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NSPE Contact: Committee on Policy and Advocacy
Professional Policy Supported: 10-Professional Practice

Position Statement: It is the position of the National Society of Professional Engineers (NSPE) that contractual provisions such as “indemnification/hold harmless,” “guarantee/warranty,” “liquidated damages,” “performance bonds” and others that seek to shift risks from the parties in the best position to assume those risks to the engineer are inappropriate.

Background:
Professional engineers should not assume liabilities that are not the engineer’s proper professional responsibility when providing professional services. Assuming responsibilities for which the engineer does not have legal or contractual authority, responsibility, or control is inconsistent with the ethical practice of engineering. Imposing risk-sharing measures may create ethical dilemmas for engineers, forcing them to choose between their professional duties and financial considerations. Engineers are already held to high standards of professional conduct and are legally obligated to provide services with due care and competence.

Engineering, like other learned professions, is based upon professional judgment; therefore, its practitioners cannot appropriately guarantee or warrant perfection, as is explicit or implied in a guaranty or warranty.

Risk-sharing measures are more appropriately placed with project owners who have greater control over project finances, business aspects, and risk management. Engineers are better suited to focus on delivering the highest quality engineering solutions while adhering to ethical and professional standards. Risk-sharing measures can erode the trust between engineers and their clients. Engineers may feel pressured to make decisions based on avoiding financial liability rather than what is in the best interest of the project. Adequate protection for owners already exists and has worked satisfactorily for many years. If a professional engineer is shown to be negligent in the performance of his or her duties, the engineer is held responsible for damages incurred as a result of that negligence.