



Australian  
Institute of  
Architects

**2024**

**Client Architect  
Agreement  
(CAA2024)**

**USER GUIDE**

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This guide is intended to give you, the Architect, guidance on the contents and effect of the Institute's 2024 Client Architect Agreement (**the CAA2024**), suggestions on how you can complete the details in the contract's Schedules and practical guidance on delivering your services to your client in a way that aligns with the CAA2024's contractual terms and conditions.

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

<b>CAA2024</b>	means the 2024 release of the Client Architect Agreement standard-form consultancy contract published by the Australian Institute of Architects.
<b>Conditions</b>	means the legally-effective provisions set out in pages 2 to 6 of the CAA2024.
<b>Contract</b>	means the CAA2024 document that you prepare, sign and use for your engagement with your Client on a Project.
<b>Schedule</b>	means a schedule page to the CAA2024, including page 1 that sets out the party and Project details. The CAA2024 also has three schedules attached to it: <b>Schedule A</b> for the Scope of Services, <b>Schedule B</b> for the Scheduled Items and <b>Schedule C</b> for any Special Conditions.
<b>Section</b>	refers to the headings used to separate the conditions, identified with a corresponding letter <b>A</b> , <b>B</b> , etc. Also look at the Contents list on page 6.
<b>Item</b>	when capitalised, is a reference to the contract details set out in Schedule B "Scheduled Items" containing Items 1 to 7B. References to "Item #" are clearly used throughout the Conditions of the CAA2024 to refer to the corresponding Item in Schedule B.
<b>Clause</b>	is a reference to the text of a numbered paragraph in the conditions. In the CAA2024, a full clause reference can have a Section, clause, sub-clause and paragraph reference which can look like this: D.8.2.a.
<b>Project</b>	means your Client's project for which you will deliver professional Architectural services under the CAA2024. In the CAA2024, the capitalised 'Project' has a specific definition (see Section M).

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

This User Guide does not address all of the terms, obligations and process in the CAA2024 and does not vary or supplement what the CAA2024 says. This User Guide does not give any guidance on modifications or special conditions that an architect or a client might agree to.

## **Other guides or resources:**

Information guide to the client (available as a download on the Australian Institute of Architects *Acumen Practice Notes (Acumen)* CAA2024 page <https://acumen.architecture.com.au/CAA2024>).

The qualification, registration and professional standards of all architects in Australia are regulated by legislation in each state and territory and governed by architect registration boards. Under this legislation, almost all architect registration boards have issued professional standards or codes of conduct. These professional standards require that architects must clearly document the agreement with a client, for performing architectural services.

The CAA2024 helps architects comply with this obligation to enter into a documented agreement, as well as the specific contractual details that must be included under the various codes of professional conduct.

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 performing architectural services for the client, you must provide a written contract for the commission. 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 2024 CLIENT ARCHITECT AGREEMENT

The CAA2024 can be used for projects of various sizes and complexity.

By completing the Schedules and both you and the Client signing it, the CAA2024 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 CAA2024, and particularly to deliver the Services set out in the Schedule A: Scope of Services (pages 9-12), 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 Schedules, or marked as 'Excluded' from the list of Services.

### **Editable schedules to CAA2024**

The Schedules and the execution page of the CAA2024 can be printed, completed and amended by hand. They are also available in digital PDF format via *Acumen*, with the editable documents to add all relevant details and make additions and/or deletions (including modifying conditions using Special Conditions—see below). The digital versions of the Schedules are available via the *Acumen* notes <https://acumen.architecture.com.au/CAA2024>.

### **Template draft letters to use with the CAA2024**

A series of 'template' letters are also provided via *Acumen* to accompany the CAA2024. 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. Note that the CAA2024 and the attached Schedules are intended to be used together as a single comprehensive contract document and operate independently of any cover letter you may prepare and send to the Client.

## SPECIAL CONDITIONS

The Institute acknowledges that varying circumstances and Client or Architect requirements may make it necessary for the parties to amend the CAA2024 other than by adding or deleting services listed in the Schedules. The parties should only use Schedule C: Special Conditions for this. Clause L specifies the order of priority that makes a special condition inserted in Schedule C override and vary the ordinary conditions of the CAA2024. For this reason, it is strongly recommended that you only use Schedule C to insert special conditions or modify specific parts of the contract and not some other method of modifying the contractual conditions which may be ambiguous, inconsistent or less certain in effect.

However, before proposing or agreeing to change the text of the CAA2024, including deletions, you should get legal advice to ensure the CAA2024, 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.

Note: The Institute's Senior Counsellor service is available to provide professional and practical guidance, however neither the Institute nor the Senior Counsellor service can give you specific legal advice about any given contract or the effect of a proposed special condition or other proposed modification of a contract.

## EXECUTION (SIGNING) PAGE

### Identity of Client

For both you and the Client to be able to enforce and rely on the terms of the CAA2024, 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 legal capacity differs depending on the type of legal entity. For you to be able to rely on the CAA2024 as a binding contract on the Client, you should insert and check the full name of the Client, 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'.

Changes to Australian law recognise that both individuals and corporations can use digital document formats of the contract and electronic contract signing to form a valid and binding contract.

### ABN number

The Client's ABN, if any, is required if the Client is a business registered for GST and operating under the ABN. There may be circumstances where there's overpayment of some component of your fees or a disbursement under the CAA2024, which was charged but not incurred. In those circumstances, and 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.

Practice tip: If you want to be sure you are contracting with the correct entity, you can search an ABN, ACN or company or business name on the Australian Business Register's *ABN Lookup* portal <https://abr.business.gov.au/Search/Index> or search on ASIC's companies and organisations register <https://asic.gov.au/> (for a fee).

## Client's address

The Client's address to be shown here is the address for delivery of important notices (which you need to give in writing) under the CAA2024. This enables the giving of notice by hand delivery, mail or email. Whichever method the parties insert into this schedule, this makes effective that method of delivering a contractual notice.

For proper service of notices under the CAA2024, you should state the Client's residential address, or the company's or incorporated association's registered office, as applicable.

Under the CAA2024, email is an effective method of sending and receiving notices and other actions under the CAA2024 contract.

## 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. As with electronic signing, Australian laws recognise that email can be a legally effective way to form a legally-binding contract and to send and receive important notices 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 human error or technical issues.

If the parties are confident that email is acceptable to communicate between them, they may insert their email address in this schedule, or continue to communicate by email after the CAA2024 is signed. If they do either, the parties need to be aware that communication by email becomes an acceptable method of notification under the CAA2024 and at law it may not matter that the receiving party has not actually opened the particular email or read it.

If the parties establish that email is an acceptable method, then email is a form of communication that that is generally recognised as being "in writing". This can be relevant and have consequences under a provision in a contract which requires for some action under the contract to be done or sent in writing.

**Practice tip:** When relying on or using email to send critical notices or correspondence under the CAA2024, you should always request a delivery and read receipt confirmation (if that function is available via your email app).

## Telephone number

Telephone numbers can be mobile or landlines or both. A telephone number is simply to facilitate communication between the parties. It is not intended and cannot be used as a method to communicate contractual actions or notices under the CAA2024. This also applies to SMS or similar messaging services or apps.

