

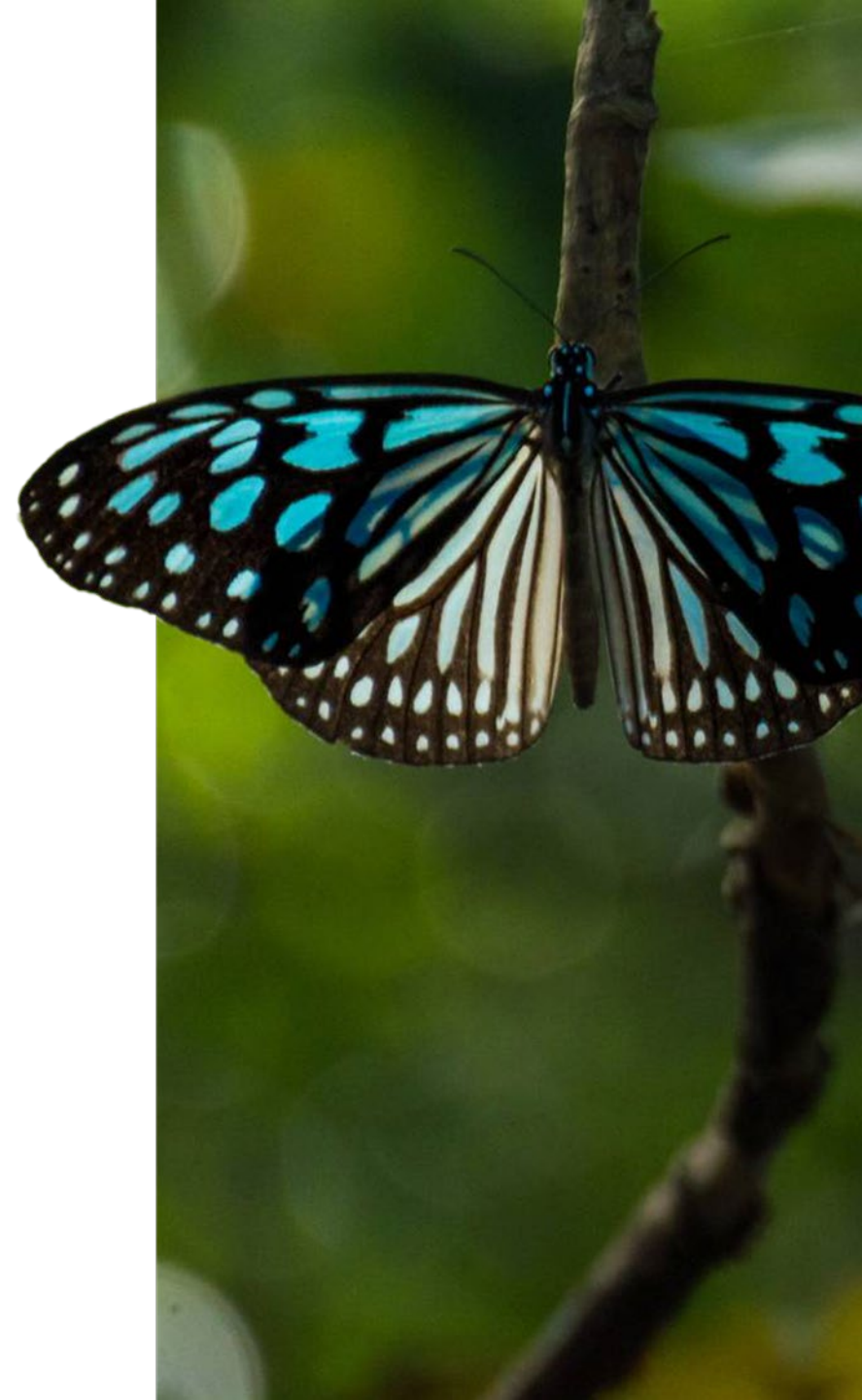
# **INDEMNIFICATION**

**CA State Contracting**

**SCAN Meeting**

**DGS Office of Legal Services**

**July 2025**





# **Why Does Indemnification Matter?**

## **Contract Scenario**



# What is Indemnification?

Refers to the concept where one party agrees to cover the losses or damages of the other party under specific circumstances defined in the contract.



