



**association** of  
**consulting** and  
**engineering**

ace association of consulting and engineering  
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29 April 2022

Jarrad Keenan  
Procurement Manager, Excellence  
Corporate Support  
Waka Kotahi New Zealand Transport Agency

By email only: [jarrad.keenan@nzta.govt.nz](mailto:jarrad.keenan@nzta.govt.nz)

Kia ora Jarrad

Thank you for your engagement with ACE New Zealand on Waka Kotahi's recent review of SM030, the state highway professional services contract proforma manual.

Further to the sessions you held with our members on 7 and 8 April 2022, we would like to make a formal submission regarding our concerns about the proposed changes to the CCCS - [Short Form Agreement](#) and [Standard Form Agreement](#), which form part a key part of the SM030 review.

ACE New Zealand represents more than 240 consulting and engineering firms, ranging from large global firms to employee-owned SMEs, that employ over 14,000 staff working across the built and natural environment. Waka Kotahi is a key client for many of our members, and SM030 forms a critical basis for those relationships.

You have advised that SM030 is being reviewed to ensure it is fit for purpose *and* aligned with government procurement best practice and MBIE all of government approach. Our concern is that many of the proposed changes are fundamentally inconsistent with the approach taken by the industry accepted All of Government Construction Consultancy Panel CCCS terms. The terms proposed would raise significant issues for our members and create barriers for many of them to continue in sustainable business relationships with Waka Kotahi.

We note that Waka Kotahi is a Construction Sector Accord agency and therefore has committed to a shared goal of sustainable, resilient, and successful business, underpinned by the principle of fair risk allocation. We do not consider the proposed terms meet the commitment Waka Kotahi has made to the Accord.

Our specific concerns are set out in the attached table.

We welcome further kōrero with you on how we can work together to ensure fair contractual terms between Waka Kotahi and our members, in the interests of building a stronger construction and infrastructure sector. These concerns need to be resolved before any roll out of a revised SM030 to our members.

We also strongly encourage you to work with Alison Murray and Chris May at the Construction Sector Accord on how you can best ensure alignment with government procurement best practice and MBIE all of government

ACE New Zealand

approach, in accordance with your intended objective. We would be happy to coordinate a meeting between us all to progress this.



I look forward to hearing from you.



Nga mihi,



A handwritten signature in black ink, appearing to read 'H Davidson', with a stylized flourish at the end.



Helen Davidson  
Chief Executive

Copy to: [shane.avers@nzta.govt.nz](mailto:shane.avers@nzta.govt.nz)  
[Alison.Murray@mbie.govt.nz](mailto:Alison.Murray@mbie.govt.nz)



Waka Kotahi Short Form Agreement for Engineering Consultancy Professional Services						
CI Ref.	Clause (or extract) wording	 association of consulting engineers		 NZ TRANSPORT AGENCY WAKA KOTAHİ		STATUS
		Date	Comments/Reponses	Date	Comments/Reponses	
CI 6.5 Part A	<p><u>Current</u> The minimum amount of Professional Indemnity Insurance will be for the amount specified in Clause 6.2 (Limitation of Liability) above, with at least one automatic reinstatement of the minimum amount per 12-month period of insurance. ... The minimum amount of Public Liability will be the sum of \$2,000,000.00.</p> <p><u>Proposed</u> The minimum amount of professional indemnity insurance required is \$2,000,000, with at least one automatic reinstatement of the minimum amount per 12-month period of insurance. ... The minimum amount of Public Liability Insurance required is \$5,000,000.00.</p>	29/04/22	<p>ACE is concerned that WK is increasing the insurance requirements on consultants in this agreement.</p> <ul style="list-style-type: none"><li>The \$2m professional indemnity insurance amount (plus reinstatement) is four times the existing WK requirement. In addition, the professional indemnity amount is four times the proposed \$500k liability cap – which is inconsistent with approach taken by the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>. Professional indemnity should match the consultant's exposure under the agreement.</li><li>The \$5m public liability amounts is two and a half times the existing WK requirement.</li></ul> <p>These substantial increases in insurance levels will materially increase the cost to consultants to maintain increased insurance requirements. It will also impact subconsultants from which consultants will require back-to-back insurance. This could create a barrier to Waka Kotahi's broader outcome objectives around engagement with smaller local suppliers. Moreover, these insurance levels are not proportionate to the minor scale engagements under this short form agreement.</p> <p>ACE requests that WK retain the status quo insurance arrangements consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>.</p>			OPEN
CI 2.14 Part B	<p><u>Current</u> n/a</p> <p><u>Proposed</u> The Consultant must comply with the Standards of Integrity and Conduct issued by the State Services Commission (see <a href="https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf">https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf</a>) and any other relevant codes of conduct notified by the Client to the Consultant from time to time.</p>	29/04/22	<p>ACE accepts that consultants can and should comply with the State Services Commission's Standards of Integrity and Conduct – but not the unknown requirements of other unknown codes of conduct.</p> <p>Please revise new cl 2.14 as follows: "The Consultant must comply with the Standards of Integrity and Conduct issued by the State Services Commission (see <a href="https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf">https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf</a>) and any other relevant codes of conduct notified by the Client to the Consultant from time to time."</p>			OPEN