The CAA2024 has been modernised to reflect email as the customary and most common form of communicating and sending formal notices under a contract. A facsimile number is optional and can still be a legally effective method of communicating. If the parties wish to use facsimile for notices under their contract, then you can insert the fax number, and identify it as such, in this section.

## 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, contractual terms or project-specific information is set out, such as every Schedule.

The CAA2024 reflects changes to Australian law which recognise that electronic signing and digital signatures can be a legally effective way of signing and forming a valid and binding contract.

## Client representative

For the effective and efficient operation of the CAA2024, 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. Under ordinary circumstances, for such Clients a minimum of 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 CAA2024 contract. The authorised person may not necessarily be the Client representative.

The second signature line option (greyed box) is for companies, including corporate trustee companies, which can be either Pty Ltd or Ltd, and must contain the signatures of: two directors, or one director and the company secretary, or a sole director/secretary. If the latter, you should verify that the company has only a sole director before accepting a signature by only one person, otherwise there may be scenarios where you may not be able to enforce the CAA2024 contract against the company.

The footer of each Schedule to the CAA2024 also prompts the Client to sign or initial that page. This is not a legal formality, but it is a prudent way to encourage the Client to read each of those pages that sets out the important contractual and commercial details which are specific to the project. The Client then acknowledges the specific terms of the contract by initialling the bottom of each of those pages wherever indicated.

## Date of signing

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

This date should then be inserted in the space provided at the top of page 1. If you are using the electronic-signing platforms that are commonly used, these have functions that help you automatically insert this date to the digital document, after all parties have signed electronically.

## Architect registration

The CAA2024 has been developed as a formal basis for the relationship between a Client and an Architect. In almost all states and territories wherever a code of professional conduct applies, an architect must enter into a written agreement between the Client and 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) in that state or territory.

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 can check with the relevant Registration Board that the person named as Architect is entitled to be described in that place.

Architects engaged under the CAA2024 should be only those currently registered as Architects in the relevant state or territory of the Client's Project site. While requirements vary, mutual recognition rules in most states and territories permit Architects registered elsewhere to also be registered in the state or territory of the Project site.

**Warning:** Entering into the CAA2024 when not registered as an Architect in the state or territory of the Project 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 and disciplinary action that can affect your registration.

### If a non-Architect wishes to use the CAA2024

Provided that the non-registered person has not represented themselves as being registered, you may want to insert a special condition in the CAA2024 at Schedule C clarifying that, wherever 'Architect' appears it means the 'non-Architect', and that clauses A.1.7 and A.1.8 are deleted from the contract's conditions. But be wary that, merely clarifying your unregistered status may not be enough to avoid a breach of the applicable Architects Act if the Services you carry out under the CAA2024 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 changes, also via a special condition, to clause G.1 accordingly.

If the parties are thinking of using the CAA2024 for engagement by a non-Architect (including Architects not registered in the state or territory of the Project site), you should first consult with the Architects Registration Board administering the applicable Architects Act.

## Identity of Architect

As noted above, for both you and the Client to be able to enforce and rely on the terms of the CAA2024, 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 are (or your practice is) carrying on business as an Architect and are registered for GST, you must state your (or your practice'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 your practice's business arrangements and the Architects Act of the state or territory in which the Project 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 CAA2024 enabling the giving of notice by hand delivery, mail or email.

## Email

The notes above about Client email addresses apply here as well, if you insert an email address for the architect.

## Telephone numbers

The notes above about Client telephone numbers apply here as well.

## Architect's representative

It is equally efficient for the Services to be delivered under the CAA2024 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

In the same way that the Client can be an individual or other type of organisational entity, there are several alternatives for an architectural practice depending on its business and corporate arrangements. So that the CAA2024 can be relied upon by both you and the Client, the correct alternative should be completed and signed.

## Signatures

As for the Client above, the correct place for you (or you on behalf of your practice) to sign, and the number of signatures required depends on the Architect's entity type and internal business arrangements or delegations to sign contracts on behalf of the practice.

## Places to sign

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

## Date of signing

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 in 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 contract. 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.

## Location

State the address and the state of the Site, if this is applicable.

## 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 M), but it is not a binding quote, estimate or any guarantee of what the built works will ultimately cost the Client. Do not insert the Total Project Cost amount—see section M and below. Note that the Cost of Works always excludes GST.

Inserting a forecast Cost of Works is especially important wherever fees are to be charged as a percentage of the Cost of Works.

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.

## Initialling key pages

Schedules A and B anticipate that some services and other contractual and commercial details will be selected, inserted, crossed out or modified and by checking the relevant box. This can be done by hand on printed hard copies or edited in the digital versions of the Schedules provided. These terms in the Schedules can be filled out and customised using the editable versions accessible from *Acumen* <https://acumen.architecture.com.au/CAA2024>.

It is important to accurately record the terms and conditions of the CAA2024 and have the Client initial each page that sets out terms that are specific to the Client's Project and contract.

The pages of the Schedules provide a place in the footer for each party to initial, which has the effect that the party acknowledges the specific terms set out on that page.

Initialling each page is not a legal formality but it is a prudent way to encourage the Client to read each of those pages that sets out the important contractual and commercial details which are specific to the Project. The Client then acknowledges the terms of the contract on that page by initialling the bottom of each page wherever indicated.

## A.1 ARCHITECT'S OBLIGATIONS

Clauses A.1.1 to A.1.8 set out your general obligations to the Client not specifically described elsewhere in the CAA2024.

**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. Promptly tell the Client in writing when the scope changes;
5. Tell the Client of all matters that are relevant to the Services that give rise to an ethical or regulatory conflict of interest;
6. If a conflict of interest arises, notify the Client that you need to suspend the Services until the conflict is resolved;
7. Comply with all Codes of Practice. This includes the Institute's Code of Professional Conduct as well as the Code that applies to your Services under the Architects Act; and
8. Maintain your architect's registration and other accreditations necessary in the state or territory of the Site to deliver the Services.

## 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 CAA2024. 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 The Design is fit for the Client's purposes;
3. You are not responsible for changes in natural materials once they are used in the Project;
4. 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;
5. The Client will be responsible for ongoing and regular maintenance of the Project, including its systems, finishes and equipment, upon completion;
6. 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; and
7. You have legal protection (and indemnity) from claims arising in connection with anything above.

Under Australian Consumer Law, architects and engineers, as professionals, have the benefit of a legal exception to the 'fitness for purpose' guarantee that other services, businesses or providers must give customers or 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 in *Acumen* note <https://acumen.architecture.com.au/project/agreements/fitness-for-purpose/>.

## A.3 THE FORECASTED AND TOTAL COST OF WORKS

The cost of the project is considered in two distinct ways in the CAA2024. It is essential that both you and the Client understand the fundamental difference between the *forecast* Cost of Works, the *final* Cost of Works and the Total Project Cost (as defined in Section M). The Information guide to the client, available through *acumen* <https://acumen.architecture.com.au/CAA2024> 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 those costs which the Architect's input of professional Services (primarily in the form of The Design) influences or in some cases, the Architect's professional inputs have control over. These costs make up the intended scope of the 'Cost of Works' as defined in this contract.

