

NSW

Architects Registration Board
L2, 156 Gloucester Street
Sydney NSW 2000

T. +61 2 9241 4033
mail@architects.nsw.gov.au / www.architects.nsw.gov.au
ABN 63-092-097-847

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) STANDARD TERMS

THIS CONTRACT IS COMPRISED OF OUR LETTER OF OFFER (INCLUDING THE ATTACHED SERVICES SCHEDULE) AND THESE STANDARD TERMS

NSW ARB TERMS OF USE: The NSW ARB has created this **contract** and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003* (NSW). The NSW ARB asserts copyright over this **contract** and permits use of this **contract** for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this **contract** that the standard terms of this **contract** are pro forma in nature, that the NSW ARB is not a party to this **contract** or to the operation of this **contract** and has no responsibility for, or in respect of the use of, this **contract**. Use of this **contract** by a party constitutes acceptance of these terms of use.

NSW ARB WARNING: *The Standard Terms in the SFACC are intended for use without amendment. Legal advice should be sought by anyone intending to make amendments to the Standard Terms.*

1 KEY SERVICE PROVISIONS

1.1 Architect's Responsibilities

The architect must:

- (a) perform the services agreed with the client ("you") from the **services schedule** and as separately agreed:
 - i. with integrity and with reasonable professional skill, care, diligence and promptness expected of an architect engaged on projects similar to the project to which the services relate and in compliance with the code of conduct; and
 - ii. in accordance with relevant laws, standards, codes and guides.
- (b) only offer services within the architect's skill and competency.
- (c) communicate with you reasonably promptly, respectfully and regularly.
- (d) provide relevant information to you in writing in relation to the services agreed to be provided and the matters set out in clause 6 and 8 of the **code of conduct** ("the key information").
- (e) confirm in writing with you the key information discussed and your instructions.
- (f) agree on reasonable time frames with you having regard to the nature and extent of instructions provided.
- (g) provide the services in accordance with the agreed time frames.
- (h) advise you as soon as the architect becomes reasonably aware of any delay in meeting an agreed timeframe, explain the basis for the delay and endeavour to reach an agreement on a new reasonable timeframe with you.
- (i) advise you to obtain specialist advice or services from a suitably qualified person other than an architect if the architect believes it is in your interests to do so.
- (j) advise you as to the progress of the services, in a manner and frequency agreed with you.
- (k) manage cost expectations by:
 - i. requesting a **preliminary budget** during **design brief** communications;
 - ii. providing a return **design brief** to you before proceeding with concept design(s);
 - iii. providing an initial indicative **opinion of probable cost of works** (a range if

appropriate) with the concept design(s) in accordance with clause 2 of this **contract**; and

iv. notifying you of:

- (A) each material matter likely to see a change including an increase in the cost, duration, or complication (buildability) of the works ("the change"); and
- (B) the need for you to provide clear instructions, confirmed in writing, about how the architect is to proceed based on the change.

(l) comply with the architect's obligations in relation to record keeping and your entitlement to inspect certain records as set out in the **code of conduct**.

(m) comply with the architect's disclosure of 'conflicts of interest' obligations under the **code of conduct**.

1.2 Client's Responsibilities

You must:

- (a) be prepared before initially meeting with the architect (the **design brief** meeting) and at every subsequent agreed meeting with the architect.¹⁰
- (b) communicate with the architect:¹¹
 - i. promptly, respectfully and regularly to avoid delay costs and maintain momentum;
 - ii. to agree on timeframes;
 - iii. to provide all information, documents and directions required by the architect to perform and complete the services;
 - iv. to fully co-operate and ensure the efficient performance of the services;
 - v. to provide timely feedback and approval for each stage before the architect continues to the next;

¹⁰ **Explanatory Note 10:** *In preparing for a design brief meeting, you should give clear thought to:*

- whether you are exploring a new build, alterations and additions, renovation or possibly all of the above;
- the type of rooms or structures (e.g. swimming pool), and number of rooms envisaged to be built, altered, added or renovated; and
- your preferred aesthetics, styles and construction materials.

Also consider preparing photo albums, a scrap book of ideas, Pinterest accounts etc.

