

EXAMPLE CONTRACT LANGUAGE¹

Design Professional's Evaluation of Claim

Client will give prompt written notice to Design Professional whenever Client becomes aware of any claim or potential claim, including third party claims, related to Design Professional's services.

Client agrees to give Design Professional an opportunity for preliminary review and written comment on the merits of the claim or potential claim, including access to the project site if such access is within Client's control. Except in the case of emergency or Client's reasonable efforts to mitigate damages, the opportunity for preliminary review and comment must be given prior to any remediation efforts. Regardless, Design Professional shall be afforded adequate opportunity for preliminary review and comment on the merits of the claim or potential claim.

Design Professional's preliminary review and comment may include an analysis, interpretation, and opinion of the merits of the claim as it relates to services of the Design Professional. The preliminary review and comment is not intended to be an exhaustive report with conclusive findings.

Alternatively, Design Professional may provide a written response declining its right for preliminary review and comment. In any case, Design Professional's preliminary review and written comment or its written response declining its right to provide written comments is a condition precedent to mediation, arbitration or litigation between Client and Design Professional.

¹ This information is provided for educational purposes only and is under no circumstances to be construed as legal advice. If you have questions regarding contracts, specific contract provisions, or other legal matters, please consult with your attorney. The author and ACEC disclaim any and all liability for damages or losses of any kind, including direct, indirect, incidental, consequential or punitive damages, and attorneys' fees or costs, arising out of or relating to any use of this information.