Waka Kotahi Short Form Agreement for Engineering Consultancy Professional Services						
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		Date	Comments/Reponses	Date	Comments/Reponses	
CI 6.2 Part B	<p><u>Current</u> n/a</p> <p><u>Proposed</u> The maximum aggregate liability of the Consultant for any claims, damages, liabilities, losses or expenses suffered or incurred whether in contract for breach of this Agreement, under indemnity, in tort including negligence, in equity, under any statute, or otherwise arising out of any act or omission by the Consultant done or not done in connection with the Services or this Agreement shall be limited to the maximum aggregate sum as specified in the Special Conditions. The aggregate liability limit shall not apply nor be reduced by the Consultant's liability in the case of fraud, wilful misconduct, wilful default, gross negligence or repudiation or for the amount of any insurance proceeds recovered under an insurance policy, including any proceeds that would have been recovered, but for any failure to claim and/or breach of the relevant insurance policy by the Consultant, or due to the failure by the Consultant to maintain an insurance policy.</p>	29/04/22	<p>As discussed in the SM030 review feedback session, ACE (including its members and insurers) have fundamental concerns with WK's proposed revision to the cl 6.2 liability cap arrangements. These revisions are not in any way reflective of market positions and are contrary to the liability arrangements recommended by MBIE in the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>. In particular:</p> <ul style="list-style-type: none"><li>• The revision in effect creates unlimited liability for consultants where its insurances respond. This exposes a consultant's entire insurance programme and will prejudice consultant's ability to obtain insurance.</li><li>• The proposed carve-outs for wilful default, wilful misconduct, gross negligence or repudiation create substantial uncertainty as to what conduct is subject by the cap and what is not. There is no agreed formulation of those terms at common law to provide consultants certainty that mistakes/negligence/difference of views on contractual positions remain subject to the liability cap.</li></ul> <p>Consultants and their insurers require surety as to their total aggregate exposure for any engagement. The proposed carve-outs to the caps vitiate that objective. Whether a consultant's insurances respond or not should not be determinative as to the level of exposure the consultant assumes for its services.</p> <p>ACE requests that WK retain the status quo liability cap drafting consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>.</p>			OPEN
CI 8A Part B	<p><u>Current:</u> The Consultant must: ... b) not do anything with the Personal Information that would, or would be likely to cause the Client to, breach the Privacy Act 1993; and c) comply at all times with Privacy at Waka Kotahi NZ Transport Agency – A Guide for Suppliers and Service Providers (<a href="https://www.nzta.govt.nz/about-us/about-this-">https://www.nzta.govt.nz/about-us/about-this-</a></p>	29/04/22	<p>ACE acknowledges the importance of consultants appropriately managing personal information as part of their services to WK.</p> <p>However, we are concerned that such extensive privacy requirements (which in effect extend to any correspondence or document used by a consultant) impose obligations that consultants cannot practicably comply with. Firstly, it is</p>			OPEN

