to your client when using the CAALS's contractual terms and conditions.

The table below explains how certain words are used in this User Guide:

CAALS	Means the 2019 release of the Client Architect Agreement for Limited Services standard-form consultancy contract published by the Australian Institute of Architects.
Contract	Means the CAALS document that you prepare, sign and use for your engagement with your Client on a Project
Conditions	Means the legally-effective provisions set out in pages 3 to 5 of the CAALS.
Section	Refers to the headings used to separate the Conditions, identified with a corresponding letter A., B., etc.
Schedule	Means a schedule page to the CAALS, including page 1 that sets out the party and Project details.
Item	When capitalised, is a reference to the contract details set out in Schedule A 'Scheduled Items' containing Items 1 to 4. References to 'Item #' are clearly used throughout the Conditions of the CAALS to refer to the corresponding Item in Schedule A.
Clause	Is a reference to the text of a numbered paragraph in the Conditions. In the CAALS, a full clause reference can have a Section, clause, sub-clause and paragraph reference which can look like this: D.8.2.a.
Project	Means your Client's project for which you will deliver professional Architectural services under the CAALS. In the CAALS, the capitalised 'Project' has a specific definition (see Section K).

All other terms that are capitalised have the corresponding meaning that is described in Section K: Definitions of the Conditions.

Other guides or resources:

Acumen note: [2019 Client Architect Agreement for Limited Services \(CAALS2019\)](#)

Cover Letter template (available as a download on Acumen CAA2019 page [here](#))

Information guide to the client (available as a download on Acumen CAA2019 page [here](#))

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 the Architect to describe the method of calculating the fees that will be charged for the services that you have agreed to deliver.

Before you start providing architectural services, you must also provide a written contract for the commission. A formal, written agreement is required by the *Architects Acts* (and applicable Code of Practice). A written agreement is also highly recommended to avoid misunderstandings or resolve disputes during and after you have delivered your Services.

How to use the 2019 Client Architect Agreement for Limited Services

While the CAALS is similar to the 2019 Client Architect Agreement (**CAA2019**) in many respects, it doesn't contain all provisions of the CAA2019 and some other provisions and procedures differ.

Like the CAA2019, it adopts **user-friendly plain English** and includes new provisions and clarifications on key mechanisms, such as: Cost of Works, Fees, Changes to the Services, Protracted Services, use of the intellectual property in The Design, digital files and terminating the agreement. Layout, concepts and defined terminology familiar from the CAA2019 are used.

The CAALS is not a substitute or direct alternative to the comprehensive 2019 Client Architect Agreement. The CAALS should only be used for **limited engagements** with a **low value** and **low complexity**. For all other engagements, or if in doubt which of the two agreement forms to use, we strongly recommend you prefer the more comprehensive CAA2019. If you are unsure which agreement form is appropriate for your particular engagement, you should seek legal advice.

When using the CAALS agreement form you must complete and issue to the Client a **Cover Letter** setting out contractual terms that are not captured in the CAALS document. Further guidance is provided in this User Guide below, as well as a template cover letter. By providing and attaching a Cover Letter, completing the Schedules and both you and the Client signing it, the CAALS sets out the contractual obligations and entitlements of each party.

You are obliged to perform the **scheduled Services** and meet all other obligations 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 CAALS, and particularly to deliver the Services set out in the Schedule B: Scope of Services, it is important to make sure that any action or service you are unwilling or don't agree to do for the agreed Fee is deleted from the Schedule, or marked as 'Excluded' from the list of services.

The Schedules and the execution page of the CAALS can be **edited digitally or printed**, completed and amended by hand. They are also available in Word format via Acumen, with the editable documents to add all relevant details and make additions and/or deletions. The digital version of Schedule B is editable and the headings are provided only as a prompt. The digital versions of the Schedules are available [here](#).

A series of **template letters** are also provided via Acumen to accompany the CAALS. Some practices will have their preferred way of preparing correspondence, and as the circumstances of each commission will vary, these are only intended to serve as a guide. However, some practices may want to adopt some or all of these guide letters. The key template letter is the 'Cover Letter' and we strongly recommend that all users adopt this template and note the guidance.

Note that the CAALS is different from the CAA2019 because the attached Schedules, Conditions and the Cover Letter are intended to be used together as a single comprehensive contract document—and anything in the Cover Letter will override anything that is inconsistent in the contract Conditions. Further guidance on how to complete the Cover Letter is included in the template.

Special conditions

Unlike the comprehensive CAA2019, the CAALS does not provide a schedule for inserting Special Conditions.

If you wish to add provisions to the Conditions of the CAALS, these can be set out in the Cover Letter that you must complete and attach—but we strongly recommend against using the Cover Letter to modify or delete the standard-form Conditions.

Because of the way that ‘Cover Letter’ is defined, anything included in that letter will have contractual consequences and takes precedence over anything else in the CAALS contract document. If you depart from the Institute’s template, you may inadvertently assume more onerous obligations than intended under the CAALS.

