



# What's New with Professional Services contracts (CCCS and the Short Form)?

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CCNZ ACENZ Conference 2018  
"Smarter together"

# Changes to CCCS and the Short Form

The Third edition of CCCS needed updating to ensure compliance with the:

**Health and Safety at Work Act 2015**

and

**Construction Contracts Act 2002**

Changes to the Short Form were also required to comply with recent legislation and for compatability with CCCS

# The Fourth Edition of CCCS

- Review committee of 25 people
- Make as few changes as necessary:

*“When it is not necessary to change, it is necessary not to change”*

*Lucius Cary Falkland, 2<sup>nd</sup> Viscount, House of Commons, Nov 22, 1641*

# The Fourth Edition of CCCS

- Changes principally made:
  - a. Compliance with Client instructions
  - b. Health and Safety (including obligations of designers under the HSWA)
  - c. “Early warning”
  - d. Payment (and impact of the Construction Contracts Act 2002)
  - e. Variations
  - f. Intellectual Property
  - g. Dispute resolution (and rights under the Construction Contracts Act 2002)
  - h. Right to suspend the Services
  - i. General Provisions



# CCCS: Section 2. Obligations of the Consultant

## Clause 2.10 Health and Safety

The Health and Safety clauses now use the language of the HSWA and require the Consultant to **consult, cooperate and coordinate** activities with the client and other relevant parties.

There is a similar obligation on the client. (see Section 3)



Where the Consultant is acting as a Designer (as defined in the HSWA), there are specific obligations (see the next slide).

# CCCS: Section 2. Obligations of the Consultant

## **Clause 2.10 Health and Safety**

### Duties of a “Designer”

The designer must, so far as is reasonably practicable, ensure that the plant, or structure is designed to be without risks to the health and safety of persons who use it, handle it, construct it or maintain it.

## CCCS: Section 2. Obligations of the Consultant

### **New Clause 2.13 Early Warning**



The Consultant must advise the Client of anything that could impact on the provision of the Services

And there is a similar obligation on the client to advise the Consultant at clause 3.7 (which is unchanged other than an amended title).

# CCCS: Section 5. Payment

This section has been re-written:

- Right to progress payments
- Payment is now on account
- Application of the Constructions Contract Act





# CCCS: Section 7. Variations

## **Clause 7.1 Variations**

Two scenarios are considered:

1. Consultant gives the Client an early warning
2. Consultant fails to give an early warning

## Section 9. Intellectual Property

# Intellectual Property



New IP means intellectual property rights in concepts, design, models, software etc. provided to the Client as deliverables.

IP is jointly owned by Consultant and Client (as Third Edition) – but now only after the Client has paid all amounts due

Consultant now does not warrant the use of New IP but instead accepts no liability for it

Where the Consultant has used the NZ Geotechnical Database on the Client's behalf, new geotechnical factual information collected in providing the Services shall be uploaded to the database

## Section 10. Disputes

- Arbitrator appointed by President of the Arbitrators' and Mediators' Institute rather than Law Society if parties cannot agree
- Preserves the Consultant's rights under the Construction Contracts Act



## CCCS: Section 11. Termination

# Clause 11.5 Right of Suspension for Non-payment



The Consultant now has the right to suspend the Services for non-payment.

# CCCS: Additional Documents

## **Special Conditions for Design and Construct Contracts**

### **Panel Agreements**

# The New Short Form

A number of changes have been made, principally:

- Adopting similar wording to CCCS regarding the Consumer Guarantees Act
  - ✓ Clauses 2 and 3 have been combined into new Clause 2
- Adopting similar wording to CCCS regarding the duty of care
  - ✓ Deleting “degree of skill, care and diligence normally expected of a competent professional” and replacing with:
  - ✓ “reasonably expected of a professional consultant providing services similar to the Services”
- Introducing a requirement for either Party to give an Early Warning, similar to CCCS
  - ✓ As soon as the either Party becomes aware of anything that will materially affect the scope or timing of the Services, the Party must inform the other Party in writing.



# The New Short Form

- Allowing a Consultant to suspend the Services for non-payment
  - ✓ If the Client fails to make payment when it is due, and the default continues for 14 days, the Consultant can issue a notice and if payment is still not received after 7 days, the Consultant can suspend the services. Interest on overdue payments can still be charged.
- Providing for disputes over payment to be dealt with under the Construction Contracts Act where applicable
- Including a minimum amount payable in the event of a breach by the Consultant of \$100,000. The maximum of \$500,000 is retained.

# The New Short Form

## Intellectual Property

- “New Intellectual Property” limited to what is provided to the Client as a deliverable.
- Client’s use of New Intellectual Property is contingent upon payment of all amounts due.
- Providing for termination of the Services by the Consultant if a suspension has not been lifted after 2 months

# The Subconsultant Agreement

This is based on the Short Form so changes have been made which reflect the revised Short Form

CCCS and the Short Form are available in the public area of the ACENZ website:

<http://www.acenz.org.nz/library>

The Subconsultant Agreement, Special Conditions for D&C Contracts and shortly for Panel Agreementd are available in the Members Only area of the website:

[http://www.acenz.org.nz/acenz advisories and industry documents](http://www.acenz.org.nz/acenz_advisories_and_industry_documents)

Also in the Members Only area you will find **Practice Note P17** which provides clause-by-clause changes to CCCS and guidance on the use of the revised edition.

# Questions?