Waka Kotahi Short Form Agreement for Engineering Consultancy Professional Services						
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		Date	Comments/Reponses	Date	Comments/Reponses	
	<p>site/privacy-guide-for-suppliers-and-service-providers/); and ...</p> <p>f) not transfer, store, or make available, or permit the transfer, storage, or making available, of the Personal Information, outside New Zealand, without the express written consent of the Client, which shall not be unreasonably withheld by the Client. The parties agree that it shall not be unreasonable in any circumstances for the Client to withhold consent for the transfer, storage, or making available of the Personal Information outside New Zealand; and ...</p> <p>h) ensure the prompt return or secure destruction or erasure of all copies or reproductions of the Personal Information held by the Consultant, its employees, and Subconsultants, once it is no longer required for the purposes of the delivery of the Services under this Contract, or where directed by the Client; and ...</p> <p>8A.5 The Consultant must ensure that all of the Consultant's Employees or Subconsultants who have access to the Client's Personal Information comply with the Consultant's obligations under this clause 8.A, and are made aware of, and receive appropriate training in relation to, the NZ Privacy Laws and the requirements of this clause 8.A.</p> <p><u>Proposed</u></p> <p>8A.1 The Consultant must comply at all times with all NZ Privacy Laws and not do anything with the Client's Personal Information likely to cause the Client to breach any NZ Privacy Laws.</p> <p>8A.2 The Consultant must comply at all times with Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers (<a href="https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/">https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/</a>). ...</p> <p>8A.5 Except as agreed in writing, the Consultant must not store or process (or permit the storage or processing of) the Client's Personal Information in any location outside New Zealand.</p> <p>8A.6 The Consultant must promptly return and/or irreversibly erase all the Client's Personal Information (at the Client's option), once no longer</p>		<p>important to note consultants are already legally required to comply with privacy legislation and regulation. Secondly, of all government agencies that ACE engages with (including Ministry of Health, MFAT, MBIE &amp; DIA), these privacy requirements are by far the most extensive and onerous.</p> <p>Given the importance of this issue to WK, ACE does not propose to delete such clauses (which would be consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>). However, we request the following amendments so that consultants are able to practicably comply with the requirements set out. We also ask that WK engage with the AoG MBIE Construction Procurement team (Alison Murray/Chris May) on how these issues are typically addressed by government agencies.</p> <p>Please amend the following clauses to state:</p> <p>8A.1 The Consultant must comply at all times with all NZ Privacy Laws and use <u>all reasonable endeavours to not do anything with the Client's Personal Information likely to cause the Client to breach any NZ Privacy Laws.</u></p> <p>8A.2 The Consultant must <u>exercise the standard of care in clause 2.2 to comply at all times with Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers (<a href="https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/">https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/</a>).</u> ...</p> <p>8A.5 Except as agreed in writing <u>or as otherwise part of the Consultant's encrypted cloud data back-up or transfer arrangements</u> , the Consultant must not store or process (or permit the storage or processing of) the Client's Personal Information in any location outside New Zealand.</p> <p>8A.6 Except as set out in clause 11.3 (subject to continued compliance with the obligations of this clause 8A in relation to the Client's Personal Information retained in accordance with clause 11.3), <u>the Consultant must promptly return and/or irreversibly erase all the Client's Personal Information (at the Client's option), once no longer required for the purposes of the delivery of the Services under this Agreement, or otherwise where directed by the Client.</u></p>			



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		Date	Comments/Reponses	Date	Comments/Reponses	
	<i>required for the purposes of the delivery of the Services under this Agreement, or otherwise where directed by the Client.</i>					
CI 8B Part B	<p><u>Current:</u> n/a</p> <p><u>Proposed</u> 8B.3 The Client expects the Consultant will ensure that it and its personnel providing the Services will:</p> <p>a) consistently demonstrate principles and behaviours set out in the Client's information management and security policies, processes, procedures and supporting controls as notified to the Consultant in writing by the Client at the date of this Agreement. Any significant and/or repeated breaches of these standards shall be considered a breach of this Agreement; ...</p> <p>d) provide interim and final data/information sets, created in the delivery of the Services such as research, asset, customer or geo-coded data with metadata to minimum standards, appropriately structured and described, and in formats as agreed;</p>	29/04/22	<p>ACE repeats our comments above in respect of WK's data management provisions.</p> <p>We request the following amendments so that consultants are able to practicably comply with the requirements set out.</p> <p>Please amend the following clauses to state:</p> <p>"8B.3 The Client expects the Consultant will ensure that it and its personnel providing the Services will:</p> <p>a) <del>consistently demonstrate principles and behaviours</del> <u>comply with the reasonable requirements set out in the Client's information management and security policies, processes, procedures and supporting controls as notified to the Consultant in writing by the Client at the date of this Agreement. Any significant and/or repeated breaches of these standards shall be considered a breach of this Agreement; ...</u></p> <p>d) provide interim and final data/information sets, created in the delivery of the Services <u>and forming part of the deliverables</u> such as research, asset, customer or geo-coded data with metadata to minimum standards, appropriately structured and described, and in formats as agreed;</p>			

