

SCHEDULE 1 CHANGE ORDERS

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 Three New Schools in Edmonton and Seven New Schools in the Calgary Region of Alberta, Canada (the "**DBFM Agreement**") between Her Majesty the Queen in right of Alberta and the Contractor, or as set out in Schedule 18 (Technical Requirements) to the DBFM Agreement, as applicable, unless expressed otherwise.

1.2 Section References

This Schedule is referenced in sections 1.1, 1.3, 7.1, 7.2, 7.3, 7.4, 11.9 and 12.3 of the DBFM Agreement.

Unless otherwise provided, references to section numbers are references to sections in this Schedule.

1.3 Definitions

"**Change Order**" means a variation, addition, reduction, substitution, modification, deletion, removal or other change, other than one which does not have a material effect, to the whole or any part of:

- (a) the Project or the Project Requirements; or
- (b) the M&R or the M&R Requirements;

and includes Modifications;

"**Change Order Confirmation**" means a written confirmation provided by the Province of the Estimate, and, if applicable, of any adjustments to the Contractor's Construction Schedule and/or M&R Payments in Schedule 14 (Payment Schedule);

"**Change Order Directive**" means a written instruction and description of a Change Order, designated as a "Change Order Directive" and signed by the Province, directing the Contractor to immediately proceed with the work associated with the Change Order;

"**Change Order Enquiry**" means a written notice and description of a proposed Change Order including where applicable the method of procurement for the Change Order;

"**Construction Equipment Cost**" means the cost of use of rented or owned construction equipment, including the cost of loading, transporting, unloading, erecting, maintaining, dismantling and removing equipment at the rates under an equipment rates schedule

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

approved in writing by the Province prior to the commencement of work or procurement associated with the Change Order, or in the absence of such a rate schedule, actual cost of invoices by an arm's length third party;

"Design Cost" means the cost of design work required in connection with a Change Order including consultant fees and associated expenditures at rates under a rate schedule approved in writing by the Province prior to the commencement of work or procurement associated with the Change Order, or in the absence of such a rate schedule, actual cost of invoices for design work by an arm's length third party;

"Direct Labour Cost" means the base wage costs of employees under a wage schedule approved in writing by the Province prior to the commencement of work or procurement associated with the Change Order, or in the absence of such a wage schedule, the salaries or wages paid under the applicable collective agreement, or in the absence of any collective agreement, the actual cost of salaries and wages, excluding Payroll Burden Cost and all superintendent's or foreman's wages or other personnel responsible for supervision of the work;

"Estimate" means a detailed breakdown, estimate and other information attributable to a Change Order prepared by the Contractor in accordance with and meeting the requirements of Section 3.3;

"Materials Cost" means the cost of materials, supplies, small equipment and tools (excepting such small equipment and tools owned by personnel), including the cost of transporting, unloading, erecting, maintaining, dismantling and removing same, less any rebates, refunds, returns from sale of surplus materials and supplies and trade discounts (other than prompt payment discounts);

"Overhead Cost" means:

- (a) in respect of Change Orders issued during the Construction Period, the costs of the Contractor, subcontractors and sub-subcontractors performing the work attributable to a Change Order related to:
 - (i) operation and maintenance of head offices, branch offices, and site offices;
 - (ii) administration at head offices, branch offices, and site offices;
 - (iii) general management, legal, audit, and accounting services;
 - (iv) procurement administration;
 - (v) financing and other bank charges;
 - (vi) bonding and insurance;
 - (vii) salaries and other compensation of off-site personnel;
 - (viii) salaries and other compensation of on-site superintendents and other supervisory personnel;
 - (ix) planning, estimating, and scheduling of work;
 - (x) expendable and non-expendable small tools not owned by personnel, including maintenance thereof, and consumables;
 - (xi) recruitment and training of on-site staff; and

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

- (xii) other costs of a similar nature not included with the Total Cost of Materials and Labour; and
- (b) in respect of Change Orders issued during the M&R Period, the costs of the Contractor, subcontractors and sub-subcontractors performing the work attributed to a Change Order related to the items listed in subclauses (i) to (v), (vii) and (ix) to (xii) above;

"Payroll Burden Cost" means the statutory charges and benefits costs additional to Direct Labour Cost and the payments made to or on behalf of the employees for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan payments;

"Temporary Work Cost" means the cost of temporary structures, facilities, services, controls, and other temporary items used in conjunction with the performance of the work associated with a Change Order, including maintenance, dismantling and removal, less any residual value after dismantling and removal;

"Total Cost of Materials and Labour" means the sum of costs directly related to and necessarily and properly incurred by the Contractor, subcontractors and sub-subcontractors in performing the work associated with a Change Order, including:

- (a) Materials Cost;
- (b) Total Labour Cost;
- (c) Temporary Work Cost;
- (d) Construction Equipment Cost;
- (e) Design Cost; and
- (f) in respect only of Change Orders issued during the M&R Period, bonding and insurance and salaries and other compensation of on-site superintendents and other supervisory personnel,

but excluding Overhead Cost and profit; and

"Total Labour Cost" means the sum of Direct Labour Cost and Payroll Burden Cost.

