

Contract Modernization

Professional Disclaimers

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

Industry partners sought clarity on what protective language and disclaimers they are allowed to include in their reports, designs, and other Instruments of Service, especially when those documents rely on information provided by the Province.

What's Included in the Agreement

A schedule (Schedule 9 - Disclaimers) provides clear, defined boundaries on permitted and non-permitted exclusionary terms, conditions, and disclaimers.

Permitted Disclaimers: The Agreement expressly permits Consultants to include statements that protect the context of their work, such as:

Reliance on Supplied Information: Explicitly stating that the author assumed all information received from the Province or its consultants was accurate and relied upon it.

Intellectual Property & Fair Use: Protecting copyrights or trademarks, or noting fair use of third-party materials (provided the consultant remains liable for any actual infringement).

Context and Currency: Stating that a document must be read in its entirety based on specific assumptions, and noting that opinions may change if new information becomes available.

Scope and Audience: Clarifying that the work is solely for the purposes disclosed by the Province, limiting reliance to the author's specific area of expertise, and requiring notice if the work is shared with a third party.

Unforeseeable Liabilities: Limiting liability for the independent ways others interpret or apply the work, and excluding liability for hazardous substances unless they were specifically brought to the author's attention.

Non-Permitted Disclaimers: To ensure the Province and its contractors can effectively utilize the deliverables, consultants are strictly prohibited from including disclaimers that:

Contradict the Main Contract: Claiming ownership rights, limiting warranties, or shifting liability in ways that conflict with the overarching Consulting Services Agreement.

Dodge Professional Diligence: Stating the consultant is not responsible for identifying what further information is needed to provide an accurate, reliable report.

Restrict Project Operations: Limiting the Province's ability to get a second opinion from a third party, or preventing project contractors from relying on the accuracy of the documents.

Rely on Unverified Data: Limiting liability by qualifying the work based on unwritten instructions or assuming the accuracy of information from unverified, non-Province sources.

Why we made the change

The intent is to establish a fair balance. These updates allow professional consultants to protect their practice and outline the specific context of their work, while ensuring that the Province and project contractors can confidently rely on the deliverables to construct and operate the project without being hindered by overarching, contradictory legal disclaimers.