The Cost of Works is specifically defined in Section M of the CAA2024 to include:

the final cost of all work designed, specified or scheduled by the Architect,

*plus*, all work designed, specified or scheduled by Specialist Consultants coordinated by the Architect (if any),

and in forecasting the Cost of Works, this is to include the specific costs of:

- the final adjusted contract price (excluding GST) in accordance with a building contract for the Project; plus
- 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
- 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 the Architect creates for 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 for the purposes of the CAA2024 contract.

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 CAA2024 if 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.

If you and the client have agreed to a percentage fee, the Cost of Works determines the architectural fees payable under the CAA2024. The final Architect's fees are calculated on the final, known Cost of Works. Before that final amount is known, your percentage fees are calculated on the forecast Cost of Works and then adjusted progressively during the Project (see also clause D.4). The progressive adjustments may be monthly or by milestone, depending on the payment structure you've agreed with your Client.

## TOTAL PROJECT COST (A.3.1 AND SECTION M)

The Total Project Cost encompasses all the costs the Client will ultimately pay that are associated with the Project when it is complete.

The Total Project Cost includes the Cost of Works, plus all the other costs the architect cannot and does not control and that your professional Services don't directly influence.

Total Project Cost is defined basically 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 to the client, such as legal fees, removal costs, contingencies for construction costs, consultants' fees or finance charges. These may vary depending on the Project. You might also think of the 'Total Project Cost' as the final outturn cost to the Client of constructing its project.

Bear in mind that, depending on the size, nature and complexity of a given project, the breadth of Total Project Cost (as defined) 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 such items (for example: landscaping, or loose furniture, fittings and equipment), these items would be included in the Cost of Works, unless you and the Client agree differently.

### Client budget (clause A.3.1)

It is for the Client to advise you what their budget for their project is. In the early stages of engaging with your Client there will be discussions where you may guide and inform the Client about what a plausible budget would be for the proposed scope of the project.

Once your Client has settled on their budget, under the CAA2024, 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 (including the GST that would be payable). The Client's budget is not the Architect's responsibility, even though you might guide and inform the Client in the process of them setting the budget.

Critically, clause A.3.4 emphasises as a contractual condition of your Services, that the forecast of the Cost of Works is only indicative and that the Architect does not and cannot give any promises or guarantee about what the final Cost of Works will be when the Project is complete. This helps manage the Client's expectations about the effect of the Cost of Works under the CAA2024 and also gives the Architect contractual protection for liability to a Client who might later feel aggrieved by the final cost of its project by claiming against the Architect.

## A.4 PROGRAM OF SERVICES

You will need to discuss the program for delivering your services right from your initial contact with your Client, because the Fee you will ultimately agree to with the Client inevitably reflects the time involved and the resources you must bring to the Services to ensure that you can meet the client's expectations.

The program will need to be agreed to before you enter into the CAA2024 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 contract. 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 professionally or practically 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 its preferred program for the overall project, before you begin performing your Services. After that, you and the Client must discuss and work together to develop the program for your Services (as a component of the overall project program).

Then, during the Project, if there are changes to the project, scope or programming or other considerations that may impact the program, you and the Client will need to discuss those and ultimately agree on a revised program. This process may demand greater communication and a level of direct negotiation between you and the Client. 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.

If the parties cannot at any time during the Project mutually agree on changes to the program, you might consider whether your Services need to be suspended under clause A.6 (*Suspended Services*). If your attempts to secure your client's cooperation and agreement on a reasonable change in program cannot be resolved in a timely way and your Services are being or will be delayed, you might also consider whether these interactions reach a point where it is 'beyond the Architect's control' for the purposes of clause A.5 (*Protracted Services*).

For further guidance on how changes to the project, scope or programming are managed under the CAA2024, see below sections on clause A.5 *Protracted Services*, A.6 *Suspended Services* and D.8 *Change to the Services*.

## 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. If you identify such a cause, this process follows:

1. You must notify the Client of the cause and if possible, tell the Client how long you anticipate the Services will be delayed;
2. You and the Client must meet to negotiate in good faith a change to the Fee (clause D.8 applies, see below); and
3. The parties are also required to agree on a revised program under clause A.4.2 (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, or progressing your Services relies on a third party (like a planning or other authority) for input or approval.

It may not be possible for you to estimate the length of the delay for a cause that is beyond your control or knowledge or involves a third party that you don't have access to or influence over. This is why clause A.5.1(a) uses the wording 'if possible'. Even so, 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. In the circumstances of any cause of delay, you may realistically only be able to anticipate a forecasted or some general period of time that the delay might result in. If so, it's good practice to clearly say so in a notice you give under clause A.5.1(a).

If this process to negotiate on a change to the Fee and/or revise the program doesn't result in you and the Client agreeing on those changes, then either party may consider and choose under clause A.5.2 to terminate the agreement immediately by giving the other notice.

The prospect that either party may ultimately act to terminate the contract operates as a 'tie breaker' between the parties if they cannot agree. Termination is a serious outcome and so this prospect should compel them to take the process in A.5.1 seriously, to act and negotiate in good faith and consider making reasonable compromises to achieve agreement on reasonable changes to the Fee and program, rather than risk all progress that has been made on the Services and The Design.

If you are considering exercising this right to terminate, consider giving the Client a reasonable opportunity to respond and agree and if not, then try to give the Client a reasonable amount of notice in advance of your intention to terminate. What would be considered a 'reasonable' notice can vary and almost always depends on the circumstances and may be relative to the period of time you've been negotiating with the Client; the stage of the Project and the progress you need to make with your Services in that stage, or an upcoming milestone of the Project.

The Client has the equivalent right to terminate the contract under clause A.5.2 and so equivalent considerations on giving you reasonable opportunity and notice also apply to the Client in reverse.

**Practice tip:** If you find yourself in these circumstances, we strongly recommend you get legal advice before you formally exercise any of your rights to terminate the contract.

If you do intend to exercise your right to termination under clause A.5.2, then the termination procedures in clause K.2.2 come in to effect (see below section K *Termination*).

## 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, a dispute, or non-payment. Either the Client or the Architect may act to suspend the Services by following the steps in clause A.6.

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.b). Whoever initiates the suspension, 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.

In addition, if the Client initiates the suspension (or if an invoice is overdue under clause D.3.3), the Architect gains an additional right to be reimbursed by the Client for all reasonable costs it actually incurs associated with a suspension. This may include the reasonable costs of additional administration or architectural work or time required to resume the Services after the suspension. Bear in mind that reasonable costs in this context should be at least in some proportion to the Services, the amount of work currently underway at the time of it being suspended and the proposed length of the suspension. The Architect may also be asked to substantiate and produce documentation (including timesheets, if requested) that it has actually incurred those costs.

The reason for this is, if the Client chooses, acts or instructs the Architect to suspend the Services, there is typically additional administrative work, instructing, documenting, etc the Architect then must do in order to make the suspension effective and put the Services on hold. Similarly, the Architect is likely to incur similar costs to then re-open and set up the project files, take new instructions from the client and resume the Services.