Note: In preparing the Cover Letter, the Institute recommends against the following: making any representations about the quality and/or standard of the Services; making comments that might be untrue or misleading; discussion of the Fee or any other matter which is already covered in the CAALS; and including anything that is vague, uncertain or immeasurable.

For this reason, it is strongly recommended that you only use the Cover Letter to add special conditions to your contract and not some other method of amendment which may be less certain in effect.

However, before proposing changes to the Conditions of the CAALS, including deletions, you should get legal advice to ensure the CAALS, as amended by a proposed special condition, 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 representations or assurances from your Client or their lawyer.

Execution (signing) page

Identity of Client

For both you and the Client to be able to enforce and rely on the terms of the CAALS, 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. For you to be able to rely on the CAALS, 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’ 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, for example, any part of the Project is to have fees calculated on percentage of the cost of the project there may have been an overpayment of your fees based on the initial forecast Cost of Works compared to the actual known Cost of Works when 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.

Email

The Schedule on page 1 provides for an email address for both parties. It is common and current practice that a party may legally rely on email as a substitute delivery method for giving notices and other actions under a contract. Bear in mind there is a risk that an email may not be received because the email address might be rarely accessed, or subject to change, or delivery to it may become unreliable from time to time due to technical issues.

If the parties are confident that email is acceptable to communicate between them, they may insert their email address, or continue to communicate by email after the CAALS is signed. If they do either, the parties need to be aware that communication by email becomes an acceptable method of notification under the CAALS and at law it may not matter that the receiving party has not actually opened the particular email or read it.

When relying on or using email to send critical notices or correspondence under the CAALS, you should always request a delivery and read receipt confirmation (if that function is available).

Signatures

The correct place for the Client to sign and the number of signatures required depends on the Client's entity type. Note that the Client should also initial each page where modifications or project-specific information is set out, such as every Schedule.

Client representative

For the effective and efficient operation of the CAALS, a Client nominates only one representative (where shown) for the purpose of communications to and from the Architect. 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, or a partnership. Typically for such Clients, at least one signature by an authorised person is required.

You should satisfy yourself that at least one signatory has the authority to legally bind the Client to the CAALS contract. The authorised person may not necessarily be the Client's nominated representative.

The second signature line option (greyed box) is for companies, including corporate trustee companies, either Pty Ltd or Ltd and must contain the signatures of either:

- 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 a signature by only one person, otherwise there may be scenarios where you may not be able to enforce the CAALS contract 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).

This date should then be inserted at the space provided at the top of page 1.

Architect registration

The agreement has been developed as a formal basis for the relationship between a Client and an Architect. A written agreement between Client and Architect is required under the Codes of Professional Conduct that apply to Architects in each state and territory. 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 in that place.

Architects engaged under the CAALS 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.

Entering into the CAALS 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 monetary penalties.

Provided that the non-Architect has not represented themselves as being registered, you may want to insert a special condition in your Cover Letter clarifying that, wherever 'Architect' appears it means the 'non-Architect', and that clauses A.1.7 and A.1.8 are to be deleted. But be wary that, merely clarifying your unregistered status may not be enough to avoid a breach of a relevant *Architects Acts* if the Services you carry out under the CAALS 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. A non-architect would also need to consider what professional indemnity insurance cover they can get and make further changes, via a special condition, to clause A.1.9 accordingly.

If the parties are thinking of using the CAALS for an 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*.

Identity of Architect

As noted above, for both you and your Client to be able to enforce and rely on the terms of the CAALS, it must be properly executed (signed). To achieve this, the appropriate person(s) must sign in their appropriate legal capacity, as the 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 or Ltd company or other entity type such as 'Trustee for XX' or 'ABC Pty Ltd trading as XYZ Architects'.

ABN number

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

Registration number

As required by most state and territory Architects 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 in which the site is located. The required registration number may or may not be the registration number of the Architect's representative.

Email

The notes above about Client email addresses apply here as well.

Architect's representative

It is equally efficient for the Services to be delivered under the CAALS by your representative, and only one representative, who must be 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 CAALS can be relied upon by both you and the Client, the correct alternative should be completed and signed.

Signatures

As for the Client, the correct place for you (or you on behalf of your firm) to sign, and number of signatures required depends on the Architect's entity type.

Places to sign

The notes above relating to places to sign apply here as well.

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 last signatory).

This date should then be inserted at the space provided at the top of page 1

The Project

Briefly describe the scope of the Project to identify it in relation to this agreement. For example, whether it is residential or commercial, the type and approximate size of the build product, whether it involves a completed construction or only a design. You might consider putting more relevant detail about the Project in your Cover Letter.

The Site

If this is applicable to the type of Project: state the address and the state or territory of the Site, or some other identifier.

Cost of Works forecast

You must insert only the forecast (at the time of signing) for the Cost of Works here, with a clear understanding of what the Cost of Works is. This forecast is the Architect's best forward assessment of the Cost of Works (as defined in section K), but it is not a binding quote, estimate or any guarantee of what the built works (or final Project product) will ultimately cost the Client. Do not insert the Total Project Cost amount—see section K and below. Note that the Cost of Works always excludes GST.

