PLAIN LANGUAGE GUIDE

TO ALBERTA INFRASTRUCTURE'S CONSTRUCTION MANAGEMENT AGREEMENT

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Plain Language Guide

Alberta Infrastructure's Construction Management Agreement

The Construction Management (CM) Agreement sets out the legal framework governing the relationship between Alberta Infrastructure and the Construction Manager. It explains what each party must do, who carries key risks, how payment works, and what procedures must be followed during the project. The Agreement is detailed, and many important rules appear in schedules and supporting documents.

This guide helps Construction Managers, project teams, and other stakeholders understand the main rights, obligations, and risks in the Agreement. It does not replace the Agreement and is not legal advice. It explains the Agreement in practical terms and highlights what the provisions mean during project delivery.

This guide is organized to follow the typical progression of a construction project, from pre-construction planning through project execution, change management, payment, quality control, dispute resolution, and project close-out. Throughout the guide, readers will find summaries of important contractual requirements, notice obligations, timelines, and risk-management considerations.

Where there is any inconsistency between this guide and the Agreement, the Agreement and the associated documents should be relied on. Construction Managers should always refer to the actual contract language when making project decisions or assessing their legal rights and obligations.

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Part 1 – Before Construction Begins

1. Understanding the Contract Documents

A. The Contract Documents

The Agreement is built like a pyramid. The main Construction Management Agreement sits at the top and sets the legal framework providing definitions, risk allocation and key obligations. Directly beneath it are more than thirty numbered Schedules that add greater detail on the parties' legal rights and provide supplemental information to inform the work. At the bottom of the pyramid are the documents listed in Schedule 10, which provide additional information that informs the higher levels. A complete listing of the "Contract Documents" is found in Schedule 4 (Contract Documents).

If the documents conflict, Article 1.4 (Order of Precedence) decides which document governs. In general, later written directions, such as Change Orders or Supplemental Instructions, take priority over the original contract documents.

Practical Insight

- Keep a current index of all Agreements, Schedules, Supplemental Instructions, and Change Orders.
- When documents conflict, stop and apply Article 1.4 before pricing or performing the work.
- Do not rely on an old drawing, schedule, or instruction without checking whether it has been replaced.

B. Relying on the Province's Information

The CM may rely on the accuracy and completeness of the Contract Documents, including geotechnical information. However, if the information comes from a third party, such as a geotechnical report provided to the Province, the CM can only rely on it to the same extent the Province can rely on it. The CM may carry out its own investigations at its own cost, but is not required to do so.

The CM should not assume it is protected simply because a problem originates in the design documents. The CM is required to review the Contract Documents and identify any inconsistencies, errors, or incompleteness in the Contract Documents and immediately bring them to the attention of the Province prior to the work being performed. Failure to detect document errors that reasonably should have been identified can remove relief and shift extra costs or delay liability to the CM.

Practical Insight

- You can rely on Province-issued information only within the limits of the Province's own rights to rely on that information.
- Still complete a careful document review before starting affected work.
- Flag obvious errors, gaps, and conflicts in writing, and keep the backup in the project file.

C. Clarifying Information

Articles 6.4 (Request for Clarification) and 6.5 (Request for Information) give the CM a formal way to resolve uncertainty before work starts. Use a Request for Clarification when a drawing or specification appears inconsistent with the Contract Documents. Use a Request for Information when the CM needs more detail, such as additional drawings, specifications, or data, to understand the work. The Province must act in good faith and aims to respond in writing within 10 business days. These procedures must be used (and answered) before the CM proceeds, helping all parties avoid re-work, cost overruns and later disputes over design intent or scope.

Practical Insight

- Do not guess at unclear design intent.
- Send the right written request before starting the affected work.
- Keep the response with the site records so the team can prove what it was told to build.

2. Understanding the Work

Although the CM must perform the Work in accordance with the Contract Documents, including the Construction Execution Plan (Schedule 2) and Detailed Construction Schedule (Schedule 3), the CM has full control over the means and methods in performance of the Work.