Waka Kotahi Standard Form Agreement for Professional Services

CI Ref.	Clause (or extract) wording	<div>association of consulting and engineering</div>		<div>NZ TRANSPORT AGENCY WAKA KOTAHİ</div>		STATUS
		Date	Comments/Reponses	Date	Comments/Reponses	
CI 6.4 Part A	<p><u>Current</u> is amended by deletion of the words: “the period stated in the Special Conditions” and replacing with “six years”.</p> <p><u>Proposed</u> The duration of liability shall be six years from the date of completion of the Services, or from the date of termination of the Agreement, whichever is the earlier.&lt;&lt;OR (please specify)&gt;&gt; The duration of liability shall be [period] years from the date of completion of the Services, or from the date of termination of the Agreement, whichever is the earlier.</p>	29/04/22	<p>ACE is concerned that WK is including an option in this agreement for the parties’ duration of liability to be longer than the status quo 6-years from the completion of the services.</p> <p>The industry accepted position has been a 6 year duration of liability following the completion of the services. This is the position under the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a> and central and local government agencies all over NZ. This reflects a reasonable period for consultants (and insurers) to stand behind their work, while also providing certainty as to the ending of claims exposure (and the associated costs/premium implications). Consultants’ arrangements with their insurers are predicated on this basis. Should agencies such as WK impose increased duration of liability periods, this will have detrimental implications for consultant’s ability to obtain affordable insurance arrangements – and for some consultants jeopardise the application of their existing coverage - which is not in consultant’s or client’s interests. ACE requests that WK retain the status quo 6-year duration of liability in this clause.</p>			
CI 2.4 Part B	<p><u>Current</u> n/a</p> <p><u>Proposed</u> The acts and omissions of any Subconsultant shall, for the purpose of this Agreement, be deemed to be the acts and omissions of the Consultant.</p>	29/04/22	<p>While ACE accepts consultants have responsibility for the subconsultant’s services insofar as they relate to the services under the agreement, this clause unacceptably deems any subconsultant’s act to be the consultant’s – whether or not the consultant had knowledge or control.</p> <p>Consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>, please delete this amendment.</p> <p>Alternatively, please revise the amendment to state: “The acts and omissions of any Subconsultant shall, for the purpose of this Agreement, be deemed to be the acts and omissions of the Consultant <u>to the extent such act or omissions arise in the performance of the Services.</u>”</p>			
CI 2.14 Part B	<p><u>Current</u> n/a</p>	29/04/22	ACE accepts that consultants can and should comply with the State Services Commission’s Standards of Integrity and			





Waka Kotahi Standard Form Agreement for Professional Services



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		Date	Comments/Reponses	Date	Comments/Reponses	
	<p><u>Proposed</u> The Consultant must comply with the Standards of Integrity and Conduct issued by the State Services Commission (see <a href="https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf">https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf</a>) and any other relevant codes of conduct notified by the Client to the Consultant from time to time.</p>		<p>Conduct – but not the unknown requirements of other unknown codes of conduct.</p> <p>Please revise new cl 2.14 as follows:</p> <p><i>“The Consultant must comply with the Standards of Integrity and Conduct issued by the State Services Commission (see <a href="https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf">https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf</a>) and any other relevant codes of conduct notified by the Client to the Consultant from time to time.”</i></p>			
CI 4.3 Part B	<p><u>Current</u> If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Consultant, and the Consultant does not within a period acceptable to the Client replace the relevant Key Personnel with a person of equivalent skills and experience, the Client reserves the right to withhold 20% of the value of the next contract progress payment due until such time as a suitable replacement has been made and notified to the Client. The monies retained, shall be paid to the Consultant by payment as part of the progress payment due after the replacement has been made.</p> <p><u>Proposed</u> If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Consultant, and the Consultant does not within a period acceptable to the Client replace the relevant Key Personnel with a person of equivalent skills and experience, the Client reserves the right to withhold 20% of the value of the next payment due until such time as a suitable replacement has been made and notified to the Client. The monies retained, shall be paid to the Consultant by payment as part of the payment due after the replacement has been made.</p>	29/04/22	<p>It is inappropriate for engineering consultancy professionals to be subject to a 20% fee retention in respect of key personnel who become unavailable – the performance of the services should be the sole measure. Such an approach is again inconsistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>.</p> <p>Please delete this amendment.</p> <p>Alternatively, please revise the amendment to state:</p> <p><i>“If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Consultant, and the Consultant does not within a period acceptable to the Client replace the relevant Key Personnel with a person of equivalent skills and experience, the Client <u>notify the Consultant it considers the Consultant to be in breach of its Key Personnel obligations and require the Consultant to replace the relevant Key Personnel with a person of equivalent skills and experience within 14 days. If such a breach is not remedied, the Client may suspend and/or terminate the Services on written notice to the Consultant reserves the right to withhold 20% of the value of the next payment due until such time as a suitable replacement has been made and notified to the Client. The monies retained, shall be paid to the Consultant by payment as part of the payment due after the replacement has been made.</u></i></p>			
CI 6.2 Part B	<p><u>Current</u> n/a</p>	29/04/22	<p>As discussed in the SM030 review feedback session and noted above for the short form agreement, ACE (including its members and insurers) have fundamental concerns with</p>			