2. GENERAL PROVISIONS

2.1 Change Order

Subject to the provisions of this Schedule and without invalidating the DBFM Agreement, the Province may from time to time propose or require the Contractor to carry out and implement a Change Order. The Contractor shall not be entitled to any payment, compensation or extension of time for a Change Order except in accordance with the DBFM Agreement and this Schedule. A Change Order shall not be regarded as confirming an extension to the Total Availability Target Date or School Availability of a School unless expressly stipulated.

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

2.2 Valuation and Payments for Reductions or Avoided Costs

- (a) If a Change Order involves any reduction in the Project, the Project Requirements, the M&R, or the M&R Requirements, and results in net savings in costs (in the context of a reduction in the Project or the Project Requirements having regard, without limitation, to any reasonable make whole premiums, hedging or other breakage costs, or prepayment fees and all reasonable redemption implementation costs reasonably incurred by the Contractor as a result of any adjustments to debt service payments that are directly attributable and limited to the reduction in the Project or Project Requirements) to the Contractor for completing the Project or performing the Project Requirements, the M&R, or the M&R Requirements, then the value of all such savings shall be reflected in a lump sum payment to the Province or in adjustments to the Capital Payments and/or the M&R Payments to the extent as determined by the parties, acting reasonably.
- (b) The Contractor shall not be entitled to claim for any losses, costs or damages for fixed overhead or profit due to the reduction, deletion or removal of any part of the Project, the Project Requirements, the M&R, or the M&R Requirements, except to the extent that any of such amounts would have been incurred by the Contractor and included in the Capital Payments or M&R Payments payable by the Province after the date on which the Project, the Project Requirements, the M&R, and/or M&R Requirements are reduced, deleted or removed.

3. CHANGE ORDER ENQUIRY PROCESS

3.1 Initiating a Change Order Enquiry

- (a) If the Province wishes to propose a Change Order it shall deliver to the Contractor a Change Order Enquiry. The Change Order Enquiry shall describe the proposed Change Order with sufficient detail to enable the Contractor to prepare an Estimate.
- (b) If the Province would be required by applicable law or interprovincial agreements to require the Contractor to seek invitational tenders or to competitively tender any contract in relation to the proposed Change Order, then the Province may include in the Change Order Enquiry a requirement that the Contractor seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, for the proposed Change Order in preparing the Estimate.

3.2 Contractor's Delivery of Estimate

As soon as practicable and in any event not more than 15 Business Days after receipt of a Change Order Enquiry, or such longer period as the parties acting reasonably mutually agree, the Contractor shall deliver to the Province an Estimate prepared in accordance with and meeting the requirements of Section 3.3.

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

3.3 Estimate Requirements

- (a) The Estimate shall include such of the following information as is applicable, sufficient to demonstrate to the Province's reasonable satisfaction:
- (i) the steps the Contractor will take to implement the Change Order, in such detail as is reasonable and appropriate in all the circumstances;
 - (ii) any impact on School Availability and Total Availability and any impact on the Contractor's Construction Schedule (failure to provide this information with the Estimate will disallow the Contractor from claiming compensation from the Province for delays to School Availability for any School or delays to Total Availability resulting from the Change Order);
 - (iii) an estimate of and explanation for the reasonable incremental financing costs and reasonable breakage costs or make whole premiums on financing to be repaid from the Provincial Funding Final Payment in the event Total Availability is delayed by the Change Order;
 - (iv) any impact on the Contractors' ability to perform the M&R including any impact on the M&R Payment;
 - (v) any impact on Accessibility;
 - (vi) any subcontractors required in addition to or in substitution for those listed in Schedule 17 (Subcontractors);
 - (vii) the estimated Total Cost of Materials and Labour, Overhead Cost and profit attributable to the Change Order;
 - (viii) any permits that are required to be obtained or amended attributable to the Change Order, and the estimated time for obtaining or amending same;
 - (ix) the proposed methods of certification of any Project Requirements or M&R Requirements required by the Change Order if not currently contemplated within the provisions of the DBFM Agreement; and
 - (x) any other impact of the Change Order on the DBFM Agreement;
- in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing an Estimate, the Contractor shall include sufficient information to demonstrate that:
- (i) the Contractor has used commercially reasonable efforts, including the use of invitational tenders or competitive tenders if appropriate or required, to oblige