It is recommended you read:

- 'Working with your Architect' Consumer Guide: <http://www.architects.nsw.gov.au/download/WORKING%20WITH%20YOUR%20ARCHITECT%20CONSUMER%20GUIDE.pdf>
- NSW Architects Code of Professional Conduct, which also refers to clients: <https://www.architects.nsw.gov.au/download/NSW%20ARCHITECTS%20CODE%20OF%20PROFESSIONAL%20CONDUCT%202017.pdf>

¹¹ **Explanatory Note 11:** *It is very important that you communicate clearly with your architect at all times. Lack of communication is a major cause of misunderstandings that can lead to relationship breakdowns.*



- vi. if you become aware of being unable to comply with the preceding points at all or in accordance with agreed timeframes; and
 - vii. if you are not happy with something.
- (c) manage cost expectations by:¹²
- i. providing a reasonable **preliminary budget** during **design brief** communications;
 - ii. providing a carefully considered **design brief**; and
 - iii. providing clear instructions, confirmed in writing, about how you want the architect to proceed against any changes likely to see an increase in the cost, duration, or complication (buildability) of the works.
- (d) enter into direct contracts with specialist consultants that are in the opinion of the architect reasonably required. These consultant contracts will include a direct responsibility for you to pay to the specialist consultants all fees and other costs agreed under those contracts.
- (e) allow the architect reasonable access to the project site before, during and after the provision of their services.
- (f) allow the architect to erect signage at the project site.
- (g) grant permission to the architect or their agent to photograph the project and use the project, and any material generated by it, for awards programs, publications, marketing and promotion.

1.3 Earlier Services

Unless agreed in writing to the contrary, any earlier services the architect has provided or agreed to provide to you which are in any way related to the works the subject of this **contract**, shall also be subject to the terms and conditions of this **contract**.

1.4 Additional Fee for Additional Services

The architect's fee covers the services agreed to be performed in the **services schedule**. If you wish the architect to provide additional services, you need to agree a scope of services and a fee in accordance with clause 3 of this **contract**.

1.5 Stages⁹

- (a) Unless agreed to the contrary and confirmed in writing, the services shall be provided stage by stage, as follows:
- i. Design Brief & Measured Drawings
 - ii. Concept Design
 - iii. Design Development
 - iv. Development Application/Planning Permit
 - v. Construction Documentation

¹² **Explanatory Note 12:** It is crucial to the success of a project that you take an active role at all times in keeping apprised of the **opinion of probable cost of works**; in understanding the budget and the affordability of the project; and in communicating all concerns about this to your architect promptly and clearly.

You should clearly indicate to your architect whether or not you have a fixed and finite amount of money. You should also tell your architect if money is less critical and your priority is to optimise the exploration of design solutions to the brief scenario (irrespective of cost or within given financial limits).

A misalignment between budget and desired project outcomes and miscommunication between a client and an architect on affordability is a major cause of disappointment and conflict for clients and architects that can be avoided with good communication.

It is recommended you read:

- Design 'compact' to avoid disappointment (changes in costs of construction): <https://www.architects.nsw.gov.au/download/CIRCULAR%20-%20SYDNEY%20CONSTRUCTION%20COSTS%20Oct%202016.pdf>

- vi. Contractor Selection
 - vii. Construction Certificate/
Complying Development Certificate
 - viii. Contract Administration
 - ix. As-Built Documentation.
- (b) If the architect considers it will be efficient or expedient to commence more than one stage of the services concurrently, or to commence specific items from subsequent stages prior to commencement of that stage, the architect must obtain your consent, which must be confirmed in writing.
- (c) The architect must obtain your consent, which must be confirmed in writing, before selecting any contractor or consultant to perform work or services in relation to the project.

2 OPINION OF PROBABLE COST OF WORKS¹³

The **opinion of probable cost of works**:

- (a) is an architect's opinion of the probable cost to you of contracting with a contractor at arm's length to construct the works the subject of the project.
- (b) excludes such things including, but not limited to:
- i. the professional fees and disbursements of all experts including the architect's fees and disbursements;
 - ii. authority fees, taxes, levies and other charges payable to authorities;
 - iii. finance charges; and
 - iv. removal, relocation, living and holding costs.
- (c) is a figure or range quoted exclusive of GST.
- (d) is indicative only, should be considered indicative only, and will be subject to limitations (such as those set out in clause 2(h) below).
- (e) must include the rationale for the opinion arrived at (including methodology, assumptions, limitations and corresponding contingency consequences).
- (f) will vary from time to time and, depending on the status of the project, will be updated sequentially to comprise the latest of the following:
- i. an initial indicative **opinion of probable cost of works** by the architect based on the concept design;
 - ii. any updated indicative **opinion of probable cost of works** by the architect as the design is developed and approved by the certifying authority.
- (g) will be superseded, and ought not to be relied upon even on an indicative basis as and when the following occurs:
- i. an estimate is provided by a professional cost consultant, such as a quantity surveyor retained by you or another party, which will be more accurate and reliable due to their expertise in estimating the cost of projects; and/or

