

SCHEDULE 11

INSURANCE REQUIREMENTS

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design, Build, Finance and Maintain Twelve New Schools in Central and Southern Alberta (the “**DBFM Agreement**”) between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 DBFM Agreement Reference

This Schedule is referenced in sections 1.3, 11.1, 11.2, 11.4, 11.6, 11.8, 11.9, 18.7 and 18.8 of the DBFM Agreement.

2. GENERAL INSURANCE REQUIREMENTS

2.1 Insurance Act

All insurance policies must comply with the *Insurance Act* (Alberta).

2.2 No Limit on Obligations

The insurance forms and limits listed below are presented as minimum requirements that the Contractor must provide, without in any way limiting the Contractor’s obligations or liabilities under the DBFM Agreement.

2.3 Actual Form and Substance

All insurance must be in forms and with terms and conditions acceptable to the Province, acting reasonably and acting in a reasonably timely manner. The Province shall be deemed to be acting unreasonably if the effect of not finding certain forms or terms and conditions acceptable is to impose on the Contractor (or its subcontractors) insurance requirements additional to the insurance requirements set out in the DBFM Agreement, including this Schedule 11. The purpose of this Section 2.3 is to give the Province the right to have modified or deleted from the actual insurance policies, terms and conditions that the Province becomes aware of, including becomes aware of only after receiving the certified copies of the insurance policies, that are clearly contrary to the express intent or the spirit of the insurance requirements in the DBFM Agreement, including this Schedule 11.

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3. CONTRACTOR REQUIRED INSURANCE

3.1 Contractor Required Insurance

The Contractor shall purchase and maintain in full force at all times:

- (a) from the Execution of the DBFM Agreement through to Construction Completion of all Schools, project specific general liability wrap-up insurance in an amount not less than \$10,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury, personal injury and property damage including loss of use thereof. General aggregate limit, if any, must not be less than \$20,000,000. Aggregate limit can be achieved through primary, excess, or umbrella liability insurance. Defence costs must be in addition to the limits of insurance. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. Such coverage shall cover all operations related to the Project whether conducted on School Sites or elsewhere. The named insureds on the policy shall be the Province, the Contractor, the Municipalities and the School Boards. Other insureds on the policy shall include all consultants, subconsultants, and subcontractors, whether named or unnamed in the policy. The Province as a named insured must have the right to make a claim directly to the insurer. Such insurance shall include but not be limited to:

- Products and completed operations liability; the completed operations liability coverage shall remain in effect for a period of 24 months after Construction Completion of all Schools;
- Owner's and contractor's protective liability;
- Blanket written contractual liability;
- Contingent employer's liability;
- Personal injury liability;
- Non-owned automobile liability;
- Cross liability;
- Employees as additional insureds;
- Forest fire fighting expenses;
- Broad form property damage endorsement;
- Operation of attached machinery; and
- Sudden and accidental pollution (as per IBC 2313 or similar),

and where such further risk exists:

- Blasting, demolition, pile driving, caisson work or tunnelling, as applicable;
- Elevator and hoist liability; and
- Towing/on hook coverage unless this risk is covered by the “all risks” builder’s risk policy required under Section 3.1(b) of this Schedule 11.

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- (b) in respect of each School, from the Execution of the DBFM Agreement through to School Availability, course of construction insurance in the form of an “all risks” builder’s risk policy covering each School on a replacement cost basis. The course of construction policy shall insure each School to an amount not less than the replacement cost. The named insureds on the policy shall be the Province, the Contractor, the Municipalities and the School Boards. Other insureds on the policy shall include any Lender (as defined in Schedule 6 to the DBFM Agreement), all consultants, subconsultants and subcontractors, whether named or unnamed in the policy, and all others having an insurable interest in the Project. The Province as a named insured must have the right to make a claim directly to the insurer. The course of construction insurance shall not: (i) create or contemplate an insurance trustee; (ii) contain any endorsements in favour of Lenders that may be prejudicial to the Province; (iii) modify or endorse the Standard Mortgage Clause; (iv) modify or endorse the Loss Payable Clause; nor (v) modify or endorse the Basis of Loss Settlement Clause in terms of the insertion of an insurance trustee. The Contractor shall maintain the course of construction policy until all Schools have achieved School Availability.
- (c) or shall cause to be purchased and maintained, from the Execution of the DBFM Agreement through to Construction Completion of all Schools, project specific professional errors and omissions insurance, covering all architects and engineers and other design professionals involved in the Project, in an amount not less than \$5,000,000 per claim. The Contractor must ensure that such policy is endorsed to add by name all architects, engineers and design professionals involved in the Project as additional insureds. Project specific professional errors and omissions insurance coverage shall include an extended reporting period of not less than 36 months from Construction Completion of all Schools.
- (d) from the Execution of the DBFM Agreement through to the end of the Term, automobile liability on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than \$1,000,000 inclusive per occurrence.
- (e) in respect of each School, from the Execution of the DBFM Agreement through to the end of the Term, Standard Comprehensive Boiler and Machinery Insurance insuring not less than the replacement value of each School.
- (f) from the time that the first School achieves School Availability through to the end of the Term, general liability insurance in an amount not less than \$10,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury and property damage, including loss of use thereof. Aggregate limit can be achieved through primary, excess, or umbrella liability insurance. Defence

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costs must be in addition to the limits of insurance. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. The School Boards are to be added as additional insureds under this policy for any and all claims arising out of the Contractor's operations under the DBFM Agreement. Such insurance shall include but not be limited to:

- Products and completed operations liability;
- Owner's and contractor's protective liability;
- Blanket written contractual liability;
- Contingent employer's liability;
- Personal injury liability;
- Non-owned automobile liability;
- Cross liability with respect to additional insureds;
- Employees as additional insureds;
- Broad form property damage endorsement;
- Operation of attached machinery; and
- Sudden and accidental pollution (as per IBC 2313 or similar),

and where such further risk exists:

- Blasting, demolition, pile driving, caisson work or tunnelling, as applicable;
- Elevator and hoist liability; and
- Towing/on hook coverage unless this risk is covered by the “all risks” builder’s risk policy required under Section 3.1(b) of this Schedule 11.