The forecast stated on the front page, is the Architect's forecast as at the time the parties enter into the contract and on the information available or provided up to that time.

While the Client's budget (and Cost of Works forecast) may be relied on by you and the Client in determining fees, eventually, in a full-service arrangement, the Cost of Works at the completion of the Project (as it is defined) will determine your final fee calculation that is payable under the contract.

Where partial services are to be provided, the CAALS clarifies that the forecast is only a reasonable forecast of the likely cost to construct the design (see A.3 Cost of Works forecast below).

Initialling key pages

Schedules A and B anticipate that some services and details will be selected, inserted, or crossed out or modified and by checking the relevant box. This can be done by hand on hardcopies or edited in the digital versions of the Schedules provided. It is important to accurately record the conditions of the CAALS and have the Client initial each of the relevant pages to these clauses, even if no services are actually modified. These pages provide a place for the Client's initials.

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

A.1 Architect's Obligations

Paragraphs 1 to 9 of clause A.1 set out your general obligations to the Client not specifically described elsewhere in the CAALS.

In summary, you are required to:

1. Deliver the Services with reasonable skill, care and diligence at the level that would be expected of an Architect who has experience in projects of similar size, type, complexity and value to the Project;
2. Act as the Client's agent if included in the Services – for example, under the building contract;
3. Maintain accurate records and keep the Client informed of progress;
4. Notify the Client promptly when the scope changes;
5. Notify the Client of any conflicts of interest connected with the Services;
6. If a conflict of interest arises, notify the Client (and you may need to suspend the Services until the conflict is resolved);
7. Comply with all Codes of Practice including the Institute's Code of Professional Conduct and the Code that applies to your Services under the *Architects Act*;
8. Maintain the registration and accreditations necessary in the state or territory of the Site to deliver the Services; and

Clause A.1.9 requires you take our professional indemnity (PI) insurance. The minimum level of your PI insurance cover must be the amount stated in Item 4 of Schedule A. (Note that in the CAA2019 this obligation to hold insurance is set out elsewhere.) While it is prudent for an Architect of the practice to also take out and hold public liability insurance, this is not required under the CAALS as a contractual obligation to the Client. It is for the Architect to consider what other insurance policies are prudent or required under applicable laws.

A.2 Services or Responsibilities Not Included

Clause A.2 sets out what is specifically excluded from your responsibilities and the services you provide under the CAALS. Often the exclusions are as important as what's included in the scope of your Services, relative to the Fee you are to be paid.

In summary:

1. You are not responsible for the Project complying with the building contract documents. You must instruct the building contractor regarding the requirements of the building contract documents (if contract administration is included under the Services).
2. Importantly, you do not give any express or implied warranty that the Project or Design is fit for the Client's purposes.
3. The Services do not include services relating to asbestos, other hazardous materials, or any other site contaminant. You should recommend that your Client engages a suitable expert for such services.
4. If the Client sources, supplies or requests items, materials, fixtures and fittings to be incorporated into the Project, the Client bears the full risk and responsibility for such items, materials, fixtures and fittings.
5. Your costs of digital data conversion or transfer (other than in default PDF format) is an additional cost that are reimbursed as a disbursement.

Under the Australian Consumer Law, architects and engineers, as professionals, have the benefit of an exception to the 'fitness for purposes' guarantee that other services, businesses or providers must give their clients. This is an important exception and reflects the unique professional role and recognition and trust that society puts in these professions. See further commentary on [Acumen](#).

A.3 Cost of Works

The cost of the project is considered in two distinct ways in the CAALS. It is essential that both you and the Client understand the fundamental difference between the Cost of Works forecast, the final Cost of Works (as defined in Section K) and the Total Project Cost. Information to the clients, available through [Acumen](#), may help the Client understand the concepts better and help avoid misunderstandings or friction during the Project.

The distinction starts from the principle that the Architect is responsible only for the costs which the Architect's input of professional Services (primarily, 'The Design') will influence or in some cases, control. These costs make up the Cost of Works.

The Cost of Works is specifically defined in Section K of the CAALS, as: the final cost of all work designed, specified or scheduled by the Architect, including all work designed, specified or scheduled by Specialist Consultants coordinated by the Architect, including:

1. the final adjusted contract price (excluding GST) in accordance with a building contract for the Project; plus
2. the equivalent final cost (excluding GST) of any work or items supplied by the Client to the building contractor (as if provided by the building contractor under the building contract); plus
3. 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. This includes the costs of Architect-designed or coordinated work which is not 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) are included in the Cost of Works.

The Cost of Works specifically excludes GST and the Client's other costs of the Project, related to, for example, financing, other consultant fees, planning and authority charges, unaffixed furnishings and moving or removalists cost (see Total Project Cost below). For the purposes of the CAALS, where these other costs are directed by you or directly influenced by the professional services you are providing, they should be included in the Cost of Works.

Where you have agreed to a percentage fee, the Cost of Works determines the architectural fees. The final Architect's fees are calculated on the final, known Cost of Works. Before that time, your percentage fees are calculated on the Cost of Works forecast and then adjusted progressively during the Project (see also clause C.2.2).