If an invoice remains unpaid (clause D.3.3) and the Architect chooses to suspend the Services, then for the purposes of clause A.6.2 this is to be treated as if the Client had suspended (because the Client's non- or late payment was the cause).

Whereas, if the Architect suspends the Services, for example, because a conflict arises under clause A.1.6 that the Architect may need to resolve, then no additional right to be reimbursed for reasonable costs in connection with 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 CAA2024.

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. (if the Architect is to provide contract administration as stated in Schedule A) only issue instructions to the builder through the Architect;
3. cooperate with the Architect to determine a reasonable budget for the Cost of Works;
4. provide all information needed by the Architect to complete the Services, including relevant Client Information and Site information;
5. cooperate fully with the Architect through the Project, and give instructions, decisions and approvals promptly;
6. engage the Specialist Consultants directly and consult with the Architect when doing so;
7. allow the Architect reasonable access to photograph or record the Project (during and after the Project);
8. allow the Architect to publicise the Project including for marketing purposes or awards (such as the annual Architecture Awards – state or national);
9. attribute the Architect's moral rights in The Design (see also clause F.2);

10. comply with the Architect's directions or requirements to access the Site (which could include requiring the Client to comply with the builder's conditions of site access and site induction); and
11. tell the Architect of any Project details to be kept confidential.

We recommend you give the Client a copy of the accompanying CAA2024 Information guide to the client to help them understand how the CAA2024 works and their key rights and obligations. You can download a copy from *Acumen* <https://acumen.architecture.com.au/CAA2024>.

## C. ADMINISTRATION

Each party's representative is authorised to exercise all the right, powers, authority and functions in the same way as the party it represents. The parties may replace their representatives at any time, but they must in writing notify the other party of a change of representative.

Under the CAA2024 the Client is required to expressly authorise the Architect to start on and deliver Services; however, the Architect must still get the Client's authorisation to proceed with those components of the Services that are identified in Schedule A as needing Client authorisation (words like *permission*, *authorisation*, *consent* or *approval* or *to proceed* can be used interchangeably in this context). As a general guide, stages of the Services at which you should request Client approval are typically:

- the final developed design;
- selection of the building contractor and specialist consultants; and
- submitting the developed design to an authority for planning or other approval.

The Client's permission for this must be in writing and can be given by email if the parties have stated their email addresses on the front page or otherwise adopted email as a regular form of communication.

**Practice tip:** If you are modifying Schedule A to suit a particular project and engagement, it is important that you carefully describe the particular service in Schedule A to identify if Client consent is needed, or you can use or adapt the wording providing in the standard Schedule A.

## D. FEES

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

In Section D, methods of charging your fees for your Services are:

- A percentage of the Cost of Works;
- Lump sum;
- Time-based rates (hourly, daily, monthly\*); or
- a combination of these.

**\*Practice tip:** The editable Schedule B, Item 2 could be modified to adopt some other time unit such as weekly or minute increments.

The total amount calculated under the method chosen is the 'Fee' under the contract. The Fee may also include a Mobilisation Fee (see Schedule B, Item 1, A.O), which is in effect a pre-payment towards the Fees

for your Services. Note that the applicable Code of Practice may set out limits on how much you can charge as a Mobilisation Fee or other type of pre-payment. Under the CAA2024, the Mobilisation Fee can only be a lump sum dollar amount. Please check the applicable code of conduct in the state or territory of the Site for any restrictions or caps on these types of fee amounts.

These fee types are described alongside the conditions for payment of fees, and it is clearly stated that the parties should assume that the amounts calculated under any of the methods *don't* include GST. In **Schedule B**, Items 1, 2 and 3 guide you on which rates or amounts are GST exclusive or inclusive and also prompt you to insert the corresponding Fee amount, GST component and GST-inclusive amount.

If you are unsure about the GST, seek accounting, business or taxation advice.

**Practice tip:** If your Client is a consumer (and not a corporation, trust or other business), you should always state and make clear the GST component as well as the GST-inclusive amount of your Fee and all amounts in your invoices that will make up the total Fee. For a consumer client, the GST is typically a cost to them that they cannot claim back.

In relation to any one service performed under the CAA2024, only one method would apply. One component of the Services may be priced by one method (for example: a percentage fee for A.2 *Design development*) and another component of the Services on another (for example: Time-based monthly rates for A.6 *Contract administration*). In this case you should show both fee bases selected for that component of the Services and clearly insert the relevant amounts in the respective lines in Item 1 or Item 2 for that service, or tick the corresponding boxes if Time-based rates apply.

Your Fee is also a function of and proportionate to those Services which are included and set out in **Schedule A**. Schedule A has 3 columns you can use to identify which components of the Services are included in the Fee: Included, Excluded and Additional. You can use these check boxes to 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), or those which are deliberately excluded and you cannot or will not provide those components. 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, for any line item that is unmarked or ambiguous, the disclaimer at the top of Schedule A states that this item is by default excluded from the Services. This way, you have the discretion for any service in the Schedule that doesn't have a clearly marked box, whether it was intended to be included or not—and a Client couldn't argue that an ambiguous line item should be considered included in the Services for the Fee.

If after the CAA2024 is signed and the Services have commenced there is a change to the Services and Fees for additional services is required or requested, the Architect and the Client must follow the procedure in clause D.8 (see *Change to the Services* below).

**Practice tip:** You might consider including your practice's hourly rates in Schedule B, Item 2 which are the schedule rates you can then nominate for the method to calculate the adjustment to the Fee for a particular change to the Services.

If there is a discrepancy between the allocation of percentage or lump sum fees to the individual services or stages of the project (see Schedule B, Item 1), or an ambiguity or some missing detail or figure, the respective Total Percentage or Total Lump Sum Fee shown in Item 1 is the amount that takes priority and will apply as the Fee. When completing the details in Item 1, always double-check that the percentages all add up to the Total Percentage Fee amount (which may not be 100%) or the Total Lump Sum Fee (excl GST) amount, depending on the Fee model you have agreed on.

## D.1 FEES PAYABLE

The Client is required to pay you the Fee, plus all adjustments required under the CAA2024, plus all applicable Disbursements, in exchange for the Services.

Adjustments may be required due to:

- Protracted Services – clause A.5;
- Suspended Services – clause A.6;
- Changes to the forecast and final Cost of Works – clause A.3;
- Changes to the scope of the Services – clause D.8; or
- Additional Specialist Consultants – clause E.2.

## D.2 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, clearly identifying:

- your practice's name and its ABN
- the GST component and GST-inclusive amounts
- the respective amounts relating to the Fee and Disbursements being claimed in that invoice.

**Practice tip:** If you are unsure how to prepare a tax invoice, seek accounting, business or taxation advice or refer to the general guidance provided by the Australian Tax Office <https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/tax-invoices>.

Fees stated in the CAA2024 on any basis (whether percentage based, lump sum or at Time-based rates) are exclusive of GST. This is made clear in clause H.10. Ensure you display the GST component and then add GST for each relevant tax invoice, unless the item in Schedule B identifies it as a non-GST item.

## D.3 PAYING CLAIMS

Under the CAA2024, by default the Client must pay the amount in a claim for payment within 10 business days after receiving it.