¹³ **Explanatory Note 13:** Your architect is neither the contractor nor a quantity surveyor. Your architect will usually conduct a high-level assessment of the indicative **opinion of probable cost of works** having regard to such broad considerations as the number of square metres, quality of finishes, published guidelines per square metre, or the like. As with all parties who provide estimates, your architect's indicative **opinion of probable cost of works** will be subject to assumptions and limitations as more fully described in clause 2 of this **contract**.

It is highly recommended that a specialist cost consultant, such as a quantity surveyor, is used to provide an estimate for the cost of the developed design, if not earlier in the design process. Clients who choose not to utilise a quantity surveyor do so at their own risk.

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) (contract)

NSW ARB Terms of Use: The NSW ARB has created this contract and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003* (NSW). The NSW ARB asserts copyright over this contract and permits use of this contract for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this contract that the standard terms of this contract are pro forma in nature, that the NSW ARB is not a party to this contract or to the operation of this contract and has no responsibility for, or in respect of the use of, this contract. Use of this contract by a party constitutes acceptance of these terms of use.

- ii. a contractor's quote for the cost of works (subject to its assumptions and limitations) has been obtained; and/or
 - iii. the contract sum in the building contract (subject to its assumptions and limitations) is agreed between you and the contractor; and/or
 - iv. the final adjusted contract price (including GST) in accordance with any building contract, including the value of any works or items which are outside the scope of the building contract but have a connection with the subject matter of the architect's services or with the project generally, is known.
- (h) the following limitations shall apply:
- i. an architect's **opinion of probable cost of works** represents the architect's best judgement as a design professional as opposed to a professional cost consultant, such as a quantity surveyor;
 - ii. the **opinion of probable cost of works** is supplied only for your guidance and any reliance is at your own risk;
 - iii. an architect has no control over such things as: the particular impact on the cost of your project in the event of difficult site and building conditions; the cost of labour and materials; the availability of suitably reputable contractors; competitive bidding; and market conditions generally;
 - iv. the **opinion of probable cost of works** is based on the architect's recent experience and adjusted to accommodate factors known to the architect at the time it is prepared;
 - v. the architect does not guarantee the accuracy of the **opinion of probable cost of works** as compared to actual building quotes or cost to you; and
 - vi. if you desire a higher level of confidence in predicting the cost of works than that provided in the architect's **opinion of probable cost of works**, you should retain as early as possible the services of a professional cost consultant, such as a quantity surveyor, for this purpose.

3 VARIATIONS

3.1 Agreement to Vary/Change

- (a) You and the architect may vary/change the scope of the services only by agreement confirmed in writing by the parties.
- (b) The following procedure is to apply to any variations or changes of the kind described under clause 3.1(a):
 - i. you must direct the **variation** (including a direction to provide services which in the architect's opinion amounts to a variation) orally or in writing;
 - ii. the architect is to confirm the terms of the **variation** in writing including:
 - (A) the scope of the **variation**;
 - (B) the **fee, hourly rates to apply**, or other proposed mechanism for valuing the **variation**; and
 - (C) whether part of the **services schedule** has been replaced and is no longer relevant.
- (c) If you do not confirm the terms of the **variation** by agreement in writing (or any amended terms satisfactory to both parties) within five business

days of receipt of those terms, the project may be delayed.