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

- its subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (ii) the full amount of any and all expenditures that have been reduced or avoided have been taken into account and applied in total to reduce the amount of all Change Order costs;
 - (iii) the Contractor has mitigated or will mitigate the impact of the Change Order, including on the Contractor's Construction Schedule for completion of the Project and the performance of the M&R Requirements;
 - (iv) in considering the impact of the Change Order on the M&R Payment, if applicable, the Contractor has considered, where the Change Order will increase the M&R or the M&R Requirements, the Total Cost of Materials and Labour attributable to such increase, including anticipated renewals;
 - (v) the Contractor will perform all work associated with a Change Order in accordance with the times allowed for Contractor access to the School Sites and the Schools described in Schedule 18 (Technical Requirements); and
 - (vi) the Contractor is in compliance with all applicable laws or intergovernmental agreements to which the Province is a party with respect to invitational tenders, quotations or competitive tenders.
- (c) The Contractor shall use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Change Order and shall use commercially reasonable efforts to comply with prevailing good industry practice in relation to any such procurement to a standard no less than the Contractor would apply if all costs incurred were to its own account.
- (d) As soon as practicable, and in any event not more than 15 Business Days after the Province receives an Estimate or such longer period as the parties acting reasonably mutually agree, including any consequential changes to the Estimate resulting from a modification thereof or an addition of a requirement to seek invitational bids or competitive tenders, the Contractor and the Province shall discuss and seek to agree on the Estimate and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule).
- (e) The Province may modify a Change Order Enquiry in writing, at any time prior to the agreement between the parties referred to in (d), above, in which case the Contractor shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification or such longer period as the parties acting reasonably mutually agree, notify the Province in writing of any consequential changes to the Estimate and, if applicable, to an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule).

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

- (f) If the parties cannot agree on an Estimate provided pursuant to a Change Order Enquiry, and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule) ("**Dispute**"), then:
- (i) in the case of such a Dispute during the Construction Period, the Dispute shall be submitted to the Project Adjudicator (appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure)) for recommendation, and if either party does not agree with the Project Adjudicator's recommendation the Dispute shall be determined in accordance with the Dispute Resolution Procedure; or
 - (ii) in the case of such a Dispute during the M&R Period, the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

3.4 Change Order Confirmation

- (a) As soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by the Contractor, acting reasonably) after the date the Estimate, and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule), were agreed to, the Province shall either:
- (i) issue a Change Order Confirmation; or
 - (ii) withdraw the Change Order Enquiry by written notice to the Contractor.
- (b) If the Province does not issue a Change Order Confirmation within 10 Business Days (or such extended period as may have been agreed to) after the date the Estimate and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule), were agreed to, then the Change Order Enquiry shall be deemed to have been withdrawn.
- (c) If the Province has required the Contractor to seek and evaluate invitational tenders or to seek and evaluate competitive tenders in relation to the Change Order and the Province either withdraws or is deemed to have withdrawn the Change Order Enquiry, the actual costs necessarily and properly incurred by the Contractor directly attributable to the invitational or competitive tendering process, including Design Cost if any, as the parties acting reasonably mutually agree, will be invoiced by the Contractor in a form satisfactory to the Province and will be paid by the Province.
- (d) Upon the Change Order Confirmation being issued:
- (i) the parties shall as soon as practicable thereafter do all acts and execute all documents necessary to implement the Change Order, including provision for payment to the Contractor in the amount set out in the Estimate, and, if applicable, implementation of an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule), provided that if the Change Order relates to damage to a

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

School caused by the occurrence of Graffiti as defined in section 5.12.5 of Schedule 18 (Technical Requirements), or resulting from Graffiti removal or the breaking of interior or exterior glazing other than due to weather events then, notwithstanding the amount set out in the Estimate, the Province will pay only up to the amount of the deductible set out in section 3.1(g) of Schedule 11(Insurance Requirements) for the Change Order; and

- (ii) the Contractor shall as soon as practicable thereafter implement the Change Order as provided for in the Change Order Confirmation.

4. CHANGE ORDER DIRECTIVE PROCESS

4.1 Initiating a Change Order Directive

- (a) At any time and from time to time (including whether or not the Province has made a Change Order Enquiry, or the Contractor fails to provide an Estimate, or an Estimate is not promptly agreed upon by the parties, or there is a Dispute), if the Province wishes to proceed immediately with a Change Order the Province shall issue a Change Order Directive. The Change Order Directive shall describe the Change Order with sufficient detail to enable the Contractor to prepare an Estimate and to proceed immediately with the work associated with the Change Order.
- (b) If the Province would be required by applicable law or interprovincial agreements to require the Contractor to seek invitational tenders or to competitively tender any contract in relation to the proposed Change Order, then the Province may include in the Change Order Directive the requirement that the Contractor must seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, in relation to the Change Order.

