



# Dealing with Data

*Drafting and negotiating provisions to address data risk in services contracts.*

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The background is a complex, abstract digital visualization. It features several concentric, glowing circles in shades of cyan and blue. Interspersed among these circles are numerous small, bright points of light in red, orange, and yellow, creating a sense of depth and movement. The overall effect is that of a data tunnel or a high-tech interface.

**Data is  
everywhere**

# So what are we talking about?

- Any data provided by one party to another?
- Data held or processed in a particular system or systems?
- Data generated through provision of the services?
- Personal information? De-identified information?
- Is it confidential information? Is it IP?





**Customer Data means:**

- (a) all data and information (including Personal Information) made available to the Supplier by the Customer under or in connection with this Agreement (whether or not stored, hosted or otherwise held by the Supplier or accessed or processed or otherwise used in any manner by the Supplier);**
- (b) all data and information (including Personal Information) generated by or through use by the Supplier of any of the data described in (a) above (including by application of any artificial intelligence in respect of such data by the Supplier); and**
- (c) includes, without limitation, any information about the Customer's business, systems or networks, employees, contractors, or clients.**

# Who owns the data?

- Ownership of data
- Māori data sovereignty



# Use and access rights

- Can the service provider only use the data to provide services during the contract term or should it have broader rights?
- Are there any restrictions on what the customer can use the data for?
- Who can get access to the data during the term of the contract, for what purposes, and at whose cost?



# Data security

- IPP 5 of the Privacy Act
- Protective Security Requirements (PSR) + NZ Information Security Manual (NZISM)
- Technical standards eg ISO 27001
- Different rules for different operating environments?





# Privacy Act

What does the Privacy Act tell us about how to deal with data in contracts?

- Agent vs agency
- Security
- Offshore transfers
- Access
- Privacy breach notification
- Amendment Bill.





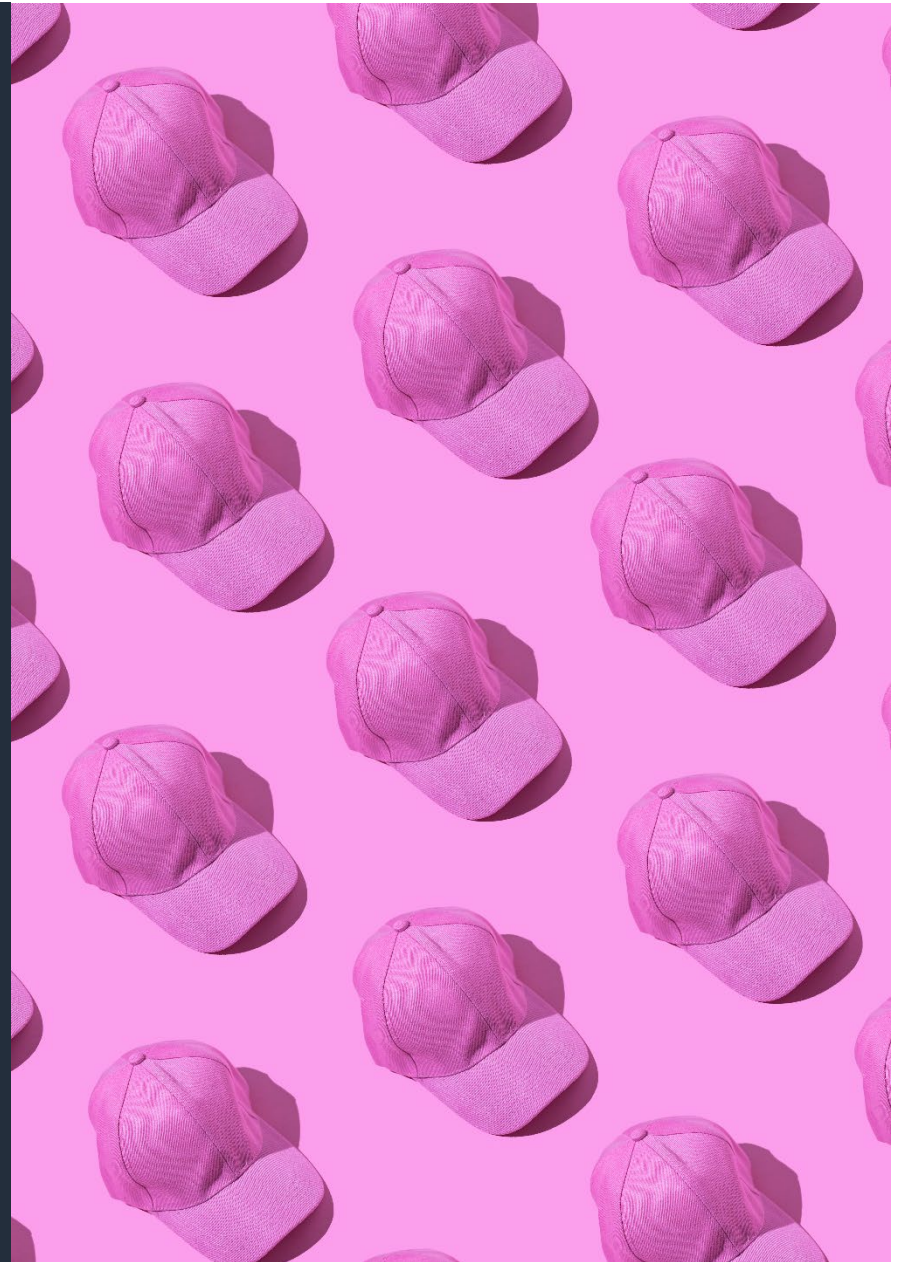
# Termination and disengagement

- How long does the service provider have to keep the data after termination/expiry?
- If it keeps data, what can the service provider do with that data?
- Does the customer get access/data returned to it after termination/expiry?
- Will the service provider need to work with a new provider for the data to be transferred?



# Liability

- Caps and super-caps
- Exclusion clauses and loss of data.



# Clause relationships

- Confidentiality
- Intellectual property
- Privacy
- Security
- Termination and termination consequences
- Liability
- Everything needs to work together as a cohesive whole!







Questions?

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