- (g) from the time that the first School achieves School Availability through to the end of the Term, broad form “all risks” property insurance covering each School that has achieved School Availability on a replacement cost basis and including coverage for flood and earthquake, debris removal, building by-laws and demolition costs. The replacement cost of each School shall be determined by the Contractor acting reasonably and the Contractor shall report the replacement cost of each School to the Province annually on the anniversary date of the Execution of the DBFM Agreement. The receipt and review by the Province of the reported replacement cost of each School shall not create on the part of the Province any responsibility or liability for the adequacy or suitability of the replacement cost of each School determined by the Contractor. The named insureds under the policy shall be the Contractor and the School Boards. The policy shall include an agency clause which states that the Contractor as the first named insured shall act as agent for payment of premiums, providing notice of loss and submission of required information. The policy shall contain a waiver of subrogation in favour of the Province. The “all risks” insurance shall not: (i) create or contemplate an insurance trustee; (ii) contain any endorsements in favour of Lenders that may

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be prejudicial to the Province; (iii) modify or endorse the Standard Mortgage Clause; (iv) modify or endorse the Loss Payable Clause; nor (v) modify or endorse the Basis of Loss Settlement Clause in terms of the insertion of an insurance trustee. The following risks (collectively, the “**Primary Exclusions**”) are permitted excluded risks under the required property insurance and are the Primary Exclusions included in “Damage Events” as defined in the DBFM Agreement:

- war;
- nuclear radiation or radioactive contamination;
- terrorism;
- electronic data recognition; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- electronic data exclusion for damage or destruction, distortion, erasure, corruption of alteration of electronic data; and
- computer virus or hacking exclusion.

The following risks are the only risks that may be excluded risks under the property insurance but shall not be considered “**Damage Events**” as defined in the DBFM Agreement:

- inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear and tear or gradual deterioration, rust, corrosion, wet or dry rot; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- loss or damage by normal settling, shrinkage, expansion or contraction in the building or foundation; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded;
- loss or damage caused by or resulting from misappropriation, conversion, inventory shortages, unexplained disappearance, infidelity or any dishonest act on the part of the insured, its employees or agents or subcontractors or any others to whom property has been entrusted;
- seepage or gradual pollution or contamination damage; there must be an exception to the pollution or contamination exclusion to provide coverage for sudden and accidental contamination and resultant damage not otherwise excluded;
- mechanical breakdown or failure, derangement of mechanical parts, or rupture caused by centrifugal force; there must be an exception to the exclusion where physical loss or damage not otherwise excluded ensues;
- mould; the exclusion should not apply to loss or damage concurrently caused directly by an otherwise covered cause of loss; and

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- electrical injury or disturbance from artificial causes to electric devices or appliances; there must be an exception to the exclusion to provide coverage for resultant damage and damage not otherwise excluded.

4. SUBCONTRACTOR REQUIRED INSURANCE

4.1 Subcontractor Required Insurance

The Contractor shall require and ensure that:

(a) from the Execution of the DBFM Agreement through to the end of the Term, each of its subcontractors designing or building the Project and each of its subcontractors carrying out the M&R maintains and provides evidence as reasonably requested by the Province of automobile liability on all vehicles owned, operated or licensed in the name of the subcontractor in an amount not less than \$1,000,000 inclusive per occurrence;

(b) except where its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the M&R is a named insured under Section 3.1(f) and such master policy covers the M&R operations, from the time that the first School achieves School Availability through to the end of the Term, its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the M&R maintains and provides evidence as reasonably requested by the Province of general liability insurance in an amount not less than \$10,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury and property damage, including loss of use thereof. Defence costs must be in addition to the limits of insurance. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. The School Boards are to be added as additional insureds under this policy for any and all claims arising out of the operations in respect of the Schools of the subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the M&R. Such insurance shall include but not be limited to:

- Products and completed operations liability;
- Owner's and contractor's protective liability;
- Blanket written contractual liability;
- Contingent employer's liability;
- Personal injury liability;
- Non-owned automobile liability;
- Cross liability with respect to additional insureds;
- Employees as additional insureds;
- Broad form property damage endorsement;
- Operation of attached machinery; and

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- Sudden and accidental pollution (as per IBC 2313 or similar),

and where such further risk exists:

- Blasting, demolition, pile driving, caisson work or tunnelling, as applicable;
- Elevator and hoist liability; and
- Towing/on hook coverage unless this risk is covered by the “all risks” builder’s risk policy required under Section 3.1(b) of this Schedule 11.

(c) from the time that the first School achieves School Availability through to the end of the Term, each of its subcontractors carrying out the M&R other than its subcontractor identified in Schedule 17 (Subcontractors) primarily responsible for carrying out the M&R maintains and provides evidence as reasonably requested by the Province of general liability insurance in an amount not less than \$5,000,000 inclusive per occurrence and in the aggregate with respect to products and completed operations, insuring against bodily injury and property damage, including loss of use thereof. Any professional liability exclusion for supervisory or inspection activities shall be limited to services provided by architects, engineers, surveyors or design professionals. The School Boards are to be added as additional insureds under this policy for any and all claims arising out of each subcontractor’s operations in respect of the Schools.