Waka Kotahi Standard Form Agreement for Professional Services

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		Date	Comments/Reponses	Date	Comments/Reponses	
	<p><u>Proposed</u></p> <p><i>The maximum aggregate liability of the Consultant for any claims, damages, liabilities, losses or expenses suffered or incurred whether in contract for breach of this Agreement, under indemnity, in tort including negligence, in equity, under any statute, or otherwise arising out of any act or omission by the Consultant done or not done in connection with the Services or this Agreement shall be limited to the maximum aggregate sum as specified in the Special Conditions. The aggregate liability limit shall not apply or be reduced by the Consultant's liability in the case of fraud, wilful misconduct, wilful default, gross negligence or repudiation or for the amount of any insurance proceeds recovered under an insurance policy, including any proceeds that would have been recovered, but for any failure to claim and/or breach of the relevant insurance policy by the Consultant, or due to the failure by the Consultant to maintain an insurance policy. .</i></p>		<p>WK's proposed revision to the cl 6.2 liability cap arrangements. These revisions are not in any way reflective of market positions and are contrary to the liability arrangements recommended by MBIE in the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>. In particular:</p> <ul style="list-style-type: none"><li>• The revision in effect creates unlimited liability for consultants where its insurances respond. This exposes a consultant's entire insurance programme, and will prejudice consultant's ability to obtain insurance.</li><li>• The proposed carve-outs for wilful default, wilful misconduct, gross negligence or repudiation create substantial uncertainty as to what conduct is subject by the cap and what is not. There is no agreed formulation of those terms at common law to provide consultants certainty that mistakes/negligence/difference of views on contractual positions remain subject to the liability cap.</li></ul> <p>Consultants and their insurers require surety as to their total aggregate exposure for any engagement. The proposed carve-outs to the caps vitiate that objective. Whether a consultant's insurances respond or not should not be determinative as to the level of exposure the consultant assumes for its services.</p> <p>ACE requests that WK retain the status quo liability cap drafting consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>.</p>			
CI 6.5	<p><u>Current</u></p> <p>n/a</p> <p><u>Proposed</u></p> <p><i>The Consultant shall name the Client (which shall include the Client's officers, employees and agents) on its public liability insurance policy as additional insureds in respect of their vicarious liability arising from the Consultant's negligence in relation to the performance of this Agreement.</i></p>	29/04/22	<p>A consultant's public liability insurance policy often has a "principal's extension" covering its client to the extent it suffers a relevant loss caused by the consultant. However, such arrangements may not extend to cover the client's agents (depending on their capacity).</p> <p>Consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>, please delete "and agents" in the amendment to cl 6.5.</p>			OPEN