3.2 Re-Design Variations¹⁴

- (a) The architect is entitled to a **re-design variation** if the architect is directed by you to depart at any time from:
 - i. the concept design options; and/or
 - ii. the scope of the design or works;
 agreed at a previous stage of the **services schedule**.
- (b) If there is a **re-design variation**, the architect must promptly provide a written notice to you:
 - i. identifying the nature of the **re-design variation**; and
 - ii. either:
 - (A) advising you of the **fees** for the **re-design variation**; or
 - (B) if the **fees** are not reasonably capable of being determined in advance, the architect must propose a method for immediately valuing the **re-design variation** once it is completed.
- (c) If you do not within five business days of receipt of that notice confirm agreement in writing of both the scope of and the fee for the **re-design variation** (including where relevant the method for determining the **re-design variation**), the project may be delayed.

4 PAYMENT

4.1 The Architect - Tax Invoices Generally

The architect is not entitled to payment for their **fees** or **disbursements** incurred unless they provide a tax invoice to you on or after the day set out in the **services schedule** setting out:

- (a) the total value of the services performed; and
- (b) the **disbursements** incurred by the architect in respect of the project, less the payments received to date (including any administration fee set out in the services schedule).

4.2 Tax Invoice for Deposit

- (a) The architect may provide a tax invoice to you for any deposit set out in the **services schedule**:
 - i. on or after the date of this contract; and
 - ii. regardless of whether the architect has performed any services.
- (b) The deposit will be accounted for in the tax invoice the architect provides at the completion of the services or the earlier termination of this **contract**.

4.3 Payment Due to the Architect

You, as the client:

- (a) must pay the architect:
 - i. the amount of each tax invoice within the time provided for in the **services schedule**; and
 - ii. **interest** at the rate set out in the **services schedule** on any overdue payments.

¹⁴ **Explanatory Note 14:** Any change in the design or works may constitute a **re-design variation**, including, but not limited to:

- changes in the scope of works, such as adding a swimming pool or a window to the brief after the **concept design stage**;
- changes in levels, dimensions and positions of work, such as increasing the ceiling height or dropping the floor level of a garage to fit a boat after the **concept design stage**; and
- significant changes in the character of the design or quality of the work or construction materials.

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) (contract)

NSW ARB Terms of Use: The NSW ARB has created this contract and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003* (NSW). The NSW ARB asserts copyright over this contract and permits use of this contract for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this contract that the standard terms of this contract are pro forma in nature, that the NSW ARB is not a party to this contract or to the operation of this contract and has no responsibility for, or in respect of the use of, this contract. Use of this contract by a party constitutes acceptance of these terms of use.

- (b) acknowledge that the architect may deduct any overdue payments from any deposit held by the architect.

5 INSURANCE

The architect must for the architectural services being provided or to be provided to you:

- (a) maintain an appropriate policy of professional indemnity insurance;
- (b) provide you with information relating to that insurance maintained;
- (c) maintain public liability insurance (as is available upon reasonable commercial terms); and
- (d) maintain workers' compensation insurance (employers' liability insurance) (as required by law).

6 COPYRIGHT

- (a) All copyrights coming into existence in connection with the performance of the services vest in and are owned by the architect.
- (b) Subject to clauses 8 and 10 of this contract, the architect grants to you a revocable, non-exclusive, non-transferrable licence to use the documents created by the architect once only for the construction of the project at the nominated project address.
- (c) Attribution for the design must be made to the architect in any use.
- (d) The architect (or any nominee) may, in respect of the project as the architect considers desirable:
 - i. after giving reasonable notice, take such project records, including photographic records; and
 - ii. publish such materials.
- (e) The services exclude the provision of any documents in digital formats other than Portable Document Format (PDF).
- (f) If there is any dispute in relation to copyright, the provisions of clause 9 of this contract must be followed.¹⁵

7 CONSUMER LAW, RELEASE & LIMIT OF LIABILITY

- (a) Subject to clause 7(b) and to the extent permitted by law, you release, hold harmless and indemnify the architect for, from and against any actual or alleged, direct or indirect, costs, losses, damages, fines, penalties and any other monetary consequence or liability in contract, under statute or at law incurred by the architect arising out of or in connection with this contract, the works, or the project at large:
 - i. arising out of or in connection with personal injury (including death) to or affecting you or anyone, defects and property damage to or affecting you or anyone, financial loss to or affecting you or anyone, any statutory, regulatory, or supervisory investigation or proceeding involving anyone (except for the

architect where it involves the NSW ARB); and

- ii. whether arising out of or in connection with allegations made by you, a party you have contracted with, a party the architect has contracted with, or anyone else, or an authority or regulator or other supervisory body (except the NSW ARB),

except to the extent the architect is covered under their public liability or professional indemnity insurance policy as applicable.