Partial services and the Cost of Works forecast

The standard-form anticipates that Architects are likely to use the CAALS for engagements that aren't for full services, such as preliminary designs or feasibility studies. The contractual standard to be met in preparing the forecast is merely what is reasonably likely, as the Project develops. Clause A.3.2 addresses that and clarifies that if the CAALS is used for partial services, then the Cost of Works forecast is no more than: the Architect's reasonable forecast of the likely cost to construct your design.

This forecast is particularly relevant where fees are to be charged as a percentage of the Cost of Works, even if a built product based on your design is not initially intended to be achieved.

Total Project Cost (Section K)

The Total Project Cost encompasses all the costs to the Client associated with the Project. The Total Project Cost includes the Cost of Works, plus all the other costs over which you have no control and that your professional Services don't directly 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 list of examples that might be included as other costs, such as legal fees, removal costs, contingencies for construction costs, consultants fees, or finance charges. These may vary depending on the Project.

Bear in mind that, depending on the project, Total Project Cost can capture examples of costs which, depending on the circumstances, are properly included within the definition of Cost of Works.

If you are responsible for specifying, scheduling, or designing specified items, or a Specialist Consultant coordinated by you was responsible (for example: landscaping, or loose furniture, fittings and equipment), these items would be included in the Cost of Works, unless the parties to the CAALS agree differently.

Client Budget (clause A.3.1)

It is for the Client to advise you what their budget for their project is, however, when engaging with the Client there will be discussions where you will guide and inform the Client about what a plausible budget would be for the proposed project.

Once your Client has settled on their budget, under the CAALS the Client agrees that they have budgeted for the Total Project Cost (that includes the Cost of Works and that overall budget should also include GST components on the cost of the project). It's the Client's responsibility to ensure their budget is adequate; this is not the Architect's responsibility, even though you might guide and inform the Client in the process of them setting the budget.

A.4 Program of Services

You will need to discuss the program for your services right from your initial contact with your client, because the Fee you will ultimately agree to with the client will have to reflect the time involved and the resources you must bring to the Services to ensure that you can meet the client's expectations. Therefore, the program will need to be agreed to before you enter into the CAALS with the Client. If you believe that the client's expectations of the Project and the program are not achievable or need to be managed, then it is essential that you discuss this with your Client, before you enter into the CAALS. It might help you in this discussion if you can point out the consequences, both financial and in a practical design sense, if the program is too short. Consider also if you can point out that it is not only you but the other consultants and authorities (over whom you have little or no control), who will affect whether program milestones can be achieved. You should not promise what you cannot deliver, and so be realistic about your ability to deliver the design solution and the subsequent services your client will be expecting.

Under clause A.4, it is for the Client to initially inform you of the preferred program of Services, but you and the Client must first agree on the program before you begin performing your Services. Then, during the Project, if there are changes (see clauses A.5 and C.6) or other considerations that impact the program, you and the Client will need to discuss and agree on a revised program. Similar considerations as in the paragraph above, also apply to these subsequent discussions – this can help manage your client's expectations and avoid misunderstandings or disputes.

A.5 Protracted Services

Clause A.5.1 sets out the process the Architect and Client are required to comply with where the Services are protracted due to any cause beyond the Architect's control. This process is the same as in the CAA2019:

1. You must notify the Client of the cause and where possible, inform the Client of the anticipated extent of the delay;
2. Both parties are required to meet to negotiate in good faith a change to the Fee (clause C.6 applies, see below); and
3. The parties are also required to agree on a revised program under clause A.4.1 (see above).

There may be causes or scenarios where you can't know the extent of the delay. For example, the cause may be a delay by the Client in resolving an issue before they can give you confirmation to proceed with one of your Services. It may not be possible for you to estimate the length of the delay for a cause that is beyond your control or knowledge. This is why clause A.5.1(a) uses the wording 'where possible'. However, it may be helpful practice when giving your notice under clause A.5.1(a) if you set out fully for the Client how the current delay is impacting on other parts of the Program or on delivering your Services. This may serve to highlight to the Client the importance of resolving that delay and can inform the meeting that you and the Client are required to have in step 2 above.

If this process doesn't resolve the delay, you can choose under clause A.5.2 to terminate the agreement immediately by giving the Client notice if:

- the Services are protracted by any cause beyond your control;

and

- you have complied with the requirements of steps 1 and 2 (above) but you and the Client do not agree to a change to the Fee and revised Program.

If you do, then the termination procedures in clause J.2 immediately apply (see section J below).

A.6 Suspended Services

During an engagement, one of the parties may need to suspend the services. This might be for different reasons: an external cause, change of mind, dispute, or non-payment. Either the Client or the Architect may seek to suspend the Services.

If there is a suspension of the Services, for any reason, whether initiated by the Client or the Architect, all rights and entitlements of the Architect will continue as though the suspension had not occurred (clause A.6.1). The Architect is entitled to be paid all Fees and Disbursements which would be due under the contract up to the date the Services are suspended by either party.

The Architect also has the right to be reimbursed by the Client of all costs associated with a suspension, including additional administration or architectural work or time required to resume the Services after the suspension.