# Important Purposes

- Allocates and Transfers Risk:  
Aim is to protect a party from potential losses or damage
- Protects Against Third-Party Claims
- Limits Financial Exposure





## Related Terms:

- Indemnify
- Defend
- Hold Harmless

Concepts are related and overlapping but distinct





# Indemnify

Agree to cover the losses or damages of the other party under specific circumstances defined in the contract.





# Hold Harmless/ Save Harmless

Agree not to hold the other party responsible for any loss, damage, or legal liability that may arise under the agreement





# Defend

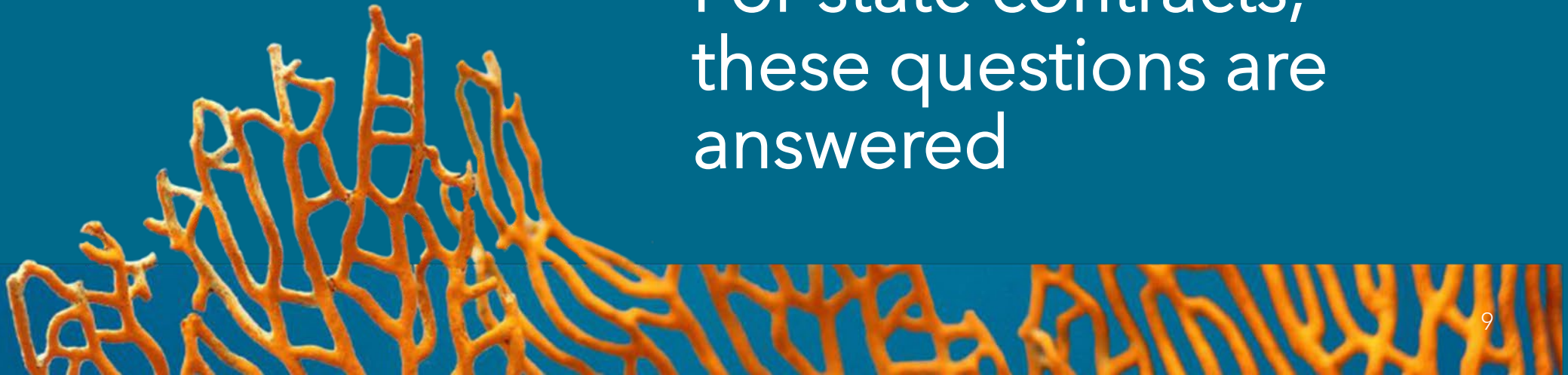
Agree to defend, finance a defense, or reimburse an indemnitee for defending a covered claim



## Considerations

- Who is being indemnified?
- What is the scope?

For state contracts,  
these questions are  
answered





# INDEMNIFICATION

## State's Standard General Terms and Conditions

### GTC 02/2025 Section 5

- Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.





