

Service Agreement General Provisions Guide - May 2021

Summary:

The applicability of the indemnification clause of service agreements differs depending on whether a service provider is considered a design professional per CA Civil Code section 2782.8 or not. The new Service Provider agreement page and General Provisions have been revised to reflect both types of indemnifications within one agreement form.

Background:

[CA Civil Code 2782.8](#) created certain carveouts in the indemnification provided by design professionals effective to agreements entered on or after January 1, 2018. The provisions of the above-mentioned code section cannot be waived or modified by contractual agreement, act, or omission of the parties.

Instructions:

After discussion with the possible service provider and prior to making the agreement available for their signature, creator/administrator of the agreement shall determine which indemnification should be applicable based on the following steps:

1. Agreement administrator to confirm if the scope is for design professional services and whether service provider is a Design Professional when the entity is any of the following:
 - a. **Architect**- An individual licensed as an architect pursuant to [Chapter 3 \(commencing with Section 5500\) of Division 3 of the California Business and Professions Code](#), and a business entity offering architectural services in accordance with that chapter.
 - b. **Landscape Architect**- An individual licensed as a landscape architect pursuant to [Chapter 3.5 \(commencing with Section 5615\) of Division 3 of the California Business and Professions Code](#), and a business entity offering landscape architectural services in accordance with that chapter.
 - c. **Professional Land Surveyor**- An individual licensed as a professional land surveyor pursuant to [Chapter 15 \(commencing with Section 8700\) of Division 3 of the California Business and Professions Code](#), and a business entity offering professional land surveying services in accordance with that chapter.
 - d. **Professional Engineer (Electrical, Mechanical, and Civil including Structural and geotechnical)*** - An individual registered as a professional engineer pursuant to [Chapter 7 \(commencing with Section 6700\) of Division 3 of the California Business and Professions Code](#), and a business entity offering professional engineering services in accordance with that chapter.

Further clarification is provided with regards to Professional Engineers at the of this document. *
2. If the service provider is not any of the above or does not possess a state of California professional license, that entity is **not** considered a design professional.
3. Agreement page now includes a question as to whether the agreement is for a design professional services. A Yes/No selection box is provided, which the administrator of the contract needs to appropriately select.

4. A new separate license number box from the DIR number box has been provided on the agreement signature page. If the agreement is for design professional service provider, the agreement administrator must confirm the service provider's license number for compliance with Design Professional indemnification and must insert the professional service provider's license number when they qualify per item 1 above. **If the service provider cannot provide their professional license number under one of the four categories, the agreement administrator shall inquire the reasoning and inform the service provider appropriately.** Note that many service providers may have license numbers, but having a professional license does not necessarily qualify the service provider as a design professional per CA Civil Code section 2782.8.
5. The new General Provisions of the agreement includes a check box after item 8a and 8b. The box associated with 8a shall be checked if the service provider is not a design professional per CA Civil Code section 2782.8 or the box associated with 8b shall be checked if the service provider is a design professional per CA Civil Code section 2782.8.
6. Crossing out provision 8.a or 8.b in the Service Provider General Provisions of the contract is not required.

Note that the provisions of section 8.b pertaining to the duty and cost to defend shall not apply to either of the following:

- a. Any contract for design professional services, or amendments thereto, where a project-specific general liability policy insures all project participants for general liability exposures on primary basis and covers all design professionals for their legal liability arising out of their professional services on a primary basis.
- b. A design professional who is party to a written design-build joint venture agreement and not the primary holder of the Trustees and Design-Builder contract.

*Clarification of Professional Engineers:

There are three categories of professional engineer licensure available in California per [information available from the Department of Consumer Affairs](#). These include:

- (1) Engineers that are regulated by **Practice Act**,
- (2) Engineers that are listed by **Title Act**, and
- (3) Engineers that are given **Title Authority**.

Although all three categories are considered professional engineers, only the professional engineers that are regulated and fall under the **Practice Act**, also known as the [Professional Engineers Act](#), as well as those under **Title Authority** qualify to take advantage of the Design Professional indemnification per CA Civil Code 2782.8.

The following engineers are those that do qualify as "design professionals" and can take advantage of the 8.b indemnification provisions:

- a. Electrical Engineer – Practice act
- b. Mechanical Engineer – Practice act

- c. Civil Engineer – Practice act
- d. Geotechnical Engineer (a subset of Civil) - Practice act and title authority
- e. Soils Engineer (a subset of Civil) - Practice act and title authority
- f. Structural Engineer (a subset of Civil) - Practice act and title authority

Professional engineers that are listed in, but not regulated as part of the [Professional Engineers Act](#) are not currently qualified to take advantage CA Civil Code 2782.8 created indemnification carveouts. Such engineers may be part of the Title Act [CA Code of Regulations Title 16 Division 5 sections 400-476](#).

The following engineers are limited to the 8.a indemnification provisions as they do not qualify as “design professionals” currently:

- a. “agricultural engineer,”
- b. “chemical engineer,”
- c. “control system engineer,”
- d. “fire protection engineer,”
- e. “industrial engineer,”
- f. “metallurgical engineer,”
- g. “nuclear engineer,”
- h. “petroleum engineer,”
- i. “traffic engineer.”