

## **SCHEDULE 9**

### **TRI-PARTY AGREEMENT**

**1. DBFM Agreement**

This Schedule pertains to the Agreement to Design, Build, Finance and Maintain Nine New Schools in Edmonton and Nine New Schools in Calgary (the “DBFM Agreement”) between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein.

**2. DBFM Agreement Reference**

This Schedule is referenced in Section 1.3 of the DBFM Agreement, and “Tri-Party Agreement” is defined in Section 1.1 of the DBFM Agreement. The Tri-Party Agreement that is the subject of this Schedule is referenced in Section 2.6 and Schedule 18 (Technical Requirements) of the DBFM Agreement.

**3. Tri-Party Agreement**

The prescribed form of the Tri-Party Agreement contemplated by Section 2.6 of the DBFM Agreement is the document commencing on the next page.

## TRI-PARTY AGREEMENT

made the \_\_\_ day of \_\_\_\_\_, 2008

AMONG:

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,  
as represented by the Minister of Infrastructure and the Minister of Education**

(the "Province")

AND:

(the "Contractor")

AND:

**THE BOARD OF TRUSTEES OF \_\_\_\_\_ SCHOOL DISTRICT NO. \_\_\_\_\_**

(the "School Board")

### **PREAMBLE:**

The Province and the Contractor have entered into an agreement of even date herewith to Design, Build, Finance and Maintain Nine New Schools in Edmonton and Nine New Schools in Calgary (as such agreement may be amended, supplemented or replaced from time to time in accordance with the terms thereof, the "DBFM Agreement").

Pursuant to the DBFM Agreement, the Province and the Contractor have agreed to enter into this agreement with the School Board.

**NOW THEREFORE**, in consideration of the terms and conditions of this Agreement, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### **1. INTERPRETATION**

#### **1.1 Defined Terms**

Capitalized terms used in this Agreement have the meanings set out in Section 1.1 of the DBFM Agreement or Schedule 18 (Technical Requirements) of the DBFM Agreement, as applicable, except where a contrary meaning is clearly intended, and:

- (a) "**Agreement**" means this agreement, as amended, supplemented or replaced from time to time;
- (b) "**FOIP**" means the *Freedom of Information and Protection of Privacy*

*Act* (Alberta), as amended or replaced from time to time;

- (c) **“Novated DBFM Agreement”** means, upon the termination by the Province of the DBFM Agreement with the Contractor, the new DBFM Agreement requested at the option of the Lender (as defined in Schedule 6 of the DBFM Agreement) under the Direct Lender Agreement, and entered into directly between the Province and the Lender (or, if the Lender is a collective, any member of the collective designated by the collective for that purpose) on the same terms (and having the same remaining Term) as the DBFM Agreement;
- (d) **“School”** means an individual School, as defined in the DBFM Agreement, under the jurisdiction of the School Board, as listed in Schedule “A” attached hereto;
- (e) **“Schools”** means collectively the Schools, as defined in the DBFM Agreement, under the jurisdiction of the School Board, as listed in Schedule “A” attached hereto;
- (f) **“School Site”** means the individual School Site, as defined in the DBFM Agreement, upon which a School will be located, as shown in Schedule “B” attached hereto; and
- (g) **“School Sites”** means collectively the School Sites, as defined in the DBFM Agreement, upon which the Schools will be located, as shown in Schedule “B” attached hereto.

## **1.2 Order of Precedence**

If there is any conflict or inconsistency between the provisions in this Agreement and the provisions of the DBFM Agreement, provisions in the DBFM Agreement shall govern and the parties to this Agreement agree that the obligations of the parties under this Agreement shall be modified accordingly. If there is any conflict or inconsistency between the provisions in this Agreement and the provisions of the Direct Lender Agreement, provisions in the Direct Lender Agreement shall govern and the parties to this Agreement agree that the obligations of the parties under this Agreement shall be modified accordingly.

## **2. PURPOSE OF AGREEMENT**

### **2.1 Purpose**

The parties agree that the purpose of this Agreement is to establish the roles and responsibilities among the School Board, the Contractor and the Province to ensure that the DBFM Agreement is administered properly and expeditiously.