4.2 Proceeding with Work

The Contractor will proceed to immediately implement the work associated with the Change Order including the appropriate method of procurement, if applicable, upon receipt of the Change Order Directive.

4.3 Estimate and Change Order Confirmation

- (a) If the Contractor has not previously done so, the Contractor shall as soon as practicable and in any event not more than 15 Business Days after the issuance of the Change Order Directive, or such longer period as the parties acting reasonably mutually agree, provide an Estimate to the Province prepared in accordance with and meeting the requirements of Section 3.3;
- (b) as soon as practicable, and in any event not more than 15 Business Days after the

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

Province receives an Estimate or such longer period as the parties acting reasonably mutually agree, the Contractor and the Province shall discuss and seek to agree on the Estimate and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule);

- (c) as soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by the Contractor, acting reasonably) after the date the Estimate was agreed to, the Province shall issue a Change Order Confirmation;
- (d) as soon as practicable after the Province has issued the Change Order Confirmation the parties will do all acts and execute all documents necessary to further the Change Order, including provision for payment to the Contractor in the amount set out in the Estimate and, if applicable, implementation of an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule); and
- (e) pending issuance of the Change Order Confirmation, the undisputed value of the work performed by the Contractor pursuant to the Change Order Directive, as the parties acting reasonably mutually agree, will be invoiced by the Contractor and will be paid by the Province monthly on a progress basis and all such amounts paid will be accounted for in determining the Total Cost of Materials and Labour under Section 4.4.

4.4 Valuation of Change Order Directive

If the Province has issued a Change Order Directive and the Province and the Contractor have not been able to reach agreement on the Estimate and, if applicable, an adjustment to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 (Payment Schedule), then adjustments to the Contractor's Construction Schedule or the M&R Payments in Schedule 14 shall be determined by the Dispute Resolution Procedure, applying the criteria set out in Section 3.3(b)(iv) and having regard to the manner in which value and payment are determined in subclauses (a) and (b) below, and the work attributable to the Change Order shall be valued and payment to the Contractor shall be determined as follows:

- (a) for the work associated with the Change Order Directive that is to be performed by the Contractor's own forces or by the subcontractors identified in Schedule 17 (Subcontractors) (the "**Schedule 17 Subcontractors**"), that portion of the work associated with the Change Order (the "**Own Forces Work**") shall be valued as the Total Cost of Materials and Labour for the Own Forces Work, plus:
 - (i) for Overhead Costs, an additional 10% of the Total Cost of Materials and Labour for the Own Forces Work; and
 - (ii) for profit, an additional 10% of the sum of the Total Cost of Materials and Labour for the Own Forces Work and the amount determined in accordance with Section 4.4(a)(i).
- (b) for the work associated with the Change Order Directive that is to be performed by a

**SCHEDULE 1 – DBFM AGREEMENT
EXECUTION VERSION**

subcontractor of the Contractor (other than the Schedule 17 Subcontractors) pursuant to a contract between the Contractor and such subcontractor, that portion of the work associated with the Change Order (the “**Subcontractor Work**”) shall be valued as the Total Cost of Materials and Labour for the Subcontractor Work, plus:

- (i) for Overhead Costs of the subcontractors performing the Subcontractor Work, an additional 10% of the Total Cost of Materials and Labour for the Subcontractor Work;
 - (ii) for profit for the subcontractors performing the Subcontractor Work, an additional 10% of the sum of the Total Cost of Materials and Labour for the Subcontractor Work and the amount determined in accordance with Section 4.4(b)(i); and
 - (iii) for the Contractor’s work (including without limitation Overhead Costs and profit) on the Subcontractor Work, an amount equal to 5% of the sum of the Total Cost of Materials and Labour for the Subcontractor Work and the amounts determined in accordance with Section 4.4(b)(i) and (ii).
- (c) notwithstanding (b) above, if the Province has required the Contractor to seek and evaluate competitive tenders for the work associated with the Change Order Directive, then for the work associated with the Change Order Directive that is to be performed by a subcontractor of the Contractor (other than the Schedule 17 Subcontractors) pursuant to a contract between the Contractor and such subcontractor arising from the awarding of the competitive tender, that portion of the Change Order (the “**Subcontractor Work**”) shall be valued as the amount of the accepted bid or tender plus, for the Contractor’s work (including without limitation direct costs, indirect costs, overhead and profit) on the Subcontractor Work, an amount equal to 5% of the the amount of the accepted bid or tender.