

This document is an excerpt from the NZIA Agreement for Architect Services (AAS) 2018 Standard Conditions of Contract. For the purposes of clarity, Parts A to C have been omitted. All references to fees and scope are as outlined in Beyond Architects' fee letter, which should be read in conjunction with this document. The NZIA AAS 2018 is a legal document, and the general conditions herein form the binding contract for engagement.

### D1. Parties Obligations

- 1.1 **Agreed Services:** The Architect must perform the Agreed Services exercising the degree of skill, care and diligence normally expected of a competent architect.
- 1.2 **Payment:** The Client must pay the Architect for the Agreed Services in accordance with Part C and Section D7.

### D2. Brief

- 2.1 **The Client agrees** to provide the Architect with a Brief and a Budget, which clearly defines:
  - a) the Client's requirements, preferences and priorities for the Project;
  - b) the purpose for the structure, and the types of activities and tasks likely or intended to be carried out on the Site and in relation to the structure;
  - c) the safety requirements and objectives for the Project; and
  - d) all information reasonably available to the Client that relates to the Site and is reasonably necessary for the Architect to perform the Agreed Services in accordance with this Agreement.
- 2.2 **The Client acknowledges** that the Budget excludes GST, Territorial Authority charges, the Architect's Fee and Separate Consultants' fees, hard/soft fit-out, or items supplied by others that are not part of the Architect's design.
- 2.3 **The Architect will** use reasonable endeavours to design within the Budget to Concept Design stage. The Architect will not be responsible for the costings of later design stages nor for the Project being able to be constructed within the Budget.

### D3. Authority

- 3.1 **Prior to any Agreed Services** starting:
  - a) The Client agrees to appoint an individual who has authority to give instructions to the Architect on the Client's behalf.
  - b) The Architect agrees to appoint an individual who has authority to take instructions from the Client and act on behalf of the Architect for the performance of the Agreed Services.

### D4. Stages of Service

- 4.1 **Written approval** to proceed with each stage must be provided by the Client before the Architect is obliged to commence work on that stage.
- 4.2 **Material change to the Architect's Services Materials** will not be made by the Client without the Architect's prior written consent.
- 4.3 **Unless Administration and/or Observation** are included in the Agreed Services, the Architect has no obligation to answer any questions or make site visits during/following construction. If the Architect subsequently agrees to carry out such work, the work will be subject to all the conditions of this Agreement, and will be invoiced at the hourly rates specified in Part C.

### D5. Confidentiality

- 5.1 **Confidentiality** of all information shall be maintained by both the Architect and Client for the duration of the Project, except as is required for the reasonable needs of the Project.

### D6. Separate Consultants

- 6.1 **Separate Consultants** (and their scope of services) must be disclosed to the Architect before their appointment, and their conditions of engagement must include that:
  - a) The Architect is responsible only for coordinating their services, and
  - b) The Client must give all instructions to the Separate Consultants through the Architect.

- 6.2 **The Architect** will advise the Client of any obvious and material errors or omissions in the information from the Client which the Architect should reasonably have been expected to find. Otherwise the Architect is entitled to rely on any information from, or services or work done by the Client, or for the Client, and has no responsibility to the client or any other person in relation to that information, service or work.

#### D7. Fees and Payments

- 7.1 **Accounts for fees** can be rendered monthly by the Architect or otherwise periodically. The Client must:
- pay all undisputed amounts claimed and due under this Agreement, and
  - in respect of any disputed amounts, and irrespective of whether the account is a payment claim under the Construction Contracts Act 2001, provide details and reasons concerning non-payment to the extent required for a payment schedule under section 21 of that Act,
- within 10 Working Days of the date of the account, without any other deduction or set-off.
- 7.2 **A Client's Agent** (or any person purporting to be an agent) who enters into this Agreement on behalf of the Client will be jointly and severally liable with the Client for the payment of all fees due to the Architect under this Agreement.
- 7.3 **If the Client has not met the requirements of clause 7.1**, the Architect will be entitled to suspend performance of the Agreed Services on 2 Working Days' notice in writing and to withhold Services Materials until payment (including any reasonable costs incurred in relation to the suspension) is received in full. The Architect will not be liable to the Client or any other person for any losses arising from suspension of the Agreed Services or the withholding of Services Materials.
- 7.4 **Interest will be paid by the Client** at the rate of 1.5% per month compounded monthly on all overdue accounts and the Client will also pay any debt recovery costs in full including legal costs on a solicitor/client basis.
- 7.5 **In the event of a fees dispute**, including where covered by the adjudication provisions of the Construction Contracts Act 2002, the Client cannot use any of the Services Materials to which the disputed fees in any way relate until the dispute is resolved. The Architect will not be liable to the Client or any other person for any losses arising from the Client's inability to use the Services Materials.
- 7.6 **Accounts in the form of Payment claims under the Construction Contracts Act 2002** may be rendered by the Architect at its discretion, in which event:
- Part 2 Subpart 3 (making and responding to payment claims) and Subpart 4 (suspension of work) of the Act will apply.
  - The Architect's rights in clause 7.3 to suspend Agreed Services and withhold Services Materials will continue to apply.