# INDEMNIFICATION

**State's Standard  
General Terms and Conditions**

**GTC 02/2025  
Section 5**

**Policy of the State of  
California**

**SCM Vol 1 section 2.07**



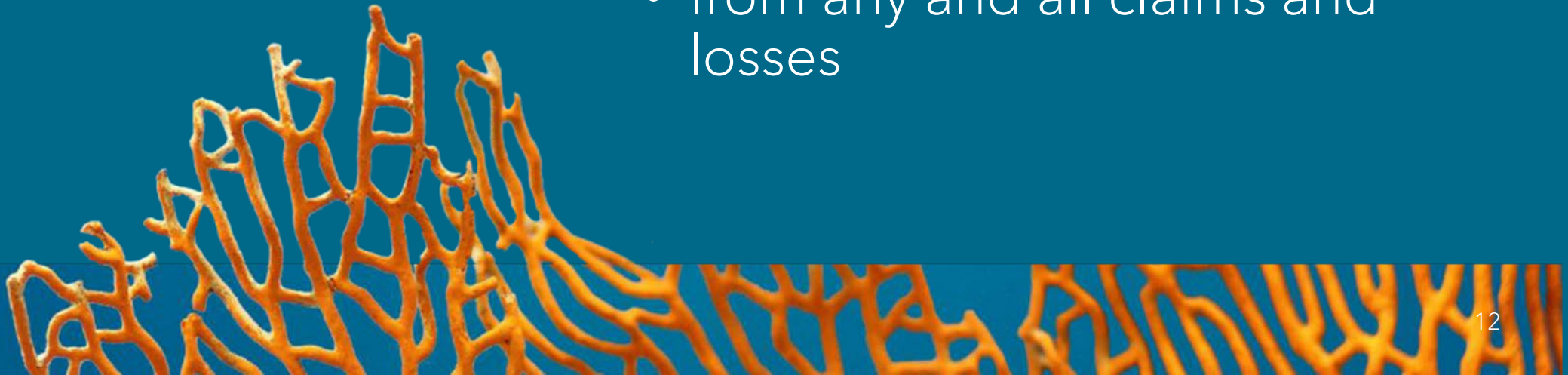


# INDEMNIFICATION

**GTC 02/2025**  
**Section 5**

**Break Down -1**

- Contractor agrees to indemnify, defend and save harmless
- the State, its officers, agents and employees
- from any and all claims and losses





# INDEMNIFICATION

**GTC 02/2025**  
**Section 5**

**Break Down - 2**

- accruing or resulting to
- any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies
- in connection with the performance of this Agreement,





# INDEMNIFICATION

**GTC 02/2025**  
**Section 5**

**Break Down -3**

- and from any and all claims and losses accruing or resulting to
- any person, firm or corporation who may be injured or damaged by Contractor
- in the performance of this Agreement.





# INDEMNIFICATION

**State's Standard  
General Terms and Conditions**

**GTC 02/2025  
Section 5**

**Policy of the State of  
California:**

**We don't want to be  
responsible for a  
situation caused by the  
contractor. The  
contractor is  
responsible.**





# But sometimes....

The contractor wants to:

- Delete the GTC indemnification provision
- Modify GTC indemnification provision so the *contractor*, not the State, is indemnified by the State
- Insert a provision into Exhibit A or one of the other exhibits that conflicts with the GTC provision
- Include a boilerplate exhibit or attachment which conflicts with the GTC provision

Any of these actions requires DGS OLS approval.

Best practice is to obtain approval *before* submitting the contract to DGS OLS for approval and prior to sending the contract to the contractor to sign

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- Modify GTC indemnification provision so the *contractor*, not the State, is indemnified by the State
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# **Contractor Indemnifying the State** **v.** **State Indemnifying the Contractor**

These are two VERY different actions with different legal consequences and differing supporting legal authorities.



## State Indemnifying the Contractor

- Potential legal impediments
- Not generally supported by California law
- Very limited exceptions





# State Indemnifying the Contractor

## Potential Issues - 1

- In absence of express statutory authority, a state agency does not have the power to act as a surety or indemnitor
- Could conceivably create unbudgeted contingent financial liabilities in unknown amounts



# State Indemnifying the Contractor

## Potential Issues - 2

- Fiscal control laws contain prohibitions against incurring expenditures in excess of budget allotments
- The California Constitution, Articles XVI, sections 6 and 7 prohibit the giving of money without a legislative appropriation
- Such clauses may inaccurately portray the agency's actual authority





But wait -

We mentioned  
exceptions:

*Statutory*  
exceptions



# **Most Common Statutory Exception**

## **GC 895.4 - Public Entities**

(Most Frequently Applied)

As part of any agreement, the public entities may provide for contribution or indemnification by any or all of the public entities that are parties to the agreement upon any liability arising out of the performance of the agreement.

This applies to the State, counties, and cities.





# **Contract Scenario**

## **Revisit**



# Questions?



# The End