**3. TERM AND TERMINATION**

**3.1 Term**

This Agreement shall commence on the Execution of the DBFM Agreement and shall continue until the earlier of the expiration or termination of the DBFM Agreement or Novated DBFM Agreement in accordance with its terms.

**4. ACCESS TO AND USE OF SCHOOL SITES**

**4.1 Grant of License**

Subject to the restrictions set out in Section 4.4, the School Board, to the extent of its ownership interest in the School Sites, for the term of this Agreement as described in Section 3.1, hereby:

- (a) provides the Province with an irrevocable non-exclusive license of access to and use of, for the purposes of allowing the Province to perform its obligations under the DBFM Agreement, each of the School Sites, including all fixtures and improvements constructed thereon under the DBFM Agreement; and
- (b) agrees that the Province may, in furtherance of the Province's obligations under the DBFM Agreement, provide to the Contractor, its subcontractors, agents, employees, any representatives of the holders of the Senior Debt Financing or any Suitable Substitute Contractor, (as defined in Schedule 6 (Direct Lender Agreement) of the DBFM Agreement) a non-exclusive license of access to and use of, for the purposes of allowing the Contractor, its subcontractors, agents, employees, any representatives of the holders of the Senior Debt Financing or any Suitable Substitute Contractor, (as defined in Schedule 6 (Direct Lender Agreement) of the DBFM Agreement) to perform its obligations under the DBFM Agreement, each of the School Sites.

The School Board agrees with the Province that it will not grant utility rights of way, easements or similar interests in land over the School Sites without the prior written consent of the Province, such consent not to be unreasonably withheld.

**4.2 Status of School Sites**

Except as expressly set out in this Agreement and the DBFM Agreement:

- (a) the license of access to and use of the School Sites is being provided to the Province and to the Contractor and those claiming thereunder on an "as is" basis; and
- (b) the School Board makes no representations or warranties with respect to the School Sites.

**4.3 Commencement and Duration**

The Province’s license of access to and use of the School Sites, together with any rights granted to the Contractor and its subcontractors, agents, employees, any representatives of the holders of the Senior Debt Financing or any Suitable Substitute Contractor, comes into effect on the date of Execution of the DBFM Agreement and continues for the term of this Agreement as described in Section 3.1.

**4.4 No License Fee**

The School Board agrees with the Province that no fee or amount shall be payable by the Province for its license of access to and use of the School Sites.

**4.5 Uninterrupted Access**

The School Board covenants to the Province that the Province’s non-exclusive license of access to and use of the School Sites shall be:

- (a) uninterrupted for the term of this Agreement, and
- (b) without any disturbance or interference from the School Board, its trustees, employees, agents, contractors, students or invitees or any other person claiming from or under the School Board,

in each case subject only to the Identified Encumbrances and the provisions of the DBFM Agreement.

The School Board, to the extent of its ownership interest, agrees with the Province that it shall defend title to the School Sites against any person (including, without limiting the generality of the foregoing, any person claiming aboriginal title or treaty rights) claiming any interest adverse to the School Board, except where such adverse interest arises as a result of a negligent or wrongful act or omission of the Province or the Contractor or those for whom they are legally responsible, including but not limited to any liens or other encumbrances registered as a result of the acts or omissions of the Contractor or its subcontractors.

**4.6 No Leasing, Licensing etc.**

The School Board agrees with the Province that for the term of this Agreement it will not lease or grant any other license of the School Sites to any third party, or permit any use of the Schools and School Sites other than as specifically permitted by this Agreement.

**5. SPECIFIC OBLIGATIONS PRIOR TO SCHOOL AVAILABILITY**

**5.1 School Board Access to the Schools and School Sites - Progress of Project**

The School Board agrees with the Province and the Contractor that, prior to the day that School Availability is achieved, it shall not access the School Sites except in strict

accordance with this Section 5.1 or Section 5.8, as the case may be, and agrees that any access granted under this Section 5.1 is for the purpose of its officials, employees or representatives viewing the progress of the Project at the School Sites, provided that:

- (a) the School Board gives the Contractor and the Province reasonable notice of the access request, and the Contractor acting reasonably consents to the access;
- (b) the School Board strictly complies with all of the Contractor's reasonable requirements regarding access to the School Sites, including but not limited to the Contractor's safety and other site requirements; and
- (c) the School Board does not in any way delay, prevent or interfere with the Contractor's ability to carry out the Project or cause damage to the Project when accessing the School Sites.