- (b) If you are a Consumer (Consumer as defined in section 3 of the Australian Consumer Law) ("ACL") and the architect supplies goods or services to you, there may be certain guarantees applicable under Division 1 of Part 3-2 of the ACL ("Consumer Guarantees"). To the extent those Consumer Guarantees apply to:

- i. PDH goods or services supplied by the architect, the architect recognises you may have certain rights under the ACL in connection with those Consumer Guarantees as they apply to those PDH goods or services and nothing in this contract should be interpreted as attempting to exclude, restrict or modify the application of those rights;
- ii. non PDH goods or services supplied by the architect, the architect's liability to you in connection with any breach of the Consumer Guarantees in respect of those non PDH goods or services is limited (at the architect's discretion) to:

(A) in the case of goods:

- I. the replacement of the goods or the supply of equivalent goods;
- II. the repair of the goods;
- III. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- IV. the payment of the cost of having the goods repaired; and

(B) in the case of services:

- I. supplying the services again; or
- II. the payment of the cost of having the services supplied again.

- (c) If you make a claim against the architect which includes a cause of action (whether in contract, under statute or at law) other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, the architect's maximum aggregate liability to you is limited to the greater of:

- i. the cost of the goods or services charged by the architect under this contract; and
- ii. insurance proceeds actually recovered (if any) under their public liability or professional indemnity insurance policy as applicable.

- (d) A reference to PDH goods or services means goods or services which, for the purposes of the ACL, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

¹⁵ **Explanatory Note 15:** Copyright is explained in more detail in:

- Access to Electronic Files Information Sheet: <https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20%20ACCESS%20TO%20ELECTRONIC%20FILES.pdf>
- Architects and intellectual property: Protecting Your Building Plans and Designs: https://www.architects.nsw.gov.au/download/Architects%20and%20Intellectual%20Property_2017.pdf

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) (contract)

NSW ARB Terms of Use: The NSW ARB has created this contract and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003* (NSW). The NSW ARB asserts copyright over this contract and permits use of this contract for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this contract that the standard terms of this contract are pro forma in nature, that the NSW ARB is not a party to this contract or to the operation of this contract and has no responsibility for, or in respect of the use of, this contract. Use of this contract by a party constitutes acceptance of these terms of use.



8 SUSPENSION

8.1 Suspension by the Architect

- (a) If you fail to pay in full any one or more of the tax invoices provided by the architect within the time provided for in the **services schedule**, the architect may (on giving five business days' written notice) suspend the performance of all or part of the services and exercise their rights under the provisions of clause **9** of this **contract**.
- (b) In the event that:
- agreement is not reached as to the amount payable under the **dispute resolution** process; or
 - you breach the terms of payment under the **dispute resolution** process;

the architect may, if the architect still assesses you are in default, exercise their rights under clause **10** of this **contract**, without prejudice to either party's rights to dispute the validity of the termination.

8.2 Resuming Performance after Suspension

- (a) The architect may, on giving five business days' written notice, resume the performance of the services or the relevant part.
- (b) The architect must, on being paid in accordance with the process in clause **4** of this **contract** or otherwise, resume the performance of the services or the relevant part within five business days.

8.3 Consequences of Suspension

If the architect exercises their rights under clause **8.1** above:

- (a) you may not terminate this **contract** under the general law (or otherwise) without complying with the Dispute Resolution and Termination provisions in this **contract**;
- (b) the project may be delayed beyond the actual period of suspension; and
- (c) the copyright licence granted under clause **6** above is revoked during the period of the suspension.

9 DISPUTE RESOLUTION¹⁶

- (a) In the event that the parties are in dispute or disagreement or allege a breach of an obligation under this **contract**, or at law or under statute otherwise, it is a requirement that alternative dispute resolution takes place. The following **alternative dispute resolution** process must be followed:
- before commencing a formal dispute in writing, the party who initiates the dispute or disagreement including any assertion that the other party is in breach of their obligations under this **contract** or at law or under statute otherwise ("the issues") must:
 - contact the other party to discuss the issues (and any issues the other party has, which they must also raise in response) ("the discussion"); or
 - arrange a meeting to hold the discussion; and