In addition, if the Client chooses, acts, or instructs the Architect to suspend the Services, there may be additional administrative work, instructing, etc the Architect then must do in order to make the suspension effective. If an invoice remains unpaid (clause C.1.5) and the Architect chooses to suspend the Services, this is to be treated as if the Client had suspended (because non or late payment was the cause). The Architect's costs associated with this must be reimbursed by the Client. This is to be distinguished where the Architect suspends the Services, for example, if a conflict arises under clause A.1.6 that the Architect may need to resolve. No right to reimbursement for suspension will apply in these cases.

B. Client Obligations

Section B lists the general obligations of the Client to you and specific obligations not set out elsewhere in the CAALS.

The Client agrees to do the following:

1. appoint the Architect as the Client's agent for the Project, as needed, to carry out the Services to be provided;
2. only issue instructions to the builder through the Architect (if the Architect is to provide contract administration under Schedule A);
3. agree to a reasonable budget for the Cost of Works;
4. provide all information needed by the Architect to complete the Services;
5. cooperate fully with the Architect throughout the Project and give instructions and approvals;
6. engage all specialist consultants directly and consult with the Architect when doing so;
7. comply with the Architect's and builder's directions or requirements to access the Site;
8. authorise its representative to exercise all the right, powers, authority and functions in the same way as the party it represents.

We recommend you give the Client a copy of the accompanying CAALS 'Information guide to the client' to help them understand how the CAALS works and their key rights and obligations. You can download a copy from [Acumen](#).

The comprehensive CAA2019 also contains further client obligations relating to reasonable access to photograph or record the Project; publication, marketing or entering into the awards and attribute moral rights. While these are not contractual obligations under the CAALS, these rights exist and continue to apply under the *Copyright Act*. See more guidance below at E. Intellectual Property and on Acumen page: [Moral rights](#).

C. Fees

This clause covers the way your fees are calculated and deals with how you are to be paid, as agreed with the Client.

In Clause C, methods of charging your fees for your Services are:

- as a percentage of the Cost of Works;
- as a Lump sum;
- on an Hourly rate; or
- some combination of these.

The calculated total amount under the method chosen is the 'Fee' under the contract. This Fee may also include a Mobilisation Fee (see further below).

The various fee components are described alongside the conditions for payment of fees and it is clearly stated that the amounts calculated under either of 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.

Note: In this case you could use the Cover Letter to clearly set out the fee bases that apply for a particular service, alongside the corresponding amounts. The template Cover Letter provides a table where you could insert the relevant additional fee information in the respective rows.

Schedule B also has 3 new columns: 'Included' 'Excluded' and 'Additional' so that you can clearly capture and identify for your Client what services are included in the Fee you've agreed from the outset and which services are available at additional cost or fee (subject to the procedure for a change to the services). This should help avoid misunderstandings and disagreements about what you have agreed to deliver, from the outset, for the Fee.

We strongly recommend that you clearly identify each line by ticking the respective box. However, for your benefit, any line item that is unmarked or ambiguous, the provision at the top of Schedule B states that this item is by default excluded from the Services. This way, it's at your discretion how to correct or whether to include a service in the Schedule that doesn't have a clearly marked box—a Client couldn't argue that an ambiguous line item should be considered included in the Services for the Fee.

Fees for additional services required or requested after the CAALS is executed are by default to be priced at agreed hourly rates, unless you and the Client agree differently in writing (see clause C.6).

If there is a discrepancy, between the allocation of percentage or lump sum fees to the individual services or stages of the project (see Item 1), or an ambiguity or omission, the respective Total Percentage or Total Lump Sum Fee shown in Item 1 is the amount that takes precedence as the Fee.

Mobilisation Fee

Your Fee may also include a Mobilisation Fee (see Item 1, A.O and Section K), which is in effect a pre-payment towards the Fees for your Services. Note that the applicable Code of Conduct may set out limits on how much you can charge as a Mobilisation Fee or other type of deposit. Under the CAALS, the Mobilisation Fee can only be a lump sum dollar amount.

The Mobilisation Fee is payable by the Client within five business days after the contract is signed by all parties. Note that if the Mobilisation Fee is not paid within this time, it is technically an overdue amount and you may consider whether to suspend your services under the relevant clause (see A.6 Suspended Services above).

C.1 Fees Payable

The Client is required to pay you the Fee, plus all adjustments required under the CAALS, plus all applicable Disbursements.

Adjustments may be required due to:

- Protracted Services – clause A.5;
- Suspended Services – clause A.6;
- Changes to the Cost of Works – clause A.3; or
- Changes to the scope of the Services – clause C.6.

If there is any ambiguity, omission, or error in the amounts allocated to separate components of the Services in Schedule A: Item 1, or claimed prior to the final claim for payment, the Total Percentage or Total Lump Sum Fee listed in Item 1 will override these.

Note: Do not include Total Percentage or Total Lump Sum Fee in your Cover Letter, because if there is an error in those amounts, any total amounts stated in the Cover Letter will apply and override any amounts in Schedule A, even if this is what you intended.

