

## Contract Review Checklist

### Indemnification

- Indemnify Client only (no “agents”)
- “Damages, losses, costs, judgments, and expenses”
- Reasonable attorney’s fees okay
- ~~“Claims, suits, demands, causes of action”~~
- ~~“to the extent caused by”~~
- ~~“in whole or in part”~~
- ~~“connected with or arising out of”~~
- Tie to negligent professional acts, errors, omissions
- Remove the word “defend”

### Duty to Defend Clients & Others

- Agree to defend only GL and Auto claims
- Remove defense of professional claims (not insured)
- Agree to reimburse Client for attorneys’ fees
  - Caused by your professional negligence

*Up-front defense is not insured by professional liability  
Guilty until proven innocent*

### Standard of Care (SOC)

- Exhibited by similarly situated firms
- On similar projects with similar scopes
- In the same region or state of the project
- Avoid superlatives (“highest, best, utmost”)
- Do not provide warranties or guarantees

### Scope of Services

- Limited, Finite (“shall consist of”)
- ~~“including but not limited to”~~
- Enumerate what scope does not include
- Anything not in Scope = Additional Services

### Safety, Site Visits, Means and Methods

- Disclaim responsibility for site or contractor safety
- Clearly describe number and scope of site visits
- Disclaim responsibility for GC’s means & methods

### Time is of the Essence

- Either remove entirely OR
  - Add “Subject to the Standard of Care,” at beginning
- Time is NOT of the Essence!  
Engineer’s No. 1 Ethical Obligation = The Public!  
Client’s schedule cannot override Ethical Canon*

### Ownership & Reuse of Documents

- Refer to final deliverables as Instruments of Service
- ~~Works for Hire~~
- Do not relinquish your intellectual property rights
- Provide Limited-Use, Royalty-Free License
- Get indemnity, release for future use of documents

### Warranties & Guarantees

- Do not agree to Warranties or Guarantees
- ~~“Plans shall be free from defects”~~
- ~~“Plans shall be fit for their intended purpose”~~
- Use “represents” instead of “warrants”
- Okay to warrant that you’ll meet the Standard of Care  
*Professionals cannot warrant a particular outcome*

### Incorporation-by-Reference

- Request, receive, and review all incorporated docs
  - Other contracts, documents, specs, weblinks
- Read and understand flow-downs
  - Identify, except any flow-downs you will not accept
- Make your agreement govern in case of conflicts

### Insurance

- Align Scope & Standard of Care with your insurance
- Know that not all risks are insurable
- Seek assistance from Greyling and the ACEC BIT

### Additional Insureds

- Cannot name Additional Insured on PL Insurance
- Name Client Additional Insured on Auto and GL only
- Don’t simply accept Certificate of Ins. from Sub
  - Make sure Sub’s policy has language, endorsement  
*“Certificate Holder” ≠ Additional Insured*  
*Only policy language, endorsement = Additional Insured*

### Liquidated Damages

- Do not accept Liquidated Damages  
*Professional Liability doesn’t cover LDs  
GC’s LDs incurred because of you = damages; indemnity*

### Limitation of Liability

- Small fee: limit liability to multiplier of fee
- Large fee: limit liability to fee or limits of insurance

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