#### D8. Intellectual Property Rights

- 8.1 **All rights including copyright** in the Services Materials belong to the Architect.
- 8.2 **The Architect** grants the Client, a non-exclusive licence (which cannot be assigned) to use the Services Materials solely for purposes relating to the Project and for no other purpose ("the License").
- 8.3 **The License is conditional** upon the Client complying with all of the Client's obligations under this Agreement, including the payment of all fees and disbursements due.
- 8.4 If this Agreement ends before completion of the Agreed Services, the Licence will still apply but to the completed Services Materials only. Partially completed Services Materials cannot be used by the Client without the Architect's prior written consent. Such consent will not be unreasonably withheld.
- 8.5 Future work on the Project using any part of the Services Materials for any alterations or extensions, without the Architect being appointed to provide related services, will require the Client to obtain the Architect's prior written consent. Such consent will not be unreasonably withheld.

- 8.6 Re-using the Architect's Service Materials is permitted only with the prior written consent of the Architect who is entitled to receive a royalty at an agreed rate for each re-use. Such consent will not be unreasonably withheld.
- 8.7 On completion of the Agreed Services or the early termination of this Agreement the Client is entitled to retain one copy of the completed Services Materials in printed or passive electronic form such as PDF. The Architect will not be required to provide any of the Services Materials in any active electronic form.

#### D9. Promotional Credits

- 9.1 **The Architect must be credited** by the Client or their representatives in any Project related brochure, or promotional material.
- 9.2 **The Architect can:**
- Display an appropriate promotional sign on the Site or in a clearly visible place nearby; and
  - Use the designs, drawings and photographs of the Project for the Architect's own promotional and professional purposes (including appropriate awards), but only with the Client's written consent, which shall not be unreasonably withheld.

#### D10. The Architects Liability

- 10.1 **Where the Agreed Services are "consumer" services as defined in the Consumer Guarantees Act 1993 and the Client is not in trade**, nothing in this Agreement will exclude or limit the Client's rights or remedies under that Act, and in particular clauses 10.2, 10.3 and 10.4 of this Agreement will not apply.
- 10.2 **Where the Client is in trade, the Agreed Services are acquired in trade** and it is fair and reasonable under section 43 of the Consumer Guarantee Act 1993 and section 5D of the Fair Trading Act 1986 that the parties be bound by this clause 10.2, the provisions of the Consumer Guarantees Act will not apply to this Agreement nor will the following provisions of the Fair Trading Act apply to either parties' conduct or representations if unintentional: section 9 (misleading conduct), section 12A (unsubstantiated representations) or section 13 (false or misleading representations).
- 10.3 **If the Architect breaches** this Agreement, the Architect will only be liable to the Client, (whether in contract, tort or on any other legal basis), for the reasonable costs of remedying any defective building work (including any reasonable professional fees) and/or any reasonable wasted costs caused by the Architect's breach, provided the costs are reasonably foreseeable. The Architect will not be liable for any other loss, damage or expense.
- 10.4 **The maximum aggregate amount of either party's liability to the other**, (whether in contract, tort or on any other legal basis), in relation to claims, liabilities, damages, losses or expenses, other than in respect of any breach of intellectual property rights, is limited to \$250,000.
- 10.5 **If either party is found liable to the other** (whether in contract, tort or on any other legal basis) and the claiming party and/or any other person has contributed to the loss, damage or expense, then the amount of the liability of the liable party will be limited to the proportional extent of its own contribution to that loss, damage or expense and irrespective of the legal basis for the contribution by others (including by the claiming party) or whether any recovery is obtainable from any contributory third party.
- 10.6 **Any claim** (whether in contract, tort or on any other legal basis) must be filed in Court, or any Tribunal which has jurisdiction to determine such a claim, within six years of the date of this Agreement or within six years of the date of the act or omission giving rise to the claim, whichever is the earlier, otherwise the parties will have no liability to each other. This clause will not adversely affect any time limitation defence available to a party under a statute.
- 10.7 **Where the Agreed Services are reduced**, limited or varied by later agreement, or this Agreement is ended prior to the completion of the Agreed Services, the Architect's liability will attach only to the services actually performed, and then only to the extent that

the reduction of that part of the Agreed Services has not compromised or denied the Architect the opportunity to correct the performed services or to otherwise mitigate the Client's loss.