The CM must perform the Services in accordance with the "Standard of Performance", which requires the CM and its trades to act with "the standard of care, skill, knowledge, and diligence that would normally be provided by an experienced, capable and prudent construction manager, and its subcontractors performing similar works for similar projects in the Province of Alberta". Although not a standard of perfection, this is a high standard and aligns with the principle that professionals who hold themselves out as having special expertise or experience are held to a correspondingly high standard when performing work.

Practical Insight

- You control how the work is done, but you must meet a high professional standard.
- Keep planning, supervision, safety, quality, and scheduling systems current.

- Make sure the project file shows why your methods were reasonable.
- If there is a dispute, you will need records showing experienced and prudent project management.

3. Pre-Construction Obligations

Prior to starting the work, the CM must provide to the Province all of the items in Article 2 (Conditions Precedent), which include the following:

1. Construction Execution Plan (Schedule 2);
2. Cash Flow Forecast (as further detailed in Article 10.3);
3. Detailed Construction Schedule (Schedule 3);
4. Permits and Approvals (in accordance with Schedule 11);
5. Bonds (in accordance with Schedule 12);
6. Insurance (in accordance with Schedule 13);
7. Quality Control Plan (in accordance with Schedule 27);
8. A Valid Alberta Worker's Compensation Board Registration Number;
9. Alberta Certificate of Recognition confirming the CM's health and safety system is compliant with all relevant health and safety laws;
10. Confirmation in writing that the CM has complied with all safety, health and security requirements (as described in Schedule 25 – Safety Requirements and Schedule 32 – Security Requirements)

The CM must also organize a mandatory "Kick-off Meeting" 10 business days prior to the commencement of the work on site. The CM and its Key Personnel (as defined in Schedule 7) must be present and prepared to discuss the Construction Execution Plan, Cash Flow Forecast, Detailed Construction Schedule, and ECO Plan. The CM should move promptly to gather the required information and organize the Kick-off Meeting to ensure that these items do not delay the start of construction.

Practical Insight

- Treat Article 2 requirements as hard gates to starting work.
- Assign an owner and deadline for each required submission.
- Chase permits, bonds, insurance, WCB, COR, and safety/security confirmations early.
- Document each submission and acceptance so a delayed start is not blamed on the CM.

Part 2 – Managing the Project

1. Access to the Site

After completing the "Pre-Construction Obligations" in Article 2 (Conditions Precedent), the Province must give the CM uninterrupted physical access to the Site for the duration of the Agreement. The Site is defined in Schedule 26.

The Province's obligation for uninterrupted access is subject only to a few limited exceptions such as granting other parties utility rights of way, easements, or similar interests in land over the Site (Article 5.1.5), inspections by the Consultant or other third parties (Article 5.10), and entry by any other government authority to carry out statutory duties (Article 5.10). If the Province cannot deliver clear access when required, the delay is treated as an owner-caused "Relief Event" entitling the CM to extra time and demonstrable costs if proper notice is provided.

Practical Insight

- Complete the Conditions Precedent and Kick-off Meeting before relying on access rights.
- Record the date, location, and extent of access actually provided.
- If access is blocked or limited, give written delay or Relief Event notice quickly.
- Keep photos, site logs, emails, and schedule records showing the actual impact.

2. Schedule & Planning

The CM must keep two living planning tools:

1. A comprehensive execution plan; and
2. A critical-path schedule.

Bid-stage drafts automatically form part of the Agreement, but the CM must soon replace them with fully developed, editable versions that break the project into tasks, allocate labour and equipment, and embed safety, quality and environmental controls. Performance must be measured against the schedule each week and reported through regular written updates. Revised plans take effect only after the Province reviews and expressly accepts them. Ignoring, failing to update, or deviating from the accepted plan or schedule is a contractual breach that lets the Province withhold payments, record poor performance, or invoke any other remedy available under the agreement.

Any slippage that threatens key milestones obliges the CM to submit a recovery plan and, if performance remains off track, the Province may direct acceleration or resequencing without first issuing a Change Order, potentially forcing the CM to absorb overtime and productivity costs unless the Province later agrees the instruction is compensable.