Submitting Claims

You may send the Client a monthly claim for payment, but not any more frequently (unless the Client agrees otherwise). Your payment claim must be in the form of a tax invoice (including GST), clearly setting out the amounts relating to the Fee and Disbursements being claimed.

Note: Fees stated in the CAALS on any basis (whether percentage based, lump sum or at hourly rates) are exclusive of GST. Ensure you add GST for each relevant tax invoice, unless the item in Schedule A identifies it as a non-GST item.

Paying Claims

Under the CAALS the Client agrees to pay the amount in a claim for payment within 10 business days after receiving it. Invoices unpaid by the due date are subject to the interest rate of 15 per cent, which will be calculated from the date payment fell due, up to the date all outstanding amounts are paid.

Overdue payment

You have the right to suspend the Services while a payment under a properly submitted invoice remains overdue. If you do so, then clause C.1.5 also applies to protect your right to be paid for your Services, and for additional costs you incur to suspend and then resume the Services (see also clause A.6 above).

C.2 Percentage Fee

Clause C.2 deals specifically with percentage fees. It provides that your fee is to be calculated and updated or adjusted relative to the Cost of Works as the Project develops. The eventual amount of your Fee is subject to final adjustment against the final Cost of Works when that is determined and known at the end of the Project.

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 fee amount will be adjusted when the final Cost of Works is determined. You may want to give your Client a copy of the 'Information to the client' guide that helps explain these concepts.

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. However, the Client is not entitled to claim a credit or refund for any part of the Fees paid for completed Services if the Project (and the Cost of Works accordingly) is revised downwards or the scope of the Services is later reduced (clause C.2.3).

C.3 Lump Sum Fee

While lump sum fees are intended to apply irrespective of any adjustment to the Cost of Works, they are set based on a defined project scope and the forecasted extent of your Services for the Project, at the outset. This is why it's critical to correctly identify included and excluded services for each item in Schedule B.

Clause C.6 provides that if the extent of the Services changes, you and the Client must meet and agree in writing to a different fee or method of calculating the fee for those changed services.

As set out in Item 1, lump sum fees can also apply to discrete items of the Services, while fees for other items of the Services can be charged on a percentage basis, or at hourly rates.

If a Mobilisation Fee applies, then this must be stated as a lump sum at Item 1: A.O.

C.4 Hourly Rate Fee

If your Services are to be charged at hourly rate fees, these rates must be set out in Item 2 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.

If requested by the Client, you must within seven days provide time sheets or other substantiation of the hours you are charging.

Hourly rate fees can also apply to discrete items of the Services, while other services can be charged on a percentage basis, or on a lump sum basis.

You can opt for Hourly Rates by ticking the box for the corresponding services in Item 1 (but not the Mobilisation Fee at A.O – this must be a lump sum amount).

C.5 Disbursements

Under the CAALS, the Client agrees to pay or reimburse you for the Disbursements identified in Item 3 and included on your tax invoice. Disbursements must be itemised, and you must state that they are inclusive of GST after each of the subtotal amounts to which GST is applied.

Clause C.5 also says that you are entitled to add a service fee of 15 per cent to the Disbursement cost to cover your administration costs in incurring the Disbursements which were paid by and reimbursable to you. Disbursements the Client is required to pay directly do not have this service fee applied.

There is a space provided in Item 3 to set out the basis that a given Disbursement will be charged. It is good practice to set this out from the outset, to avoid queries or misunderstandings with the Client. Use the space to add comments to better explain the Disbursement or any conditions for the Client.

C.6 Changes to the Services

Clause C.6.1 sets out the negotiation process the parties are required to go through where the Architect considers that the Project scope of Services requires change – either an increased or reduced scope.

The parties must negotiate:

- the changed scope of Services;
- any necessary changes to the Fee in Item 1 and any relevant Disbursements in Item 3;
- the date the changes to scope and Fee will take effect from; and
- what reimbursement to the Architect is due for those Services already performed.

Note: This negotiation can be done in person at a meeting, or by phone or exchange of emails. If you negotiate by phone or in person, it's good practice to take clear notes (or minutes) from that, then circulate those to the Client and ask them to confirm they agree to your summary of the changes and the changed Fee. This ensures you have understood and agreed to what was said.

Clause C.6.2 tells the parties that where an agreement under clause C.6.1 is reached, the parties need to record it in writing – including all changes and the date these will be effective from. The Architect can then include the amount they are entitled to under clause C.6.1(d) for services already performed, in their next claim for payment (see also clause C.1).

If the parties cannot agree on the changes to the scope or the Fee, the procedure in clause C.6.3 is triggered:

Step 1A: the Services and the Fee will continue to apply without being changed; or

Step 1B: if the Architect can no longer perform the Services because the parties cannot agree on a change, the Architect may terminate the CAALS; and

Step 2: The Architect must then give the Client 10 business days' notice of their intention to terminate – and clause J.2 applies.

If there has been no change in the Services or the Fee during the project, then the original Fee in Item 1 and the original Services in Schedule B apply. If the scope or services change by agreement after the contract was signed, but if the parties cannot agree to a subsequent change, then under clause C.6.3(a) the most recently adjusted Services and Fee continue to apply.