- 10.8 **If any change is made by the Client** or any other person to the Services Materials or to the Contract Works or to the Project's resource consent or building consent, without the Architect's prior written approval, the Architect will not be liable for any loss, damage or expense incurred by the Client as a consequence of any such change.
- 10.9 **The parties will only be liable to each other** and disclaim responsibility (in tort or on any other legal basis) for any liability, loss, damage or expense suffered or incurred by any other person. Without limiting the scope of this disclaimer, if the Project to which the Architect's Agreed Services relate is leased, transferred, sold, or otherwise disposed of in part or whole to any other person, then the Architect accepts no responsibility in law to that other person.
- 10.10 **The Architect's employees**, directors, officers and agents are acknowledged by the Client to have no personal liability to the Client in connection with this Agreement or the performance of the Agreed Services as it would be unreasonable of the Client to rely on them personally. The Client acknowledges it has relied, and/or will rely, only on the corporate conduct of the Architect.
- 10.11 **The limitations of liability** referred to in this Section D10 will confer to any extent relevant a benefit on any Sub-consultants of the Architect.

#### D11. Insurance

- 11.1 **The Architect holds** and will maintain until completion of the Services Professional Indemnity Insurance for a sum not less than \$250,000 and Public Liability insurance for a sum not less than \$1,000,000, subject to the various terms, exclusions and limitations of the policies. The Architect will use its reasonable endeavours to obtain Professional Indemnity insurance on similar terms for 6 years from the date of expiry of its insurance cover.
- 11.2 **If a greater amount of insurance indemnity** is required by the Client, the cost of the additional amount will be at the Client's expense. Such increase in indemnity will increase the Architect's maximum aggregate liability to the Client under clause 10.4 to the new indemnity amount.
- 11.3 **Separate Consultant's Professional Indemnity Insurance** will have similar terms and conditions to that of the Architect, including an obligation to use reasonable endeavours to obtain insurance for 6 years from the expiry date of its existing insurance cover. It will be the Client's obligation to use reasonable endeavours to ensure that the Separate Consultants comply with this clause.

#### D12. Disputes

- 12.1 **Resolution of disputes** must be attempted in good faith between the Client and the Architect within 10 Working Days of the dispute arising. Failing resolution within that period, either party may require the dispute to be referred to mediation.
- 12.2 **If mediation has not occurred or settlement is not achieved** within 30 Working Days of the notice requiring mediation, then the Client and the Architect may agree to refer the dispute to Arbitration by a sole arbitrator or, failing agreement, either party may refer the dispute to the Courts for resolution.
- 12.3 **In the event of a dispute**, the Architect may on expiry of the 10 Working Day resolution period stated in clause 12.1 and on 2 Working Days' notice in writing to the Client suspend its obligations under this Agreement. In that event the Architect will not be liable to the Client or any other person for any losses arising from such suspension.
- 12.4 **Should a dispute arise for any reason**, the Client cannot use any Services Materials to which the dispute may in any way relate until the dispute is resolved. The Architect will not be liable to the Client or any other person for any losses arising from the Client's inability to use the Services Materials.

**D13. Notice of Defects**

- 13.1 Problems in design or any fault or defect that the Client becomes aware of will be notified to the Architect in writing not later than 30 Working Days after the Client becomes aware of it. If the Client does not do this, any liability of the Architect (in contract, tort or on any other legal basis) in relation to the problem, fault or defect will be reduced (or extinguished) to the extent of any prejudice to the Architect due to the Client's failure to comply with this clause.

