



Contract Modernization

Indemnification and Limitations of Liability

Alberta Infrastructure has listened to its industry partners. Our new, modernized Consulting Services contracts have added clarity and are better aligned with industry standard.

Disclaimer: This document is for information and context only. It is not legal advice and must not be used as a substitute for reviewing the applicable contract, legislation, or seeking professional legal counsel. Where interpretation is required, the executed contract and governing law prevail.

What we heard

Consultants expressed concern that previous contracts created uncertainty in how risk was allocated, particularly in relation to professional liability and indirect damages.

Industry feedback highlighted:

- Lack of clarity around what types of losses each party was responsible for.
- Misalignment between contractual risk and insurable professional liability (Errors & Omissions (E&O)).
- A need for clearer distinction between Consultant responsibility and project-related risks managed by others.

What we did

The Consulting Services template introduces a clearer and more defined liability framework that reflects the Consultant's role and professional obligations. The limits of liability provisions remain unchanged. The agreement continues to include a mutual waiver of consequential losses.

Further clarity was added to:

Defined Indemnities

The Consultant indemnifies the Province against third-party claims arising from negligent performance, breach of contract or Standard of Care, willful misconduct, fraud, Intellectual Property infringement, or unauthorized use of AI or Natural Language Generators.

The Province indemnifies the Consultant against third-party claims resulting from the Province's breach of contract, negligence, or willful misconduct.

Mutual waiver of consequential loss

Both parties waive claims against each other for consequential losses, such as lost profits, lost business opportunities, or reputational damage. This waiver applies strictly to direct claims between the Province and the Consultant; it does not limit either party's indemnity obligations regarding third-party claims.

No Limit of Liability for Errors and Omissions

Nothing in the agreement caps, restricts, or limits the Consultant's legal liability for negligent, deliberate, or tortious errors and omissions, or for failing to adhere to the required Standard of Care.

Defined Standard of Care

What constitutes the "Standard of Care" is precisely defined in the Agreement. In general terms the Standard of Care requires Consultants to perform their services with the skill, care, diligence, and professional judgment expected of a qualified and experienced professional consultant in Alberta. They remain responsible for coordinating their team, maintaining project records, protecting confidential information, providing objective professional advice, and recommending better solutions where appropriate. The Standard of Care applies

throughout the agreement and extends to all services, personnel, products, and procedures used to deliver the project.

What changed

Alberta Infrastructure has clarified and modernized the liability and risk provisions in the Consulting Services Agreement to provide greater certainty, clearer allocation of responsibilities, and a more balanced approach to risk. While the language has been simplified and key obligations have been more clearly defined, the limits of liability provisions have not changed. As with previous agreements, liability for professional negligence, errors and omissions, and breach of the Standard of Care remains unlimited.