Step 1B is a decision you can make at your discretion, if you consider that you cannot perform the Services unless the Client agrees to a change to the scope and fee. This may need to be a matter of negotiation with your Client. If negotiation is not successful, you can exercise your discretion at Step 1B and terminate the contract as set out in Step 2.

This termination right is in addition to the mutual right of termination under clause J (see below J Termination).

D. Specialist Consultants

Under the CAALS, the Client will always engage directly all specialist consultants.

Clause B.6 requires the Client to directly engage a specialist consultant and will consult with you when doing so. A Client's specialist consultant is engaged on the basis that:

- you are not responsible (under the contract between you and the Client) for the services a Specialist Consultant provides (clause D.1.b); although,
- you can use and rely upon the Specialist Consultant's deliverables to the extent they are required for the performance of the Services (clause D.1.c).

Although dependant on the Project to be carried out under the CAALS, as part of the typical services provided an Architect might give recommendations to the Client about which consultants are necessary for the Project, and the likely amount, or percentage basis, their fees will be. Also as part of typical services, the architect would coordinate the services of any specialist consultant required.

E. Intellectual Property

This section covers copyright and moral rights of your design and facilitating electronic data transfer.

E.1 Copyright

The Design you create for the Client under the CAALS is considered an 'artistic work' that can attract copyright. The Architect is the 'author' of the 'artistic work' under the *Copyright Act*. This means that the Architect owns copyright in The Design and along with any co-authors, is entitled to be acknowledged as the authors ('attributed') unless a co-author has waived that moral right.

Under clause E.1 you retain copyright in and clause E.2 only gives the Client an express licence to use the Services and The Design on the Site. 'The Design' is defined as the design concepts, drawings and documents you produce or deliver under the CAALS for the Client's Project. The Client may pass on the licence to those parties who need to construct and maintain the building.

Note: The licence you give to the Client is to use The Design for the Project and only on the Site for which it was intended, subject to the conditions set out below.

These conditions are intended to minimise the risks to your copyright where your Client, for example, applies for development or planning approval using your drawings and intends to or may sell the property with the approval, whether or not it is the Client who uses The Design to construct the building, or tries to use The Design on a different site.

Paragraph E.2 gives you a right to revoke the licence for so long as a payment of your validly submitted invoice is overdue.

This is at your discretion, but we recommend that you exercise the right to protect your copyright and to encourage payment for your Services. After all, the copyright in your Design is your professional stock in trade – it is valuable and worth protecting under the CAALS provisions.

If the Client breaches clause E.2 they must automatically indemnify you against all costs you incur as a result of that breach (clause E.3). The costs can include your legal fees if you need to enforce your copyright in court, in connection with The Design or the Project.

Finally, you need to be aware that under Clause E.4, when all your Services are complete, and you have received full payment of all validly submitted invoices, the licence to the Client becomes irrevocable, but the Client never 'owns' the copyright in The Design, unless you specifically agree to this with the Client. While not recommended, a Client may request this, and you are free to agree to do so.

E.5 Electronic Data Transfer

You can issue data electronically (in digital format), but under clause E.5 you are not contractually responsible for the accuracy, completeness or contamination of such data. This is a protection for the Architect's benefit because data can be impacted or corrupted in ways beyond the Architect's control. If the Client requests or requires digital files other than the default file format, the Client agrees to reimburse you the cost of electronic data preparation and file conversion if it is listed and selected in Item 3.

The default file format is typically PDF format, but the choice of digital format can be something you address in your Cover Letter.

F. Liability

Note that your contractual obligation to hold professional insurance for the purpose of the engagement and the Project is set out in clause A.1.9. As an architect, PI insurance is mandatory under the *Architects Act* and the associated Codes of Conduct in the relevant state or territory.

F.1 Your Liability to your Client

Clause F.1.a can operate to put a legal limit on your liability exposure to the Client. Under the CAALS, this limit is now the net amount ('proceeds') your PI insurer agrees to pay or reimburse ('recover') under your PI policy.

In this context, the net amount is the amount recovered, less any contributions made, or excess (deductible) paid by you. The net amount you actually recover on a given claim can also be affected where you are undertaking several projects at once within the insured period, and there is 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 (if applicable).

Paragraph F.1.b limits the type of liability that may be claimed against you, by restricting the losses to the Client's direct loss or damage – not indirect, consequential or special losses, including those described in the brackets of the paragraph. For example, a commercial developer Client cannot claim damages or losses against you for the lost profit they were expecting to make from selling the units in the project you were designing, but the project wasn't completed as expected.

Architects should be aware that a contractual limitation of liability or capped amount under clause F is only effective in relation to *liability to the Client* for professional Services you delivered under the CAALS. Clause F.1 cannot and does not limit or avoid your liability to third parties who are injured or suffer some loss because, for example, of some negligence in the way you delivered your professional Services.