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		Date	Comments/Reponses	Date	Comments/Reponses	
CI 8A Part B	<p><u>Current:</u></p> <p>8A.1 The Consultant must: ... b) not do anything with the Personal Information that would, or would be likely to cause the Client to, breach the Privacy Act 1993; and c) comply at all times with Privacy at Waka Kotahi NZ Transport Agency – A Guide for Suppliers and Service Providers (<a href="https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/">https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/</a>); and ... f) not transfer, store, or make available, or permit the transfer, storage, or making available, of the Personal Information, outside New Zealand, without the express written consent of the Client, which shall not be unreasonably withheld by the Client. The parties agree that it shall not be unreasonable in any circumstances for the Client to withhold consent for the transfer, storage, or making available of the Personal Information outside New Zealand; and ... h) ensure the prompt return or secure destruction or erasure of all copies or reproductions of the Personal Information held by the Consultant, its employees, and Subconsultants, once it is no longer required for the purposes of the delivery of the Services under this Contract, or where directed by the Client; and ...</p> <p>8A.5 The Consultant must ensure that all of the Consultant's Employees or Subconsultants who have access to the Client's Personal Information comply with the Consultant's obligations under this clause 8.A, and are made aware of, and receive appropriate training in relation to, the NZ Privacy Laws and the requirements of this clause 8.A.</p> <p><u>Proposed</u></p> <p>8A.1 The Consultant must: ... b) not do anything with the Client's Personal Information that would, or would be likely to cause the Client to, breach any NZ Privacy Laws; and c) comply at all times with Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers ; and ... f) not store or process (or permit the storage or</p>	29/04/22	<p>ACE acknowledges the importance of consultants appropriately managing personal information as part of their services to WK.</p> <p>However, as above, we are concerned that such extensive privacy requirements (which in effect extend to any correspondence or document used by a consultant) impose obligations that consultants cannot practicably comply with. Firstly, it is important to note consultants are already legally required to comply with privacy legislation and regulation. Secondly, of all government agencies that ACE engages with (including Ministry of Health, MFAT, MBIE &amp; DIA), these privacy requirements are by far the most extensive and onerous. Thirdly, the indemnity included is unlikely to be covered by a consultant's insurances and is unnecessary given the operation of cl 6.1.</p> <p>Given the importance of this issue to WK, ACE does not propose to delete such clauses (which would be consistent with the <a href="#">All of Government Construction Consultancy Panel CCCS terms</a>). However, we request the following amendments so that consultants are able to practicable comply with the requirements set out. We also ask that WK engage with the AoG MBIE Construction Procurement team (Alison Murray/Chris May) on how these issues are typically addressed by government agencies.</p> <p>Please amend the following clauses to state:</p> <p><u>CI 1.1 Personal Information <del>has</del> means:</u> <del>any information about an individual (whether or not it is possible to identify the individual from that information), and includes all 'Personal Information' within the meaning of the Privacy Act 2020.</del></p> <p>8A.1 The Consultant must: ... b) <u>use all reasonable endeavours to</u> not do anything with the Client's Personal Information that would, or would be likely to cause the Client to, breach any NZ Privacy Laws; and c) <u>exercise the standard of care in clause 2.2</u> comply at all times with Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers ; and ... f) <u>not store or process (or permit the storage or processing of) the Client's Personal Information, at any location outside New Zealand,</u></p>			OPEN

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CI Ref.	Clause (or extract) wording	<div>association of consulting and engineering</div>		<div>NZ TRANSPORT AGENCY WAKA KOTAHİ</div>		STATUS
		Date	Comments/Reponses	Date	Comments/Reponses	
	<p>processing of) the Client's Personal Information, at any location outside New Zealand, except as clearly contemplated in this Agreement, or otherwise with the express written consent of the Client; and ...</p> <p>h) promptly seek and follow the Client's instructions as to the return, secure destruction and/or complete and irreversible erasure of all the Client's Personal Information once it is no longer required for the purposes of the delivery of the Services under this Agreement, and otherwise where directed by the Client; and ....</p> <p>8A.3 The Consultant must immediately notify the Client if the Consultant becomes aware of any breach or possible breach of the NZ Privacy Laws or of its obligations under this clause 8.A. The Consultant must take all practicable steps to mitigate the effects of any such breach, and must fully cooperate with the Client for that purpose. ...</p> <p>8A.6 The Consultant will indemnify the Client against any loss suffered by the Client or liability incurred by it that may arise out of, or in consequence of, a failure to comply with this clause 8.A.</p>		<p>except as clearly contemplated in this Agreement, <u>or as part of the Consultant's encrypted cloud data back-up or transfer arrangements</u> or otherwise with the express written consent of the Client; and ...</p> <p>h) <u>except as set out in clause 11.3 (subject to continued compliance with the obligations of this clause 8A in relation to the Client's Personal Information retained in accordance with clause 11.3).</u></p> <p>promptly seek and follow the Client's instructions as to the return, secure destruction and/or complete and irreversible erasure of all the Client's Personal Information once it is no longer required for the purposes of the delivery of the Services under this Agreement, and otherwise where directed by the Client; and ....</p> <p>8A.3 The Consultant must <u>immediately as soon as practicable</u> notify the Client if the Consultant becomes aware of any breach or possible breach of the NZ Privacy Laws or of its obligations under this clause 8.A. The Consultant must take all practicable steps to mitigate the effects of any such breach, and must fully cooperate with the Client for that purpose. ...</p> <p><del>8A.6 The Consultant will indemnify the Client against any loss suffered by the Client or liability incurred by it that may arise out of, or in consequence of, a failure to comply with this clause 8.A.</del></p>			