However, clause D.3.1 and Item 7A of the CAA2024 lets you nominate a shorter or longer period of time for the Client to pay your invoices—colloquially referred to as the 'payment terms'. What this period of time should be is a business matter for your practice to consider and decide on.

Invoices unpaid by the due date are subject to the penalty interest rate set out in Item 7B, which will be calculated from the payment due date up to the date all outstanding amounts are paid.

Whatever the rate of interest you intend to charge on unpaid invoices is a business matter for your practice to determine. You might select a flat, fixed rate or a variable 'reference' rate based on commercial or retail banking rates, or other official reference rates such as under legislation or official determinations of 'penalty' rates of interest.

However, you should be aware that an interest rate that is 'too high' might be considered unreasonable and can be challenged at law. Whether a late-payment interest rate is reasonable should be considered against the cost of borrowing, common business practice, and perhaps as a proportion of the invoiced amount. If the Australian Consumer Law applies to your Client and the contract, the Client may have a right to object to the late-payment interest under the unfair contract terms provisions. If they do, you should get legal advice.

**Practice tip:** As a very general reference, in the current business climate, a late-payment interest rate that is effectively 25% or more per annum runs the risk of being unfair or even a penalty at law, which could be challenged by the Client in court and made inapplicable.

### **Overdue payment**

You have options to secure your right to be paid. Under the contract you have the right to suspend the Services while a payment under a properly submitted invoice remains overdue. An invoice becomes overdue if the Client has not arranged to pay it in full within the period of time you stated in Item 7A (or the default 10 business days).

It is at your discretion to choose whether to exercise this right to suspend. If you do so, then clause A.6.2 also applies to protect your right to be paid the Fee for your Services as well as additional reasonable costs you actually incur to suspend, and then resume, the Services (see also clause A.6 above).

## **D.4 PERCENTAGE FEE**

Clause D.4 deals specifically with percentage fees. It provides that your Fee is to be calculated and updated or adjusted relative to the Cost of Works on an on-going basis as the Project develops. The eventual amount of your Fee is also 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 in the guidance above, but also that the Fee amount will be adjusted when the final Cost of Works is determined and that the Client may need to pay a further, final component of the Fee. 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 that have already been paid for completed Services if the Project (and the Cost of Works accordingly) is revised downwards or if the scope of the Services is later reduced (clause D.4.3). This is intended to preserve the original contractual bargain that the parties agreed at the outset, that will be the

forecast cost and the ‘minimum’ Fee that you would be paid for the Services on this Project.

## D.5 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 the included and excluded services for each item in Schedule A.

Clause D.8 provides that if the extent of the Services changes (by adding, reducing or changing the nature of the Services), 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 components of the Services, while fees for other items of the Services can be charged on a percentage basis, or at time-based rates.

If a Mobilisation Fee applies, then subject to the applicable Code of Practice, this can only be stated as a lump sum at line A.O of Item 1.

## D.6 TIME-BASED RATE FEE (FORMERLY HOURLY RATE FEE)

If your Services are to be calculated on a rate based on a time unit, these rates (commonly referred to as ‘scheduled rates’) must be set out in Item 2 for each of the personnel working on the Services or the services being provided. Where Time-based rates (commonly hourly rates) arise during the course of the project and are not stated in Item 2, they will then need to be agreed in writing in accordance with the procedure in clause D.8, before the additional services are provided.

If requested by the Client, you must within seven (7) days provide time sheets or other documentary substantiation of the hours you are charging. Substantiating documents may be provided in printed or digital copy.

Time-based 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 Time-based 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). You must then insert in Item 2 the intended rates and alongside in the far-right column select the intended time unit: hour, day or month. You may also use the editable version of this schedule to edit this and insert a different time unit.

Clause D.6.3 allows you to adjust each of your Time-based rates in line with the Consumer Price Index (CPI) for All Groups, being Catalogue Number 6401.0 that is published by the Australian Bureau of Statistics <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>. The CAA2024 contract doesn’t specifically set out the formula for making this indexation calculation on your rates. This calculation is a generally accepted one, but if you are not sure seek accounting or business advice or refer to the general guidance provided by the Australian Bureau of Statistics <https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/use-price-indexes-contracts>.

## D.7 DISBURSEMENTS

Under the CAA2024, 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 D.7 also says that you are entitled to add an administration or 'service' fee of 15% to the Disbursement cost to cover your administration costs in incurring the Disbursements which you paid and are reimbursable to you. Disbursements the Client is required to pay directly do not have this service fee applied.

There is a space provided in Schedule B, Item 3 to set out the basis on which a given Disbursement will be charged. It is good practice to make this clear and establish this from the outset, to avoid queries from or misunderstandings with the Client.

Practice tip: Use the space in the far-right column of Item 3 to add comments or clarifications about the rate, basis and GST status to better explain the Disbursement or any conditions for the Client.

## D.8 CHANGES TO THE SERVICES

Clause D.8.1 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 first step under the CAA2024 is for you to promptly tell the Client in writing how the impact or proposed change to the Services will affect the Fee. Depending on the circumstances of the change to the Services, the change to the Fee may involve a fixed or proportionate increase or decrease in the Fee; and you may nominate a different method or basis (from Schedule B) for calculating that change to the Fee.

The parties must then meet or communicate in order to negotiate in good faith:

- what the agreed change in the scope of Services is;
- 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 (this may be a past date, if some part of the changed Services were performed); and
- what reimbursement to the Architect is due for those Services already performed.

Practice tip: 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.

A Client may request having their representative or legal adviser at such negotiations and this would be a reasonable request and expectation. If the Client attends with their legal adviser, we strongly recommend that you also get legal advice and would be entitled to also have your legal adviser there.

Clause D.8.2 tells the parties that where an agreement under clause D.8.1 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 D.8.1(d) for services already performed, in their next claim for payment (see also clause D.2).

If the parties cannot agree on the changes to the scope or the Fee, the procedure in clause D.8.3 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 CAA2024; and
- Step 2: The Architect must then give the Client 10 business days' notice of their intention to terminate – and clause K.2.2 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 A 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 D.8.3(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 continue to perform the original or the changed Services unless the Client agrees to a change to the scope and your 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.

## E. SPECIALIST CONSULTANTS

This Section describes the role of Specialist Consultants, which party will engage them, and how they will be paid.

Part of the Services you provide under the CAA2024 (if included in **Schedule A**, Item A.1) is to give recommendations to the Client about which consultants you consider necessary for the Project, and the likely amount, or percentage basis, their fees will be.

Item 4 contains a list of probable types of consultants with a number of blank spaces to add any other Specialist Consultants which at the outset you consider necessary for the Project.

Clause B.6 encourages the Client to directly engage Specialist Consultant(s) required for the Project and to consult with you when doing so. These Specialist Consultants are 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 E.1.3(c)); 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 E.1.3(d)).

As part of typical services under the CAA2024, you agree to coordinate the services of any Specialist Consultant required. The Client is required 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 E.1.3(a)).

**Practice tip:** Do not agree to pay on behalf of the Client any Specialist Consultant engaged by the Client, not even as a ‘disbursement’. Offering to pay on behalf of the Client may be inconsistent with the Client’s contract with the Specialist Consultant and risks leaving you out of pocket without a clear contractual right to be reimbursed by the Client for that and having to resort to debt collection or court action.