Practical Insight

- Build the Construction Execution Plan and Detailed Construction Schedule properly at the start.
- Update them when the work changes and report against them regularly.
- If slippage appears likely, give formal notice and submit a recovery plan quickly.
- If you do not, the Province may withhold money, direct acceleration, or claim liquidated damages.

3. Managing Subcontractors

The CM will use the Key Subcontractors (identified in Schedule 8) that the CM procures for the performance of the work. Packages of work valued at over $100,000 require a public procurement and work packages between $10,000 and $100,000 must be issued by invitation to at least three subcontractors.

Before a trade begins, the CM must sign a written subcontract that mirrors the prime contract's technical, safety, schedule, payment, lien and insurance clauses, and obliges the trade to follow the approved execution plan and construction schedule. Lump-sum pricing is the default with unit-rate or cost-plus arrangements needing the Province's written consent. These requirements are found in Schedule 9 (Mandatory Subcontract Requirements). A "pay-when-paid" clause is explicitly prohibited.

The CM supervises and coordinates all trades, ensures they use competent, insured workers, and remains liable for their performance, costs, delays and defects.

Practical Insight

- Use a transparent, documented procurement process that follows the dollar thresholds.
- Put every trade under a written subcontract before work starts.
- Flow down safety, schedule, insurance, lien, payment, and warranty obligations.
- Do not include pay-when-paid clauses.
- Remember that the CM remains responsible to the Province for subcontractor delay, defects, safety incidents, and payment issues.

Part 3 – Changes, Delays and Time Extensions

1. Changes

Any variation to the project is ineffective until the Province issues a written Change Order or Change Directive. Either the Province can start a change or the CM can request one, but the Agreement is only modified by that signed document. A change may alter the scope of work, drawings or specifications, contract price, critical-path milestones, or any mix of these. Performing work that has not been captured in an authorized change puts the CM at risk of non-payment.

Schedule 16 supplies the step-by-step rules for costing and recording every approved change. It prescribes the forms, supporting evidence, and timelines the parties must use, and sets the method for valuing labour, materials, subcontractor costs, overhead, profit, bonding, and insurance. Where a change affects the timetable, Schedule 16 requires a detailed breakdown of the schedule impact on the Milestone Dates or Contract Time. The CM must update its cost reports, payment certificates, and detailed construction schedule each time a change is finalized so invoices match the revised reality.

As typical in any construction agreement, changes require written documents and proper notice, which means there is no payment or schedule relief for "handshake deals" or delayed claims.

Practical Insight

- Do not perform extra or changed work based only on a verbal instruction.
- Use the Schedule 16 process and get a written Change Order or Change Directive.
- Track changed work separately, including labour, material, subcontractor costs, and schedule impact.
- Keep a clean change log so later payment disputes do not depend on memory.

2. Delays and Relief

A. Relief Events

Relief Events are Province-retained risks listed in Schedule 19. They include unknown hazardous contamination, Province-caused delay or breach, mandatory changes in law, unforeseeable public-authority orders, unnecessary Province suspensions, acts of other Province-engaged contractors, and similar events. If one of these events actually stops or slows the work, the CM must give prompt written notice, mitigate the impact, and keep records. Together, Article 14 and Schedule 19 say: if a listed extraordinary risk materializes, the CM gets time (beyond 10 Business

Days), and costs (over and above $10,000), so long as it follows the notice and mitigation rules**.**

Practical Insight

- Use Schedule 19 as a checklist when something unusual affects the work.
- Send written Relief Event notice immediately.
- Record how the event affected critical work, how many days were lost, and what costs were incurred.
- Show what steps the team took to reduce the impact.

B. Force Majeure

For extraordinary events specifically defined in the Agreement, the CM is entitled to push milestone and completion dates out by the number of days the event stops critical work. However, due to the various requirements discussed below, in most cases it will be difficult for the CM to obtain relief under Force Majeure.

The listed events generally fall into these categories: war and political violence, nuclear events, natural disasters, Extreme Weather, public health emergencies, and civil or labour disruptions. Extreme Weather means a weather event not seen in the past 10 years. The Agreement does not include a broad catch-all clause for any event beyond the parties' reasonable control.