- the other party must agree to have the discussion; and
 - the discussion is to occur in a clear, respectful, non-emotive manner;
- if after the discussion any of the issues are unresolved, a party must give a written notice ("dispute notice") to the other party:
 - setting out the issues in a concise, clear, respectful, non-emotive manner;
 - setting out how they would like to see the issues resolved; and
 - proposing a place and not less than three dates and times within a period of the next five business days for a meeting to take place to resolve the issues;
 - the other party must:
 - set out in concise, clear, respectful, non-emotive manner their relevant response to the issues including any of their own issues;
 - set out how the party would like to see the issues resolved; and
 - agree to one of the three dates and times proposed by the party for the meeting (or propose three new dates which are no later than a further period of five business days thereafter);
 - the parties must then meet in good faith and in a respectful and non-emotive manner for a resolution discussion to achieve a complete resolution of, or at least seek to minimise, the issues and to the extent there is resolution of the issues, document that resolution in writing; and
 - to the extent there is a failure to achieve a complete resolution of all the issues documented in writing within 15 business days of the giving of the dispute notice in sub-clause ii. above, this shall be a deemed failure to reach a complete resolution.

- (b) The parties are permitted to have one non-legally qualified support person attend any meetings referred to in clause **9(a)**.
- (c) In the event the parties are unable to reach a complete resolution, a party may within a further 10 business days of the date applicable in clause **9(a)v.** above, contact the Registrar of the NSW ARB requesting that the parties be referred to mediation under the NSW ARB's **alternative dispute resolution** process and the parties must then participate in and shall be guided by this process.¹⁶
- (d) In the event this clause **9** does not result in a complete resolution of all the issues, the parties may utilise their other rights under this **contract**, under statute and at law.
- (e) The existence of a disagreement does not excuse any party from performing their respective obligations under this **contract** (except those in respect of which the disagreement exists).
- (f) To the extent you are a Consumer under the ACL and have any claim under this **contract** arising out of any Consumer Guarantee, then you are encouraged to follow, but are not bound by, the dispute resolution procedures set out in this clause **9**.

¹⁶ **Explanatory Note 16:** Parties should aim to resolve any dispute or disagreement before the relationship between them completely breaks down. The Board offers an **alternative dispute resolution** pathway focused on the ability for both parties to seek a resolution to the matter in an informal and impartial setting. It is recommended that you read: <https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20%20Alternative%20Dispute%20Resolution.pdf>.

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) (contract)

NSW ARB Terms of Use: The NSW ARB has created this contract and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003* (NSW). The NSW ARB asserts copyright over this contract and permits use of this contract for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this contract that the standard terms of this contract are pro forma in nature, that the NSW ARB is not a party to this contract or to the operation of this contract and has no responsibility for, or in respect of the use of, this contract. Use of this contract by a party constitutes acceptance of these terms of use.

10 TERMINATION¹⁷

- (a) This **contract** may be terminated:
- by agreement of the parties which must be confirmed in writing; or
 - with either party giving no less than 10 business days' notice of termination in writing to the other party if there are no disputes, disagreements or alleged breaches of obligations; or
 - if there are disputes, disagreements or alleged breaches of obligations between the parties that are the subject of clause 9 of this **contract**, with either party giving no less than 10 business days' notice of termination in writing to the other party after completion of the process in clause 9; or
 - by the architect, in order to comply with the **code of conduct**, which provides that the architect must withdraw from the provision of any architectural services if the architect reasonably believes that, in the architect's professional judgment, the provision of the services would require the architect to act in a manner that the architect considers unethical, or in contravention of the relevant Act, the Regulation or the **code of conduct**. Under this **contract**, such withdrawal may occur by the architect giving no less than 2 business days' notice of termination in writing.
- (b) Upon a party giving notice of termination under clause 10(a) above, the architect must promptly issue a tax invoice setting out details of the following:
- the unbilled value of the services performed to the date of the notice;
 - the additional unbilled value of the services to be performed from the date of the notice up to the effective date of termination (if any);
 - the unbilled value of the **disbursements** incurred to the date of the notice (including any **administration fee** set out in the **services schedule**);
 - the additional unbilled value of **disbursements** (if any) incurred covering from the date of the notice up to the effective date of the termination (including any **administration fee**); and
 - allowance for monies received on account for unbilled services or disbursements.
- (c) Unless otherwise established at law, you, as the client, are liable to pay the architect the amount of the tax invoice referred to in clause 10(b) and any **interest** applicable under this **contract** in the event of late payment.