**5.2 Prime Contractor**

In respect of each School and School Site, at all times prior to School Availability until and including the day that School Availability is achieved, the School Board and the Province hereby designate the Contractor to be the "prime contractor" within the meaning of the *Occupational Health and Safety Act* (Alberta) to assume all of the responsibilities of the "prime contractor" in respect of each School and School Site at all times prior to School Availability; provided that to the extent permitted by applicable laws the Contractor may enter into an agreement with its subcontractors identified in Schedule 17 (Subcontractors) of the DBFM Agreement primarily responsible for carrying out the Project designating such subcontractors to be the "prime contractor" until and including the day that School Availability is achieved.

In respect of each School and School Site, from and including the first day following the day that School Availability is achieved the School Board agrees with the Province that it shall be the "prime contractor" within the meaning of the *Occupational Health and Safety Act* (Alberta) to assume the responsibilities and duties of the "prime contractor" for the School and the School Site.

Where the Contractor requires access to the School Site following School Availability to carry out any Construction Completion work, the Contractor agrees with the School Board and the Province that it shall strictly comply with the School Board's safety requirements for the School and the School Site. When carrying out Construction Completion Work, the Contractor agrees with the Province that, prior to commencing such work, the Contractor shall advise the School Representative of the nature of the work, the required separation of the work area from the rest of the School and the School Site and the obligations of the School staff in connection with such separated work area.

The Province and the School Board hereby designate the Contractor as the "prime contractor" as defined under the *Occupational Health and Safety Act* (Alberta) to carry out the responsibilities and duties of "prime contractor" for such Construction Completion work carried out in a work area separated by time and space at the School or the School Sites; provided that, to the extent permitted by applicable laws, the Contractor

may enter into an agreement with its subcontractors identified in Schedule 17 (Subcontractors) of the DBFM Agreement primarily responsible for carrying out the this work designating such subcontractors to be the “prime contractor” for such work.

**5.3 Emergency Response and Safety**

The School Board agrees with the Province that, for the term of this Agreement, the School Board shall review and provide comments on the Emergency Response Plan as required by section 3.10 of Schedule 18 of the DBFM Agreement and on the Safety Plan as required by section 3.6 of Schedule 18 of the DBFM Agreement within 15 days of receipt of same from the Province.

**5.4 Right to Direct Contractor During Construction Period**

At all times during the Construction Period:

- (a) the School Board agrees with the Province that under no circumstances shall it or any of its officials, employees or representatives instruct or direct the Contractor in relation to the Project; and
- (b) the Contractor agrees with the Province to only take instructions and direction in relation to the Project from the Province.

**5.5 Construction Progress Schedules**

By the 25th day of each month during the Construction Period, the Contractor agrees with the Province that for each School it shall provide to the School Board a copy of the Monthly Construction Progress Report for the next month required by section 4.11.7(b) of Schedule 18 of the DBFM Agreement.

**5.6 Supply and Installation of ICT Wiring**

The School Board agrees with the Province that it shall supply and install all ICT wiring and cabling required for a School.

**5.7 Supply and Installation of School Board Supplied Furniture and Equipment**

The School Board agrees with the Province that it shall supply and install all School Board Supplied Furniture and Equipment.

**5.8 School Board Access to Schools – Installation Work**

The School Board agrees with the Province that the School Board and its officials, employees, representatives or contractors will access the Schools and the School Sites only after the Total Availability Target Date for the purpose of installing the ICT wiring and cabling and the School Board Supplied Furniture and Equipment, provided that if the School Board requires access to a School after the Total Availability Target date but prior to School Availability:

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- (a) a School is at least 95% complete, as determined by the Contractor acting reasonably, at the time the School Board makes an access request for a School;
- (b) the School Board gives the Contractor at least three days notice of the requested access;
- (c) the School Board agrees to reasonable terms and conditions of such access as required by the Contractor;
- (d) the School Board employees and contractors working in the School:
  - (i) coordinate their work with that of the Contractor;
  - (ii) cooperate fully with the Contractor; and
  - (iii) do not interfere with, delay or prevent the work of the Contractor;and
- (e) the School Board shall ensure that any contractors engaged by the School Board to perform the work shall be included under the Contractor's general liability wrap-up and course of construction insurance and the Contractor shall provide the School Board with evidence of that insurance prior to access of the School and School site.