If a Specialist Consultant is to be engaged directly by the Client, clause E.1.3 sets out the terms on which the Client must engage them. Clause E.2 covers the situation where the need for additional Specialist Consultants not already specified in the CAA2024 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 or reimbursable to you by the Client.

## F. INTELLECTUAL PROPERTY

This section covers copyright and moral rights of The Design, all information and materials provided by the Client to be used in the Services, and facilitating electronic data transfer.

The provisions in section F seek to protect your rights and interests in The Design. For the purposes of the CAA2024, ‘The Design’ is both the conceptual intellectual property you design and create for the Client, as well as the physical (or digital) drawings and documents you create in connection with the Services you perform. The Design is defined in section M (*Definitions*).

Note: The provisions in section F have changed materially from the former CAA2019 and the superseded 2009 contract. The Institute recommends you carefully read and be familiar with all clauses in section F of CAA2024.

### F.1 COPYRIGHT

The Design you create for the Client under the CAA2024 is considered an ‘artistic work’ that can attract copyright under the *Copyright Act 1968* (Cth). 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 author(s) unless a co-author has waived that moral right. Correctly acknowledging the author of a creative work is also referred to as ‘attribution’ and it is a legal right that is protected by the *Copyright Act*.

(See *Acumen* note copyright <https://acumen.architecture.com.au/practice/legislation/copyright/> for further information).

Under clause F.1 you retain copyright in and give the Client an express licence to use the Services and The Design. The Design is defined as the design concepts, drawings and documents you produce or deliver under the CAA2024 for the Client’s Project. This means you continue to ‘own’ the copyright in your design and not the Client. The CAA2024 gives the Client a specific right (a copyright licence) to use The Design for its Project, but only on the Site of the Project. The Client may also pass on that licence to those parties who need to, for example, 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, and is subject to the conditions in the CAA2024 which are explained 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.

### **A contractual and specific copyright licence right**

Paragraph F.1.2(a) makes it clear that the Client doesn't get and cannot claim any 'implied' copyright licence. The Client is given only the copyright licence on those contractual terms and conditions expressly set out in the CAA2024.

Paragraph F.1.2(b) 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 the Client to ensure it pays for your Services and does so on the payment terms as stated in your contract. After all, the copyright in your design is your professional stock in trade – it is valuable and worth protecting via the contractual conditions of the CAA2024.

Paragraph F.1.2(c) has the effect that the Client's contractual copyright licence is automatically revoked (withdrawn) if the Client takes any action which changes the Client's ownership or legal interest in the Site. This also includes actions by third parties: such as a subsequent purchaser of the Site, an administrator or liquidator, a mortgagee, or the Client's landlord. You can choose to reinstate the licence at your discretion after receiving a written request by the Client. If the Client makes a request, you must be reasonable in deciding whether to consent to reinstating the licence.

You cannot unreasonably refuse to reinstate the licence if the Client requests. 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 licence was revoked. For example, if the Client has not paid your Fees owing, then it would be reasonable for you to not consent to reinstate, unless and until those outstanding Fees are paid to you.

Clause F.1.3 set out the Client's warranties (legally binding promises) to you about how it will and will not use The Design. If the Client breaches clause F.1, then this will trigger the indemnity right in clause F.3 (refer below) and the Client is required by the CAA2024 to automatically indemnify you against all your loss and reasonable costs you incur as a result of breaching that warranty promise. The costs can include your legal fees if you need to resort to legal action or to enforce your copyright in court, in connection with The Design or the Project.

### **Using materials provided by the Client**

There may be circumstances in which the Client asks you to work from, incorporate or develop information or documents that the Client gives you. Under the CAA2024, any such document or information can be 'Client Information'. The Client gives additional warranties (promises) and protections via clause F.1.4. The Client promises that the Client Information it gives you will not offend the rights any third-party might have in those documents or information. If these promises aren't kept, or the Client doesn't take steps for example,

to secure copyrights, satisfy moral right obligations or protect confidential information, then breaches of those obligations are the Client's breach and not the Architect's.

The overall effect of this clause gives you clearance to use the Client Information and supports you to defend against potential claims or liabilities such as for breaching rights another person has in any Client Information. The common scenario this clause seeks to protect you from is if a Client asks you to develop a design that was originally created by another architect or designer. See also *Code of Professional Conduct* <https://www.architecture.com.au/wp-content/uploads/Institute-Code-of-Professional-Conduct.pdf>, Principle 4 and Acumen Note Architects and Copyright <https://acumen.architecture.com.au/practice/legislation/copyright/architect-and-copyright/>.

### **Copyright when the Services are completed**

Finally, you need to be aware that under Clause F.1.5, 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 have specifically agreed to this with the Client via a special condition in the CAA2024 or by some other legal method of transferring the copyright to the Client (or the Client's nominated party). While it is not recommended to transfer ownership of your copyright, a Client may request or require this and you are free to agree to do so.

## **F.2 MORAL RIGHTS**

In addition to copyright, the author or creator of an artistic work has legal rights to be correctly recognised as the author of that work and to be attributed as the author in the way that they require. The author can be a single architect, or various architects and other contributors to the design, or the architecture practice. These rights are protected at law.

This clause confirms your contractual right to be attributed for The Design by using the exact 'form of attribution' you stated in Item 5.

These rights of every 'creative' author of a 'work' like an architectural design are protected and given legal effect in the commonwealth *Copyright Act*. For more information, see *Acumen* note Moral rights <https://acumen.architecture.com.au/practice/legislation/moral-rights/>.

The Client must take positive steps to correctly attribute you or your practice (per Item 5) as the author of The Design, in all representations or information about the Project. It doesn't matter what format or manner that representation, statement or information is expressed in and includes digital, printed and audio (including spoken) media. Similarly, the Client must correctly attribute the authors of the design, even before the Project is complete and after. This will include any architectural or design awards use, plans submitted to council and marketing and promotional material including real estate agent's signage boards.

To enable the Client and other parties to use the correct form of attribution, without impinging on the moral rights of the Project's authors as the *Copyright Act* requires, you must obtain the necessary consents from all authors of and contributors to The Design. For example, in the case of an architecture practice wanting to be attributed as the practice (rather than singular architects), the practice would need to secure written consents from all authors that include employees, consultants, and contractors who contributed to The Design.

## F.3 ARCHITECT IS INDEMNIFIED FOR SPECIFIC BREACHES

A contractual indemnity is a right under a contract, for one party to compensate the other for specific losses or breaches of promises.

This clause F.3 achieves an indemnity in your favour, so that the Client must compensate you for the specific liabilities, losses and costs you suffer if the Client breaches the promises it makes in clause F.1:

Protecting your copyright in and not mis-using The Design, such as using The Design on a different project or site or allowing others to use or modify The Design.

That the Client Information does not breach confidentiality or infringe another person's copyright or moral rights.

Note that the contractual indemnity right to be compensated doesn't apply in the case that the Client breaches its obligation attribute or observe your moral rights under clause F.2.