The Australian Consumer Law (ACL) and parallel state and territory legislation may apply to the Services you perform on the Project for your Client. 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 law that all businesses give to their customers (or Clients) in conducting their business and delivering services. To the extent that any part of the Services you provide fall within the ACL's warranties the Client is entitled to, then clause F.2 limits your liability, so that the contract requires only that you either: 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.

If you are in doubt whether the ACL applies to your Client or the services, you should seek legal advice.

G. General Conditions

Clause G set out the conditions of the CAALS that apply generally to your dealings with the Client during the Project.

Note that to the extent that the CAALS is used for limited services and low complexity projects, some of the general conditions from the CAA2019 in section H have not been included.

You and the Client generally agree that:

1. All variations to the CAALS, consents, approvals, requests, notifications or notices under the CAALS must be in writing – and email will satisfy this;
2. The laws in the state or territory where the Site is located apply to the Project;
3. The CAALS plus the Cover Letter overrides any prior representations, agreements or statements or other understandings that may have been exchanged prior to signing the contract. This provision is also important for anything else you included in initial letters to or initial discussions with the Client;
4. The CAALS applies to all services delivered by the Architect prior to the signing of the contract (but you must have a written agreement with the Client as soon as you can to meet the requirements of most Codes of Conduct);
5. If an amount doesn't show the GST status, the parties must assume it is GST exclusive (ie. add GST).

Note: it is good practice, to have the benefit of paragraph G.3, that the contract (including all Special Conditions) accurately reflects the discussions or emails and requirements communicated, understood and agreed between the parties before it is signed.

H. Dispute Resolution

This clause sets out the process for dealing with disputes under the CAALS between you and the Client. The process involves direct discussion with your Client and then a mediation process, before the parties can take legal action over a dispute.

If a dispute arises, both you and the Client agree to continue to perform your respective obligations (this doesn't limit your right to suspend the Services for late payment under clause C.1.5).

Step 1: either you or the Client can give a written notice to the other of the details of the dispute and requiring both parties to meet within five days after the notice.

Step 2: at this meeting, both parties must make a genuine attempt to resolve the dispute.

Step 3: if not resolved at that meeting, either party may refer the dispute to mediation by delivering a written proposal of mediation to the other. The proposal must state the name of a mediator accredited by the Resolution Institute (formerly IAMA/LEADR) in the state or territory of the Site, who is independent of both parties and willing to act.

Step 4: If the parties don't or can't agree on a mediator, either party (usually the proposer) must formally ask the Chair of the Resolution Institute to nominate a suitable mediator.

Resolution Institute contact details:

Address: Level 2, 13-15 Bridge Street, Sydney NSW 2000

Email: infoaus@resolution.institute

Telephone: 02 9251 3366

Step 5: if the mediation is unsuccessful, only then, may a party take legal action that is outside this procedure, to resolve the dispute.

I. Not used

This heading is not used in the CAALS, to avoid confusion when referencing clauses.

J. Termination

The CAALS2019 provides a straightforward, mutual right for either party to terminate the contract, after providing the necessary notice. It's not necessary for a party to be in breach of the contract or to provide reasons for the termination (although it's likely the parties would have a discussion about the prospect of terminating the contract and providing some explanation may assist the other party to understand the reason why a party is choosing to terminate).

Either party may terminate the agreement under clause J.1 by giving the other party 20 business days written notice. The contract does not require a party to give a reason for deciding to terminate, but the requirement for 20 days' notice allows the Client to make necessary arrangements and for the Architect to wind-up the services in an orderly way. Termination of the contract then takes effect at close of business on that date that is 20 days after the notice.

If the contract is terminated under clause J.1, then on termination the Client must pay:

- (a) the amount of all Services completed prior to the date the notice to terminate was delivered; and
- (b) the amount of all Services reasonably undertaken, and reimbursable costs or expenses reasonably incurred prior to the date the notice to terminate was delivered.

Under clause J.2(b), once you have been paid your fees, you must issue to the Client a copy of The Design (as defined in clause E.1) as it is at the date of termination, and a copy of relevant documents relating to the Services. Because of clause J.2.c the Client will not have any claim against you arising under the adequacy of these documents.

Remember that under clause E.4, 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 as it was up to the date of termination (that is the date of the notice, plus 20 days).

Parties to a contract are free to mutually agree to modify their termination obligations, but you shouldn't agree to do so without legal advice.

K. Definitions

This section lists all definitions for key terms used in the CAALS. Where a capitalised term is used in the Conditions (as well as in your Cover Letter), this indicates it is a defined term and that meaning applies.

You should become familiar with the wording and concepts for each defined term, in particular those terms that differ from the CAA2019, like 'Cover Letter'.

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 or final version of the CAALS contract as an attachment to the letter.

The recommended Cover Letter is the recommended template to use for the Cover Letter that you must attach the prepared CAALS contract to. The template itself contains guidance on how to complete it and what to include.

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 the letter confirms that the Client does not intend to engage a cost consultant.



**Australian
Institute of
Architects**

This agreement is a standard form for the benefit of architects and their clients. However, architects and their clients are free to agree on conditions of engagement and fees on any basis whatsoever, providing they are not in conflict with the law applicable in the state or territory concerned.

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