**D14. Health and Safety**

- 14.1 **The Architect will ensure, so far as is reasonably practicable**, that it, and that each person it engages in relation to the Contract Works, is aware of and complies with its obligations under health and safety related Law.
- 14.2 **The Client will ensure that each person who is provided with the design** for the purpose of giving effect to it receives the health and safety information advised from time to time by the Architect to the Client ("H&S Information").
- 14.3 **The Architect will make reasonable efforts to give current information** on the H&S Information to any person who carries out an Activity in respect of the structure, if the Architect is requested to do so by the Client. The Architect may invoice the Client for complying with the request at the Architect's then hourly rates, unless agreed otherwise in writing.
- 14.4 **Each party agrees to cooperate, consult and coordinate**, so far as is reasonably practicable, with each PCBU who has a duty in relation to the Project and the Workplace, to enable each of them to comply with their respective obligations under health and safety related Law. That obligation does not limit the Client's or Architect's other obligations in this clause.
- 14.5 **The Client and the Architect agree** that, for the purpose of health and safety related Law, the Architect will not at any time have management or control of the Workplace.

**D15. Variations**

- 15.1 **Any variations to this Agreement**, including to the scope and nature of the Agreed Services, must be in writing and will be subject to all the terms and conditions of this Agreement.
- 15.2 **Variations to the Agreed Services** may be requested by the Client. In the event the Architect agrees to undertake the variations then the Architect will be entitled to charge on a time and cost basis at an hourly rate as stated in Part C.
- 15.3 **If the Agreed Services** need to be delayed or accelerated because of changes in the Client's instructions or requirements, or due to any reasons beyond the Architect's reasonable control, then irrespective of the manner in which fees are being charged, the Architect shall be entitled to additional fees on a time and cost basis.

**D16 Assignment/Termination**

- 16.1 **This Agreement cannot be assigned** or transferred without the prior written consent of both parties, such consent not to be unreasonably withheld.
- 16.2 **The Client or the Architect may terminate** this Agreement by notice in writing to the other at their last known address in the event that the other party is in material default.
- 16.3 **In the event the Client terminates** this Agreement for any reason other than the default of the Architect, the Client will pay the Architect any loss of profits resulting from the Agreement's non-completion and any expenses and costs that the Architect reasonably incurred relating to ending the Agreement where such payment is fair and reasonable.

**D17. Construction Contracts Act**

- 17.1 **This Agreement is a "construction contract" under the Construction Contracts Act 2002** unless section 11 of the Act applied. Nothing in this Agreement will be construed as negating the rights, obligations and requirements of that Act. Accordingly, the dispute resolution procedures in this Agreement will be in addition to (and not in substitution for)

those provided in the Act; but specific provisions in the Agreement will prevail over default provisions in the Act where the Act so allows.

#### D18. New Zealand Law

18.1 **The laws of New Zealand** will govern this Agreement and the New Zealand Courts will have exclusive jurisdiction in respect of this Agreement.

#### D19. Definitions

**Activity** includes manufacture, assembly, use of the structure for the purpose advised under clause 2.1(b) in Part D, construction, handling, inspection, cleaning, maintenance, repair, decommissioning, dismantling, demolition and/or disposal.

**Adjusted Cost of the Contract Works:** Final all inclusive cost of the Contract Works.

**Administration:** the management by the Architect of the construction contract between the Client and the Contractor, on behalf of the Client, including issuing instructions and variations as required.

**Arbitration:** has the meaning defined by the Arbitration Act 1996, as may be amended or substituted.

**Architect:** the company named as the Architect in Part A of this Agreement.

**Architect's Fee:** the amount or amounts stated in Part C of this Agreement as being payable by the Client to the Architect for the Agreed Services.

**Agreed Services:** the services to be provided by the Architect to the Client as identified in Part B of this Agreement.

**Agreement:** the agreement between the Client and the Architect consisting of this document and all attachments listed in Part A of this Agreement.

**BEP:** BIM execution plan

**BIM:** building information model

**Brief:** the written statement by the Client summarising their expressed requirements, preferences and priorities, in sufficient detail for the Architect to carry out the Agreed Services.

**Budget:** the target Cost of the Contract Works as nominated by the Client and stated in Part A of this Agreement.

**Client:** the person named as the Client in Part A of this Agreement.

**Contract Administrator:** The person appointed under the construction contract.

**Contractor:** the Person engaged by the Client to undertake the whole or part of the Contract Works for the Project. This term includes any Sub-contractor engaged by the Contractor.

**Contract Price:** the amount agreed in the construction contract between the Client and the Contractor for the cost of the Contract Works.

**Contract Works:** everything to be carried out by the Contractor to complete the Project, including goods, services, materials and equipment supplied by the Client.

**Cost of Contract Works:** the cost of the Contract Works as provided by the quantity surveyor's written estimate from time to time or the Contract Price once agreed by the Client and the Contractor. Such cost is exclusive of GST, all Territorial Authority charges, Architect's Fee and Separate Consultants' fees.