Entitlement to relief also requires that the event "prevents" or "renders impossible" the performance of any work. This is a high standard and beyond the more typical language that includes events that *impact* the work subject to commercially reasonable mitigation efforts.

Even if an event reaches the high threshold, relief will only be provided to the CM after the Work has been impacted for a certain period of time, which is specified in each individual agreement, and if proper notice was given within 5 Business Days of the Event.

Ultimately, if a Force Majeure event occurs for more than 120 days, either party may terminate the Agreement and the Province will pay the CM the amount the CM is entitled to for completed Work, termination costs payable to CM's subcontractors, and the CM's fixed expenses.

Practical Insight

- Force Majeure is narrow and usually gives time, not money.
- The event must actually prevent or make critical work impossible.
- Give notice within 5 Business Days and track the exact delay period.
- Do not rely on Force Majeure for routine bad weather or ordinary supply issues.

C. Stoppage by Owner

The Province may issue a formal "Stop Work Order" under Article 6.13 if it needs the CM to pause some or all activities because work is not in accordance with the Contract Documents. Once delivered, the CM must immediately halt the affected work, secure the site, and protect completed portions, while following any safety or preservation steps the Province lists. The order is temporary: the Province must later give written direction to resume, modify, or terminate the work, and the parties will adjust the schedule, price, and deadlines for any resulting delay or cost, without penalty to the CM's performance. If the Work is in accordance with Contract Documents, this is a Relief Event. Schedule 19 confirms such a government-initiated stop qualifies as a Relief Event automatically.

Practical Insight

- If a Stop Work Order is issued, stop only the work identified in the order.
- Secure the area and protect completed work.
- Keep records showing whether the stopped work complied with the Contract Documents.
- Track standby time, delay, remobilization, and other costs.
- If the work was compliant, treat the stoppage as a possible Relief Event.

D. Damages for Delay

If the CM fails to achieve "Interim Acceptance of the Work" or misses any Milestone Date, the Province is immediately entitled to "Liquidated Damages", which is the Province's sole monetary recovery for the delay.

The amount of liquidated damages per day (or part of a day) and the total cumulative amount of liquidated damages are project-specific and specified in Schedule 21 (Penalties and Damages).

Any incurred liquidated damages are deductible from progress payments and, if insufficient funds are payable, the CM must pay the Province within 30 days, failing which, the Province may call on the security bonds.

Practical Insight

- Manage the critical path closely and update the schedule often.
- Give delay, Relief Event, or Force Majeure notices on time.
- Seek approved extensions before liquidated damages begin to accrue.
- Remember that the Province may deduct liquidated damages from progress payments or recover them under the bonds.

Part 4 - Money and Payment

1. Payments and Money

Under Article 10, the Province will pay the CM according to the agreed fee structure and may deduct or hold back amounts if there are defects, third-party claims or other listed risks.

Pre-construction services described in Schedule A1 (such as early scheduling support) are covered by a single fixed fee set out in Schedule A2, with only narrowly defined out-of-pocket costs recoverable under Schedule A3.

When construction starts, the CM earns a second fixed fee for the core management tasks in Schedule B1. Schedule B2 lists the personnel and services that must be supplied for that price, while Schedule B3 identifies any additional resources the Province can order and pay for separately.

The Agreement also contains a dedicated regime dealing with increases and decreases in costs. Unlike a fixed-price arrangement where all cost risk may rest with the contractor, this Agreement includes contractual mechanisms governing eligible cost increases and decreases in specified circumstances. The CM should review Schedule 17 carefully and maintain documentation supporting procurement timing, supplier pricing and mitigation efforts.

Schedule 33 addresses tariff-related impacts. This provision recognizes that government-imposed tariffs can significantly affect project costs and supply chains. The CM should ensure procurement personnel understand the documentation and notice requirements necessary to preserve entitlement if a tariff-related event occurs.

Overall, this fee model caps the CM's margin, assigns routine cost-overrun risk to the CM, and limits extra billing to clearly defined exceptions.