The Province hereby grants the Contractor the direct authority to require the School Board employees or contractors to stop their work and leave the School Site if, in the reasonable opinion of the Contractor, the work of the School Board employees or contractors is in any way delaying, preventing or interfering with the Contractor's ability to carry out the Project.

The School Board hereby acknowledges the Contractor's authority as set out above and agrees with the Province that it will comply with the Contractor's right and authority to direct the School Board's employees or contractors as set out above.

### **5.9 Contractor's Access to School to Carry out Construction Completion Work**

After School Availability but before occupancy of a School by the students, the School Board agrees with the Province that the Contractor shall be entitled to carry out its Construction Completion work at the School in accordance with section 4.11.5 of Schedule 18 of the DBFM Agreement.

The Contractor agrees with the Province that the School Board shall have the direct authority to require the Contractor's employees or subcontractors to stop their Construction Completion work and leave the School Site if, in the reasonable opinion of the School Board, the Contractor's employees or subcontractors are in any way delaying, preventing, or interfering with the work of the School Board, provided that the School Board will provide reasonable alternate access to the School Site for the Contractor to complete the Construction Completion work .



The Contractor hereby acknowledges the School Board’s authority as set out above and agrees with the Province that it will comply with the School Board’s right and authority to direct the Contractor’s employees or subcontractors as set out above.

**5.10 Notice of School Availability**

On or before November 1, 2009, the Province agrees with the School Board that it will notify the School Board in writing of any Schools it reasonably anticipates will not achieve School Availability by June 30, 2010. After November 1, 2009, if the progress of the Project for these Schools changes, the Province agrees with the School Board that it will promptly notify the School Board in writing of the updated list of Schools that the Province reasonably believes will not achieve School Availability by June 30, 2010.

The Province agrees with the School Board that it will promptly notify the School Board of the date that each School achieves School Availability.

**6. SPECIFIC OBLIGATIONS AFTER SCHOOL AVAILABILITY**

**6.1 Liaison with School Management**

The School Board agrees with the Province that it shall appoint a single School Representative for the Schools, and shall notify the Province and the Contractor of such appointments within 10 Business Days of receipt of the Contractor’s notice of appointment pursuant to section 5.1.5 of Schedule 18 of the DBFM Agreement. The Contractor M&R Representative and the School Representative may appoint alternates to serve in addition to, or temporarily in their place, or may delegate some of the functions of, such representatives.

The Contractor M&R Representative shall be the person responsible for all communications with the School Representative regarding the day to day performance of M&R at the School, complaints, Help Desk requests, any Failures occurring at a School, and the performance of the responsibilities of the School Board set out in Section 6.2, and the Contractor shall be entitled to rely upon the communications from the School Representative regarding the day to day performance of M&R at the School, complaints, Help Desk requests, any Failures occurring at a School, and the performance of the responsibilities of the School Board set out in Section 6.2, provided that such communications do not amend or alter the obligations of the Contractor or the Province under the DBFM Agreement.

The Contractor agrees with the Province that it shall not rely upon any acts, omissions, requirements or directions of the School Representative or any other person whatsoever as authority for any departure from the terms of the DBFM Agreement.

**6.2 Responsibilities of School Board**

The School Board agrees with the Province that it shall carry out the following responsibilities at the Schools during the School M&R Period and the M&R Period:

**(a) Custodial Services**

The School Board shall carry out all custodial services, including providing qualified staff to carry out these services, for the Schools as set out in Appendix “J” to Schedule 18 of the DBFM Agreement. The School Board shall also carry out daily monitoring of the boilers in the Schools to observe and record the cycling of the boilers.

The School Board agrees shall perform the custodial services at the minimum frequencies set out in Appendix “J” of Schedule 18 of the DBFM Agreement and shall ensure that the custodial services will be of a standard equal to or exceeding the current cleaning standards provided in the School Board’s other schools, provided that:

- (a) at a minimum, such custodial services shall not result in a deterioration of any Building Element, Building System or equipment at the Schools; and
- (b) such custodial services shall be carried out so as to not adversely impact the M&R Requirements for the Schools.