11 GST

- (a) The parties acknowledge that, unless otherwise expressly stated, all amounts of monetary consideration in this **contract** are exclusive of GST.
- (b) Unless otherwise expressly stated, you, as the client, are responsible for GST.

¹⁷ **Explanatory Note 17:** Termination of a contract is a serious matter and you are advised to seek legal advice. If termination is being considered in the context of a dispute or disagreement between the parties, you should consider the Board's **alternative dispute resolution** pathway that is focused on the ability for both parties to seek a resolution to the matter in an informal and impartial setting. It is recommended that you read: <https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20%20Alternative%20Dispute%20Resolution.pdf>

12 EXPLANATORY NOTES

- The *Architects Act 2003 (NSW)* is available online: <https://www.legislation.nsw.gov.au/#/view/act/2003/89>
- The *NSW Architects Code of Professional Conduct 2017* is available online: <https://www.architects.nsw.gov.au/download/NSW%20ARCHITECTS%20CODE%20OF%20PROFESSIONAL%20CONDUCT%202017.pdf>
- The **design brief** provided by you during the **design brief stage** is to assist your architect in assessing what can be realistically built and what options might be available to you having regard to your **preliminary budget**.
- Visit the NSW ARB online: www.architects.nsw.gov.au
- It is important to have a clear understanding of the meaning of what is a **preliminary budget** as this is a common source of confusion and can lead to dispute and misalignment between you and your architect. Here, your **preliminary budget** is not intended to be a reference to what other people might call a total project budget but typically:
 - includes an allowance for the **cost of works** (exclusive of GST)
 - includes an allowance for your architect's services and **fees** (exclusive of GST);
 - assists your architect in providing a return **design brief**; and
 - assists your architect in assessing and providing realistic concept design option(s) as well as an initial indicative **opinion of probable cost of works**.The **preliminary budget** excludes fees, taxes, levies or other charges payable to council or other specialist consultants that may be needed, including **disbursements** and the like. This is because your architect will not have investigated in detail these additional costs at this point and they will change depending on your instructions on your design from time to time; You and your architect need to discuss whether and when you would like your architect to investigate any fees, taxes, levies or other charges payable to council or other specialist consultants that may be needed on this project, **disbursements** and the like to assist you in your overall total project budget considerations. For a definition of **opinion of probable cost of works** refer to Clause 2 of this **contract**.
- Please note that an initial indicative **opinion of probable cost of works** is to be provided by your architect in writing with the concept design. This will be adjusted from time to time in writing (usually increasing) as variables occur as provided for in the definition of **opinion of probable cost of works**. The contractors' quotes and ultimately the building contract supersede the architect's **opinion of probable cost of work**. The contractor's cost of works itself is likely to change during construction as provided for in the building contract.
- Your architect's **fees** are calculated:
 - as a percentage of the **opinion of probable cost of works** as agreed for each stage of the service; or
 - as a lump sum; or
 - on the basis of **hourly rates**; or
 - a combination of some or all of these.

NSW ARB SHORT FORM ARCHITECT CLIENT CONTRACT 2019 (SFACC) (contract)

NSW ARB Terms of Use: The NSW ARB has created this contract and makes it available for use by registered Architects only, and by the community contracting with registered Architects only, in good faith in promotion of the objects of the *Architects Act 2003 (NSW)*. The NSW ARB asserts copyright over this contract and permits use of this contract for properties situated in New South Wales only, without fee at this time and until further notice. It is acknowledged and agreed by each party who uses this contract that the standard terms of this contract are pro forma in nature, that the NSW ARB is not a party to this contract or to the operation of this contract and has no responsibility for, or in respect of the use of, this contract. Use of this contract by a party constitutes acceptance of these terms of use.

8. The stages of service for architectural projects have traditionally been conceived as a series of independent activities in a linear process. However, it is increasingly recognised that the design and documentation of buildings may be a non-linear process and that stages may overlap. It is sometimes the case that more than one stage may be undertaken concurrently in the interests or efficiency and expediency. If your architect considers it is desirable to commence more than one stage concurrently, they will advise you and obtain your consent, confirmed in writing.