Practical Insight

- Treat the CM's management fee as largely fixed.
- Price staff, supervision, and overhead realistically at the start.
- Know which costs are reimbursable and which are not.
- For escalation or tariff claims, keep procurement timing, supplier pricing, quotes, and mitigation records.

2. Payment

Article 10 of the Agreement sets the overall rules for how the Province pays the CM while Schedule 14 (Price and Payment Procedures) supplies the step-by-step mechanics the CM must follow. Payments are made as regular "progress payments" while construction is under way and a final payment once all contractual requirements have been met.

Three key financial tools shape every payment:

1. Holdback – Each progress payment is automatically reduced by a set percentage called the Holdback. It is kept until the work reaches prescribed milestones, then released. The Holdback is purely a contractual security measure; it is not the statutory builders-lien holdback required by Alberta's *Prompt Payment and Construction Lien Act*. Its size and release conditions are fixed in the contract.

2. Withholdings – In addition to the routine Holdback, the Province may temporarily withhold extra sums if there are defects, delays, safety problems, third-party claims, or other risks listed in the contract. Withheld money is released once the CM remedies the underlying issue. If the CM does not correct the problem, the Province can turn the outstanding amount into a "set-off" and use it to hire others to finish or repair the work.

3. Set-off – The Province has a contractual duty to deduct any amounts the CM owes the Province (whether arising on this project or another provincial contract) from the payments otherwise due to the CM. For set-off and withholding above $10,000 the Province will offer to attend a meeting to attempt to resolve the issue in Good Faith.

   These mechanisms protect the Province while ensuring the CM is paid promptly once its contractual obligations are met. However, there is no interest on late payments by the Province, except when the Province is determined to have wrongfully refused to pay certain funds as provided in the dispute resolution.

Practical Insight

- Submit clean progress claims with the required backup.
- Track contractual Holdback separately from extra Withholdings.
- Respond quickly to defects, claims, or missing documents that may justify Withholdings.
- Do not assume interest will be available for late payment.
- Poor paperwork can directly affect cash flow.

3. Security

Article 12 groups the main security promised by the CM under two headings.

1. Bonding: The CM must supply the bonds identified in the contract (for example, performance and labour-and-material-payment bonds). The details (i.e. form, dollar amount, expiry and the surety's licensing requirements) appear in the Bonding Requirements section of Article 12. The bonds have to be delivered before work begins and kept valid until the Agreement says they may be released. If the CM fails to keep a bond in place, the Province may obtain equivalent security and charge the cost back to the CM.

2. Insurance: The CM must maintain the insurance coverages listed in Schedule 13 (such as builders-risk, commercial general liability and professional liability). Certificates must be filed with the Province before site mobilization, renewed as necessary and kept in force through any warranty period. All deductibles are the CM's responsibility, and the Province must be named as an additional insured where required.

The following other contract-level security measures complement Article 12:

- Payment holdback, extra withholdings and contractual set-off rights give the Province financial protection against defects, delays or unpaid third-party claims until the CM remedies the issue.

- Schedule 9 forces the CM to flow key security obligations (bonds, insurance, lien rights) down into every subcontract and forbids "pay-when-paid" clauses that could undermine a subcontractor's security.

Taken together, these provisions ensure the Province can call on bonds, insurance proceeds, or retained funds if the CM defaults or risks arise, while setting clear documents and timing the CM must follow to keep that security in place.

Practical Insight

- Provide all required bonds and insurance before mobilization.
- Keep coverage current as the contract value or warranty obligations change.
- Name the Province as an additional insured where required.
- Flow security, bond, insurance, and lien obligations into subcontracts.
- If coverage lapses, the Province may obtain replacement security and charge the cost back to the CM.

Part 5 - Quality and Performance

1. Defects and Deficiencies

Defects or deficiencies are any parts of the Work that do not meet the Agreement's requirements. The Province or its Consultant can inspect at any time and will issue a written list of problems. The CM must, if asked, submit and carry out an approved plan to fix each item. Until everything is corrected, the Province may hold back enough money to cover the cost or value of the missing performance. Urgent issues affecting completion or use must be fixed first. If fixing is impractical, the Province may reduce the Contract Price instead. Disputes use the Agreement's dispute resolution process.