In carrying out the custodial services, the School Board shall use only environmentally friendly cleaning products that are on the manufacturers’ recommended list of cleaning products for the applicable equipment, Building Element or Building System.

The School Board agrees that each School Representative will provide annually, on or before September 15 of each year, the Province and the Contractor with the list of cleaning products used at each School.

**(b) Maintenance and Renewal of ICT Wiring**

The School Board agrees that it shall maintain, repair and renew all ICT wiring and cabling, including but not limited to voice, data and cable television wiring.

**(c) Maintenance and Renewal of School Board Supplied Furniture and Equipment**

The School Board shall maintain, repair and renew all School Board Supplied Furniture and Equipment.

**(d) Occupant Support**

The School Board shall provide all occupant support services that are necessary and incidental to the Educational Activities carried out at the Schools. Occupant support services include, but are not limited to, arranging for seating, bleachers, the gymnasium stage or desks, moving furniture, supplying teaching aids and equipment and providing any other occupant requested service not within the Contractor’s M&R obligations.

**6.3 School Use**

The School Board agrees with the Province that the Schools shall be used only for the purposes set out in section 5.2.1 of Schedule 18 of the DBFM Agreement and for no

other purposes.

Pursuant to Section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Board the following responsibilities at the Schools pursuant to the following sections of Schedule 18 of the DBFM Agreement during the School M&R Period and the M&R Period, and the School Board accepts such delegation:

- (e) section 5.2.2.1;
- (f) section 5.2.2.2;
- (g) section 5.2.2.3; and
- (h) section 5.2.2.4.

**6.4 M&R Scheduling**

The Contractor agrees with the Province that in accordance with section 5.3.1.2 of Schedule 18 of the DBFM Agreement:

- (a) the Contractor shall provide the Province and the School Representative for each School with a monthly schedule of planned M&R activities to be carried out at such School;
- (b) not more than three School Days prior to the carrying out of a planned M&R activity at a School, the Contractor will confirm the planned M&R activities with the affected School principal and the affected School Representative,

provided that no unscheduled Community Use or unscheduled Adhoc School Use has arisen since the issuance of the Contractor's monthly schedule of planned maintenance, and that the Contractor has confirmed with the affected School principal and School Representative the planned M&R activity to take place at a School, the School Board agrees with the Province that the School principal shall, subject to the Contractor's compliance with section 5.4 of Schedule 18 of the DBFM Agreement, permit the Contractor to proceed with its planned M&R activity.

If:

- (c) the Contractor has not confirmed with the affected School principal and School Representative that the planned M&R activity can proceed at a School; and
- (d) unscheduled Adhoc School Use or unscheduled Community Use is to take place:
  - (i) in the Area of a School in which the Contractor's planned M&R was to occur; and

- (ii) during the period set for the planned M&R work,

then, in the case of unscheduled Community Use, the Contractor shall be required to accommodate such unscheduled Community Use unless otherwise approved by the School Board; and, in the case of unscheduled Adhoc School Use, the School Board agrees with the Province that it shall use all reasonable efforts to have the Adhoc School Use relocated to another Area of the School. If such relocation is not reasonably possible, the Contractor shall be required to accommodate such Adhoc School Use.

### **6.5 Prime Contractor**

In respect of each School and School Site, from and including the day that the School is occupied by the students and throughout the M&R Period, the Province and the School Board hereby designate the Contractor as the “prime contractor” as defined under the *Occupational Health and Safety Act* (Alberta) in respect of the M&R work carried out in a work area separated by time and space at the School or the School Sites; provided that, to the extent permitted by applicable laws, the Contractor may enter into an agreement with its subcontractors identified in Schedule 17 (Subcontractors) of the DBFM Agreement primarily responsible for carrying out the M&R designating such subcontractors to be the “prime contractor” during the M&R Period.

When carrying out M&R during the School Day, the Contractor agrees with the Province that, prior to commencing such work, the Contractor shall advise the School Representative of the nature of the work, the required separation of the work area from the rest of the School and the School Site and the obligations of the School staff in connection with such separated work area.