The indemnity is intended to only compensate you for liability, loss or reasonable costs that you actually incur. If you need to exercise the indemnity, you'll be expected to show that you have actually suffered a liability, loss or incurred cost.

As one foreseeable example: the Client engages another designer to take a partially complete design you created for the Site and to complete it for a cheaper fee or to re-purpose it to be used on another project site. In this scenario, this could represent a 'loss' to you in the form of fees you would have earned to perform that service based on your design and copyright, or for the Client's other project, but you missed out on because of the Client's actions.

Liability, loss and costs can also include, for example, a scenario where a third party seeks to sue you for infringing their copyright that appears in The Design you created, but that this happened because of something in the Client Information that your Client gave to you and directed you to incorporate into The Design. In that scenario you might incur liability to the third party, losses to pay them compensation, and legal costs to defend any legal action.

Practice tip: If you think that the Client has or may be at risk of breaching one or more of these obligations or promises, you should promptly get legal advice. This area of law can be complicated and whether the facts and circumstances correctly trigger the right to be compensated under an indemnity are not always clear cut.

## F.4 ELECTRONIC DATA TRANSFER

You can issue data electronically (in digital format) and clause F.4.2 clarifies that you are not contractually responsible for the accuracy, completeness or contamination of such data. This extends to any loss of data or digital information due to sending or storing digital files or translating to other file formats. This is a protection for the Architect's benefit because data can be impacted or corrupted in ways beyond the Architect's control, and even despite the reasonable steps a practice could take to set up and operate its IT networks, systems, software and users.

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. These costs could include your time and any third-party cost you incur to achieve the file-conversion on behalf of the Client.

The default file format under the CAA2024 is PDF format (see Schedule A, Item A.1 and in the event of termination, see clause K.2.2(b)).

## F.5 BUILDING INFORMATION MODELLING (BIM)

If the Client requires, and the Architect agrees, to use BIM in delivering the Services, the Client agrees to specify which protocol is to apply to BIM, and the Architect's Services must comply with that protocol.

Importantly the qualification and conditions in clause F.4.1 to F.4.3 (above) also apply to all BIM electronic data that is issued or transmitted by the Architect.

For further information on BIM, see *Acumen* note: <https://acumen.architecture.com.au/project/bim---building-information-modelling/>.

## G. INSURANCE AND LIABILITY

You agree to maintain insurance cover for public liability, professional indemnity (**PI**) and workers compensation. For all architects, PI insurance is mandatory under the Architects Acts and the code of conduct that applies in the relevant state or territory.

If you are a non-architect delivering services under a CAA2024 contract, you should seek legal and insurance advice on your liability, prospects of securing cover, and how to amend the provisions and Schedules of the CAA2024 if you cannot secure suitable insurance cover for the services you are to deliver under this contract.

For professional indemnity and public liability, you can specify dollar value levels of cover for each in Schedule B Item 6. 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 the current level of your insurances (please also refer to explanation under G.2 below), before agreeing to insert an amount in Item 6.

Under the CAA2024, you are required to have the stated insurance policies in place for at least as long as you are providing the Services under this contract. This is the minimum period required under the contract and should not be confused with your professional insurance obligations at law. The Architects Acts require you to continue to hold insurance at all times you are providing architectural services. It may also be prudent for you to consider other typical insurance policies you or your practice should hold, including run-off cover if you have stopped providing architectural services.

## G.2 YOUR LIABILITY TO YOUR CLIENT

Clause G.2.1 can operate to put a legal limit on your liability exposure to the Client. Under the CAA2024, 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 or contract at the same time. These considerations are also relevant to your policy's per-claim cover limit (if applicable).

Paragraph G.2.2 limits the type of liability that the Client may claim against you, by restricting the losses to the Client's loss or damage it directly suffers – and not other types of losses which the law considers are indirect, consequential or special (which include those types described in the brackets of the paragraph. For example, a commercial developer Client is prevented from claiming 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 due to other causes.

Architects should be aware that a contractual limitation of liability or capped amount under clause G.2.1 is only effective in relation to *liability to the Client* for professional Services you delivered under the CAA2024. Clause G.2 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, or for actions or 'public liability' type events which might happen on a Site.

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 G.2.3 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 or how the ACL applies to your Client or the services, you should seek legal advice.

## H. GENERAL CONDITIONS

Clause H set out the conditions of the CAA2024 that apply generally to your dealings with the Client during the Project.

You and Client generally agree that:

1. All consents, approvals, requests, notifications or notices under the CAA2024 must be in writing – and an email will satisfy the 'in writing' requirement;

2. All variations to the CAA2024 only become effective once put in writing – again, email will be effective unless the parties agree otherwise;
3. Neither you nor the Client can assign, novate or transfer the CAA2024, but the other party can give written permission to do so;
4. The laws in the state or territory where the Site is located apply to the Project and the CAA2024 contract;
5. Nothing in the CAA2024 reduces or makes your protection at law from liability less effective;
6. The CAA2024 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;
7. The CAA2024 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 Practice);
8. Allow five (5) business days after a notice or document is posted and (10) business days if posted to or from overseas; and
9. If a notice is sent by email after 5pm, everyone can assume it is received at the beginning of the next business day; and
10. If any dollar amount in the CAA2024 doesn't identify the GST status, the parties must assume it is GST exclusive, that is, the parties must add the GST to the amount displayed.

Practice tip: to have the benefit of paragraph H.6, it is good practice to check that the contract (including all Special Conditions) accurately reflects the discussions, emails and requirements communicated and that these are understood and acknowledged between the parties before it is signed.

## I. SECTION HEADING IS NOT USED

This heading is not used in the CAA2024, to avoid confusion when referencing clauses.

## J. DISPUTE RESOLUTION

This clause sets out the process for dealing with disputes under the CAA2024 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 D.3.3).

**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, clause J.2(b) provides that either party may refer the dispute to mediation by delivering a written proposal of mediation to the other.

Clause J.2(c) requires the proposal to 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:** under clause J.2(d), you and the Client must agree in writing on the mediator within five days after either party delivers the proposal. If the parties don't or can't agree, either party (usually the proposer) must formally ask the Chair of the Resolution Institute to nominate the suitable mediator.

Resolution Institute contact details:

Address: Suite 602, Level 6, Tower B, 'Zenith Centre' 821–843 Pacific Highway, Chatswood NSW 2067

Postal address: PO Box 440, Chatswood NSW 2057

Email: [infoaus@resolution.institute](mailto:infoaus@resolution.institute)

Website: <https://resolution.institute/>

Telephone: +61 02 9251 3366

**Step 5:** clause J.2(e) requires that the mediation must follow the Mediation Rules of the Resolution Institute in the relevant state or territory, and that neither party will be required to pay more than half of the costs of mediation.

**Step 6:** if the mediation is unsuccessful, only then may a party take legal action that is outside this procedure, to resolve the dispute.

## K. TERMINATION

There are three broad scenarios where a party may terminate the contract:

1. Termination by the Architect for a Client's breach of an important obligation.
2. Termination by either the Architect or the Client, without needing a reason.
3. Termination by a Client for the Architect's insolvency or a serious breach.