**Disbursements:** reimbursement costs to be paid by the Client to the Architect for incidental items over and above the hourly charge out rate and/or fees that are required to complete the task.

**Elemental Estimate of Cost:** a detailed estimate of the likely Cost of Contract Works based on developed design documents.

**ESD:** environmentally sustainable design.

**GST:** means the goods and services tax payable under the Goods and Services Act 1985, as may be amended or substituted. All dollar amounts in this Agreement exclude GST.

**Law:** means any Act of Parliament, regulation, by-law, order, code, licence, permit, approval, regulatory instrument or any other subordinate instrument, or any other legally binding direction or requirement, as each of those may be amended,

**Lump Sum Fees:** fees calculated by assessing the quantum of work to be undertaken by the Architect at any stage of service.

**Observation:** visiting the site at times/dates entirely at the Architect's discretion to observe that the contract works are generally being built in accordance with the contract documents.

**PCBU:** has the meaning given in the Health and Safety at Work Act 2015, as may be amended from time to time.

**Percentage Fees:** fees calculated by multiplying the percentage fee rate agreed between the Architect and the Client and the Adjusted Cost of Contract Works or if that is not available, the Budget. For the purposes of fee calculation, the cost of old materials are calculated as if these materials were new, and the cost of goods and services provided by the Client are calculated as if provided by the Contractor.

**Person or persons:** an individual, partnership, body of persons, firm, company or organisation whether corporate or not.

**Practical Completion:** the Contract Works or a Separate Section of them attain Practical Completion when:

- a. they are able to be used for their intended purpose without material inconvenience; and
- b. they have been built generally in accordance with the Contract documents; and
- c. they are complete except for:-
  - i. minor defects and minor omissions for completion during the Defects Notification Period; and
  - ii. agreed unintended omissions and defects which the Architect becomes aware of during the Defects Notification Period; and
  - iii. any undiscovered, latent or other defect or omission which the Architect could not have reasonably discovered; and
  - iv. work which the Architect and the Contractor have agreed to defer to completion during the Defects Notification Period, or such later date as agreed between the parties; and
- d. Information and warranties listed in the Specific Conditions of the construction contract have been provided.

OR Where there is a definition of Practical Completion in the construction contract, then it means that definition.

**Preliminary Estimate of Cost:** an estimate of the likely Cost of the Contract Works based on preliminary design documents.

**Pre-tender Estimate:** an update of the Elemental Estimate of Cost based on detailed design and documentation documents. This estimate may be accompanied by a schedule of quantities.

**Procurement:** the means by which the Contractor is selected and engaged to undertake the Contract Works.

**Project:** the Project identified in Part A of this Agreement.

**Programme:** the continuous sequence for each stage of the Agreed Services and for the Contract Works.

**Rough Order of Cost:** an estimate of the likely Cost of Contract Works based on concept design documents.

**Separate Consultants:** the consultants contracted by and paid by the Client and listed as Separate Consultants in Part C (or later appointed).

**Services Materials:** any and all drawings and other documents or materials of any nature, including in electronic form, prepared by the Architect and/or Sub-consultants in carrying out the Agreed Services.

**Sub-consultants:** the consultants contracted by and paid by the Architect and listed as Sub-consultants in Part C (or later appointed).

**Site:** the land, building and other places made available by the Client, where the Contract Works are to be carried out.

**Time Charge Fees:** fees calculated by multiplying the hours of service provided by the agreed hourly time charge rate for each service provider.

**Working Day:** any calendar day other than a Saturday, Sunday or a public holiday, or any day falling within the period from 24 December to 05 January, both inclusive.

**Workplace:** a place where work is being carried out, or is customarily carried out, under or in relation to this Agreement and includes the Site.

## Purpose

NZIA AAS 2018 has been prepared by the New Zealand Institute of Architects to provide a balanced and insurable agreement between the Client who requires architectural services and the Architect who provides such services.

This agreement is part of a suite of documents aimed at clearly defining the scope of the Client's project, confirming the range of services that the Architect can provide to the Client, and reaching an understanding as to a fair remuneration for these services.

NZIA AAS 2018 defines the responsibilities of the Client and the Architect. It provides a framework for the implementation and delivery of a successful project.

The Client is encouraged to seek independent advice about anything that is not immediately clear, and to use the checklists provided so that everything relevant to the agreement is properly considered.

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## For further information

The Agreement for Services NZIA AAS 2018 is published by the NZIA  
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