Practical Insight

- Find and fix defects before the Province or Consultant identifies them.
- Keep QA/QC records, inspection notes, and deficiency logs current.
- Track each remedial plan and completion date.
- If you disagree with a deficiency, object quickly and in writing.
- Unresolved deficiencies may lead to withholdings, price reductions, re-inspection costs, or performance consequences.

2. Warranties

The template agreement provides for either a 1 or 2 year warranty period, which does not include the specific warranty periods for certain products or components identified in Schedule 29 (Warranty).
During the warranty period, any defect the Province finds must be corrected at the CM's cost, including related testing, access, and clean-up. If warranty work is completed, the warranty period will restart on the remedied work, up to a maximum of 10 years from the date of Final Acceptance.

If the CM does not act promptly, the Province may fix the problem itself or hire others and deduct those costs from money owing, after a good-faith meeting for set-offs over $10,000. The CM's surety bonds also guarantee warranty obligations.

Practical Insight

- Log every warranty notice as soon as it is received.
- Respond with a correction plan and schedule.
- Track testing, access, clean-up, and completion records.
- Flow the same warranty obligations and security requirements down into subcontracts.

Part 6 - Claims & Disputes

1. Lien Claims

The CM is responsible for keeping the Province's title free of construction liens or similar claims. The CM must pay trades and suppliers, monitor the registry, and, if any lien or writ is filed, discharge or bond it off promptly so it no longer affects the land or progress payments. As a condition of each progress, holdback, or final payment, the CM must give the Province a sworn statutory declaration confirming that all obligations to date have been satisfied or identifying any unpaid amounts and their status.

If a lien, trust or related action arises, the Province may withhold or set-off funds equal to the claim, plus legal fees, interest and other costs, until the matter is resolved, or may itself bond or pay the claim and recover resulting costs from the CM.

Practical Insight

- Pay trades on time, or document any bona fide dispute.
- Make sure statutory declarations are accurate before each draw.
- Monitor for liens, writs, trust claims, and payment disputes.
- If a lien is filed, act immediately to discharge or bond it off where required.

2. Article 22 – Claim and Dispute Resolution

Schedule 20 (Claim and Dispute Resolution Procedure) sets out a stepped, flexible process intended to resolve issues quickly and in proportion to their size.
As a preliminary step (and encouraged throughout the entire dispute), the parties are to engage in good faith negotiations, which can be escalated to senior leadership meetings for higher value claims.

If early negotiations are unsuccessful, the parties exchange their positions and supporting documents. The Claimant's position and documents are submitted through a Notice of Dispute containing the particulars of the matter and the relief sought, which is followed by a more detailed Statement of Particulars providing additional details on the claim and all supporting documentation. After receiving these documents, the Responding party has 20 days to provide its position and supporting documents.

The parties then have the option of referring the dispute to a fast-tracked referee process. During this condensed process, the Referee (who was appointed at the beginning of the Agreement) provides a recommendation within 15 days of the parties' written submissions.

If the parties fail to resolve the issue, the dispute must be resolved through Arbitration. The arbitration procedures provide for different tracks depending on the nature of the dispute. For complex disputes (which are claims over $5M or claims dealing with specific issues such as the termination of certain entitlements), the arbitration is conducted by a three-arbitrator panel and contains specific procedural rules for questioning and expert reports. Otherwise, the claim is heard by a single arbitrator through a process determined by the arbitrator.

Practical Insight

- Keep working while the dispute process runs, unless the contract clearly says otherwise.
- Start with good-faith discussions and escalation.
- If needed, issue a timely Notice of Dispute and Statement of Particulars with all supporting records.
- Consider the Referee process for fast guidance before arbitration.
- Diarize every dispute deadline.

Part 7 - Default, Risk and Legal Liability

1. Suspension and Termination by the Province

The Province may suspend or terminate the Agreement or the CM's right to perform all or part of the Work, in three situations:

1. immediately for certain serious defaults (such as bankruptcy, repudiation of Agreement, abandonment or any wilful misconduct);

2. for other less serious defaults (i.e. any breach of a provision or failure to comply with schedule) if they are not cured within either 31 days or such other reasonable time using diligent commercial efforts; and

3. at any time for "Termination for Convenience," in the Province's sole discretion, for any reason or no reason.