9. There are pros and cons to partial services, where you may pay your architect only to prepare the construction certificate or complying development certificate documentation and not the complete set of documentation required for the project to be constructed. If you decide to proceed with partial services, you should be aware that while the architectural services will cost less, there is a risk that what you set out to achieve is compromised in terms of the overall scheme or the quality of the finished project.

10. In preparing for a **design brief** meeting you should give clear thought to:

- whether you are exploring a new build, alterations and additions, renovation or possibly all of the above;
- the type of rooms or structures (e.g. swimming pool), and number of rooms envisaged to be built, altered, added or renovated; and
- your preferred aesthetics, styles and construction materials.

Also consider preparing photo albums, a scrap book of ideas, Pinterest accounts etc.

It is recommended you read:

- *'Working with your Architect' Consumer Guide:* <http://www.architects.nsw.gov.au/download/WORKING%20WITH%20YOUR%20ARCHITECT%20CONSUMER%20GUIDE.pdf>
- NSW Architects Code of Professional Conduct, *which also refers to clients:* <https://www.architects.nsw.gov.au/download/NSW%20ARCHITECTS%20CODE%20OF%20PROFESSIONAL%20CONDUCT%202017.pdf>

11. It is very important that you communicate clearly with your architect at all times. Lack of communication is a major cause of misunderstandings that can lead to relationship breakdowns.

12. It is crucial to the success of a project that you take an active role at all times in keeping apprised of the **opinion of probable cost of works**; in understanding the budget and the affordability of the project; and in communicating all concerns about this to your architect promptly and clearly.

You should clearly indicate to your architect whether or not you have a fixed and finite amount of money. You should also tell your architect if money is less critical and your priority is to optimise the exploration of design solutions to the brief scenario (irrespective of cost or within given financial limits).

A misalignment between budget and desired project outcomes and miscommunication between a client and an architect on affordability is a major cause of disappointment and conflict for clients and architects that can be avoided with good communication.

It is recommended you read:

Design 'compact' to avoid disappointment (changes in costs of construction):

<https://www.architects.nsw.gov.au/download/CIRCULAR%20-%20SYDNEY%20CONSTRUCTION%20COSTS%20ct%202016.pdf>

13. Your architect is neither the contractor nor a quantity surveyor. Your architect will usually conduct a high-level assessment of the indicative **opinion of probable cost of works** having regard to such broad considerations as the number of square metres, quality of finishes, published guidelines per square metre, or the like. As with all parties who provide estimates, your architect's indicative **opinion of probable cost of works** will be subject to assumptions and limitations as more fully described in clause **2** of this contract.

It is highly recommended that a specialist cost consultant, such as a quantity surveyor, is used to provide an estimate for the cost of the developed design, if not earlier in the design process. Clients who choose not to utilise a quantity surveyor do so at their own risk.

14. Any change in the design or works may constitute a **re-design variation**, including, but not limited to:

- changes in the scope of works, such as adding a swimming pool or a window to the brief after the **concept design stage**;
- changes in levels, dimensions and positions of work, such as increasing the ceiling height or dropping the floor level of a garage to fit a boat after the **concept design stage**; and
- significant changes in the character of the design or quality of the work or construction materials.

15. Copyright is explained in more detail in:

- *Access to Electronic Files Information Sheet:* <https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20ACCESS%20TO%20ELECTRONIC%20FILES.pdf>
- *Architects and intellectual property: Protecting Your Building Plans and Designs:* https://www.architects.nsw.gov.au/download/Architects%20and%20Intellectual%20Property_2017.pdf

16. Parties should aim to resolve any dispute or disagreement before the relationship between them completely breaks down. The Board offers an **alternative dispute resolution** pathway focused on the ability for both parties to seek a resolution to the matter in an informal and impartial setting. It is recommended that you read:

<https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20Alternative%20Dispute%20Resolution.pdf>

17. Termination of a contract is a serious matter and you are advised to seek legal advice. If termination is being considered in the context of a dispute or disagreement between the parties, you should consider the Board's **alternative dispute resolution** pathway that is focused on the ability for both parties to seek a resolution to the matter in an informal and impartial setting. It is recommended that you read:

<https://www.architects.nsw.gov.au/download/INFORMATION%20SHEET%20-%20Alternative%20Dispute%20Resolution.pdf>