Under the CAA2024, each of these termination scenarios require the parties to then follow the stated set of actions, rights and consequences of terminating. See *Actions and consequences following termination* below.

### 1. Termination by Architect

Under clause K.1.1, if the Architect is of the opinion that the Client has breached or not strictly complied with a material provision of the agreement, then the Architect may terminate immediately by giving the Client a notice. This will not affect your other rights or entitlements. Though you are not required to give a notice period of your intention to terminate, you may consider it reasonable to nominate a reasonable period of time so you can wind-down the services in an orderly way, before the termination takes effect.

A "material provision" can be any obligation under the CAA2024 that goes to the major and serious rights and obligations in the contract, not just something incidental. The clause clarifies that the material provisions

of this contract include, but are not limited to, the obligations listed in clause B (*Client Obligations*) and clause D.3 (*Paying Claims*).

If terminated by the Architect, then the parties must follow clause K.4.

## 2. Termination by either party, without needing a reason

Either party may at any time terminate the agreement under clause K.2.1 by giving the other 30 business days' written notice of their intention to terminate.

If a party wishes to terminate in this way, the contract does not require that party to give a reason for deciding to terminate—but a party may indicate reasons.

However, the requirement to give 30 days' notice is important and allows the other party to make necessary arrangements following the termination and for the Architect to wind-down the services in an orderly way. Termination of the contract then takes effect at close of business on that date that is 30 days after the notice is given.

If terminated by either party in this way, then the parties must follow clause K.4.

## 3. Termination by the Client

Under clause K.3, the Client can choose to terminate immediately by notice in writing if you either become insolvent or bankrupt, or commit a *material* breach of your obligations under clause A.1 or G.1. The Client must first send you a notice that specifies the breach and must reference clause K.3.2.

You then have 10 business days after receiving that notice to resolve or fix such a breach but if you don't, then the Client's termination will be effective immediately. If you receive a notice like this from the Client, you should promptly take steps, including regular communication with the Client, to attempt to resolve or remedy the breach that the Client is alleging.

The nature of the breach of any one of the Architect's obligations need to be a "material" one, which means that it can't be a fleeting, or temporary breach or a breach of an incidental or secondary requirement that doesn't go to the critical obligation under the CAA2024. What is a "material" breach will depend on the circumstances. For example, failing to secure the renewal of a professional indemnity policy, or securing a policy for an amount of cover that is *less* than the figure stated in Item 6, is likely to be a "material" breach. Whereas, being issued with a new professional indemnity policy that has a new 'exclusion' or condition that doesn't suit the Client or its project, is less likely to be considered a "material" breach. If the parties to a contract fall into dispute over termination and their final rights and entitlements, ultimately, it is for a court to determine whether the breach was "material".

If your Client is alleging that you have breached an obligation and has threatened or is threatening terminating the contract, you should promptly get legal advice.

If correctly terminated by the Client, then the parties must follow clause K.4. Note there is an exception in clause K.4.2 in the event that the Client is exercising the right to terminate for a material breach by the Architect of its professional or insurance obligations. If that's the case, then the Architect won't have the benefit of the 'no claim' protection that clause K.4.2 is intended to give.

### **Actions and consequences following termination**

If one party correctly terminates the contract under any of the scenarios explained above, the parties must then follow these steps and obligations, as stated in clause K.4.

If either party correctly terminates under clauses K.1, K.2, K.3 or clause D.8.3 (*Change to the Services*), the Client must pay:

- the amount of all Services completed prior to the date the notice to terminate was delivered; and
- the amount of Services that reasonably need to be carried out, and reimbursable costs or expenses reasonably incurred, in order to end the Services, up to the date the agreement terminates.

Reasonable actions during 30 days' notice: In the case of termination under clause K.2 (*Termination, without reason*), any 'final' services you carry out in that period between giving notice and the duration of the 30 days must be reasonably undertaken. The Architect should act reasonably during this period by avoiding any actions or incurring expenses or performing services which might objectively be considered frivolous or opportunistic or unnecessary to the purpose of winding-down and ending the Services and issuing a copy of The Design as required under clause K.4.1(b).

Architect issues PDF of final design: When you are paid all outstanding final fees and disbursements, you must then issue to the Client a PDF copy of The Design (as defined in clause F.1) as it is at the date of termination and a copy of relevant documents relating to the Services up to that point in time. This doesn't in any way require you to further develop or 'finalise' The Design during the 30 days' notice period. You merely need to prepare a reasonable digital PDF version that you can issue to the Client, only to the extent that The Design had been developed (and you've been paid for) up to the date of termination.

'No claim' protection for terminated Services: Once you've issued that PDF document, clause K.4.2 prevents the Client from attempting to make any claim against you alleging that the Services or The Design or the PDF document you issued is inadequate or incomplete. This 'no claim' provision is reasonable because termination implies the Services are ended prematurely and The Design and documentation will necessarily be inadequate and incomplete for the purposes of constructing The Design or applying for permits. However, this 'no claim' protection of clause K.4.2 does not apply to your benefit, if the Client correctly terminates under clause K3.2 (*Termination for Architect's breach*) and the reason or cause for the termination is your breach of a professional or insurance obligation as is stated in clause A.1 or G.1.

Copyright licence to use The Design on full payment: Remember that under Clause F.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 as it was up to the date of termination (being the date of the notice plus 30 days).

**Practice tip:** The parties to any contract are free to mutually agree to modify their termination rights and obligations, but you shouldn't agree to do so without first getting legal advice.

## L. SPECIAL CONDITIONS

This clause is effective to incorporate the special conditions that the parties write into Schedule C: Special Conditions in the contract you form with your Client. The effect of this clause is that a special condition inserted in Schedule C operates and applies in priority to and a way that overrides every other condition or provision in the CAA2024. So, to the extent that the special condition is inconsistent with a written condition or provision of the CAA2024, that special condition must be applied and complied with in priority.

For this reason, the Institute recommends that you do not amend the CAA2024 except by inserting special conditions in this Schedule C and that both parties get their own legal advice to assist writing and incorporating appropriate special conditions. This way, you also avoid the risk that special conditions inadvertently change the conditions of the CAA2024 in a way that was not intended or is not effective at law or attracts contractual or other liability that may not be covered under an insurance policy.

Also, if you amend the conditions some other way or without bringing these changes to the attention of the Client, there may be consequences under the Australian Consumer Law (ACL), the ACL's unfair contract terms protections, and even inadvertently breaching the Institute's copyright in the CAA2024.

Note: The Institute's Senior Counsellor service is available to provide professional and practical guidance, but neither the Institute nor the Senior Counsellor service can give you specific legal advice about any given contract, nor the effect of a proposed special condition or other proposed modification of the contract.

## M. DEFINITIONS

This section lists all definitions for key terms used in the CAA2024. Where a term is capitalised, this indicates it is a defined term. You should become familiar with the wording and concepts for each defined term.

Note that the legislation and codes of conduct listed under the definition of 'Code of Practice' can change over time. It is an architect's responsibility to be familiar with the applicable Architects Act and related professional requirements under a Code of Practice.

## 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 CAA2024 contract as an attachment to the letter which sets out the final, agreed details of your engagement.

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