The Province may also step in to perform work if there is a serious risk to public security and safety, to discharge a statutory duty, or a default has occurred and the CM has not diligently pursued the course of action to remedy.

If the CM is terminated for default (options 1 and 2 above), the Province may call upon the bonds, exercise its right of set-off against any retained funds, and/or change amounts required to correct deficiencies during the warranty period. After the warranty period has expired, the Province will pay any remaining amounts to the CM.

If the CM is terminated for convenience (option 3), the Province will pay the CM the amount the CM is entitled to for completed Work, termination costs payable to CM's subcontractors, and the CM's fixed expenses.

Practical Insight

- Avoid default triggers such as safety failures, schedule failure, abandonment, non-cooperation, or uncorrected breaches.
- Respond quickly and in writing to any default, suspension, or step-in notice.
- If work is suspended or terminated, secure the site and protect completed work.
- Preserve cost, schedule, subcontractor, and demobilization records immediately.
- Separate default termination records from termination-for-convenience records.

2. Termination by CM

The CM is entitled to terminate the Agreement if the Province defaults under the Agreement (i.e. Province has made a material inaccurate representation or fails to pay the CM in accordance with the Agreement), the Province has failed to correct the default within 31 days, and the CM has provided notice of 31 days that it is intending to terminate.

Similar to the compensation under Terminated for Convenience by the Province, if the CM terminates the Agreement, the Province will pay the CM the amount the CM is entitled to for completed Work, termination costs payable to CM's subcontractors, and the CM's fixed expenses.

Practical Insight

- Do not walk off the project without following the contract termination process.
- If the Province defaults, give the required written default notice.
- Track the 31-day cure period carefully.
- Give a clear termination notice only if the default remains uncured.
- Keep records of completed work, subcontractor termination costs, and fixed expenses.

3. Indemnification

Both the Province and the CM have similar indemnity obligations under the Agreement:

1. The CM must indemnify (reimburse and protect) the Province for: (a) all third-party claims; (b) any loss or damage to the Province's real or personal property; and (c) any negligence or willful misconduct by the CM, its employees, agents, or subcontractors.

2. The Province must indemnify the Construction Manager for (a) third-party claims that arise from the Province's own breach of the agreement, or (b) from the negligence or wilful misconduct of the Province or its employees or agents.

Both parties waive the right to recover "Consequential Losses" from each other. This waiver applies only to claims brought directly between the Province and the Construction Manager; it does not affect either party's duty to reimburse the other if a third party sues for "Consequential Losses".

It is important to note that the Agreement defines "Consequential Loss" as any indirect financial harm such as lost profit, expected profit, lost business opportunities, lost revenue, or harm to goodwill or reputation. However, it expressly says that "loss of use" of the work is not a consequential loss, so claims for being unable to use the project fall outside this exclusion and can be claimed directly by the Province against the CM.

Practical Insight

- Manage safety, quality, property protection, and subcontractors to avoid third-party claims.
- Report incidents quickly and preserve evidence.
- Understand that direct consequential losses are waived, but third-party claims are not.
- Remember that "loss of use" of the work is not excluded as a consequential loss.
- Maintain strong insurance and clear project records to manage indemnity exposure.

Conclusion

The Construction Management Agreement is designed to make responsibilities and risks clear between the Province and the Construction Manager. Successful delivery depends on doing the work properly and following the required processes for notices, schedules, changes, payment applications, quality management, claims, and disputes.

The same themes appear throughout the Agreement: act early, keep accurate records, identify problems quickly, reduce impacts where possible, and follow the contract process before asking for more time or money. The Agreement also protects the CM when owner-caused delays, Relief Events, or other Province-retained risks affect the work.

Use this guide as a working reference throughout the project. The most important habits are simple: give notice, keep proof, update the schedule, document changes, correct issues quickly, and escalate disputes before they grow. These habits help preserve rights, reduce disputes, and improve project outcomes.