Where the Contractor is carrying out M&R activities outside the School Day in an unoccupied area, such work areas need not be enclosed, provided that if the School is occupied for Community Use or Adhoc School Use, the work area must be separated and enclosed. The Province and the School Board hereby designate the Contractor as the “prime contractor” as defined under the *Occupational Health and Safety Act* (Alberta) to carry out the responsibilities and duties of “prime contractor” for such M&R work; provided that, to the extent permitted by applicable laws, the Contractor may enter into an agreement with its subcontractors identified in Schedule 17 (Subcontractors) of the DBFM Agreement primarily responsible for carrying out the this work designating such subcontractors to be the “prime contractor” for such work.

### **6.6 Emergency Response Plans and Safety**

The School Board agrees with the Province that the School Board shall review and provide comments to the Province on the Emergency Response Plan provided under section 3.10 of Schedule 18 of the DBFM Agreement and a Safety Plan provided under section 3.6 of Schedule 18 of the DBFM Agreement within 15 days of receipt of same from the Province.

The School Board agrees with the Province that the School Board shall have the primary responsibility for developing appropriate emergency response plans and safety plans for

each School that deal with school operations and student health and safety. The Contractor agrees with the Province that it shall work with the School Representative to include the Contractor's Emergency Response Plan and Safety Plan requirements for the Building Elements, Building Systems and equipment into the School Board's emergency response plan and safety plan for each School.

The School Board and the Contractor agree with the Province to complete their obligations in this Section 6.6 in respect of each School within 60 days of the School achieving School Availability. The School Board and the Contractor each for themselves agree with the Province that they shall update each School's Emergency Response Plan and Safety Plan not later than October 1 of each year during the M&R Period.

**6.7 Systems Monitoring and Response**

The School Board agrees with the Province that, in addition to the Contractor doing so, the School Board shall monitor and respond to all alarms arising from the security system, the fire alarm system, and the BMCS for each School. The School Board agrees with the Province that it will only follow steps or procedures with respect to Building Systems that have been pre-approved by the Contractor.

The School Board agrees with the Province that it is responsible for ensuring that the Schools are physically secured.

**6.8 Help Desk**

The School Board agrees with the Province that the School Representative or that person's designate shall notify the Help Desk established under section 5.7 of Schedule 18 of the DBFM Agreement of any maintenance or repair request or of any Failure at the Schools.

**6.9 M&R Reports**

The Contractor agrees with the Province that it shall provide the School Board with the monthly incident listing set out in section 5.8.2(b) of Schedule 18 of the DBFM Agreement and the monthly planned maintenance and renewal schedule set out in section 5.8.2(c) of Schedule 18 of the DBFM Agreement.

**6.10 Monitoring Contractor's Performance**

The School Board agrees with the Province that it will assist the Province in monitoring the Contractor's compliance with the DBFM Agreement as follows:

- (a) by undertaking informal day to day observation and monitoring of the School and its condition relative to the Contractor's M&R obligations; and
- (b) within five School Days of receipt, by reviewing of the monthly incident listing provided by the Contractor to the School Board pursuant to Section 6.9, to determine, and report to the Province on, the accuracy of same in

relation to the actual M&R work completed by the Contractor at the School.

The School Board will not be liable to the Province or to the Contractor for failure or delay in assisting the Province as described above, or for any error made in its observation, monitoring or review of the Contractor's M&R work.

**6.11 School Accessibility**

Pursuant to Section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Board the responsibilities to make determinations pursuant to the following sections of Schedule 18 of the DBFM agreement at the Schools during the School M&R Period and the M&R Period, and the School Board accepts such delegation:

- (i) section 5.9.2 (Area has become Inaccessible);
- (ii) section 5.9.3 (Area has become Inaccessible but Used);
- (iii) section 5.9.4 (School Building Inaccessibility); and
- (iv) section 5.9.10 (Notification to the Contractor).

**6.12 Repairs**

Pursuant to Section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Board the responsibilities to attend at an affected School pursuant to section 5.11.4(d) of Schedule 18 of the DBFM Agreement (whether the loss or damage suffered at a School is a Damage Event) to view and inspect the cause of a Building Performance Failure during the School M&R Period and the M&R Period, and the School Board accepts such delegation and agrees to provide to the Province with the results of the inspection.

**6.13 Decorating or Unauthorized Modifications to School**

The School Board agrees with the Province that it shall not carry out any Modifications to the School Building except with the consent of the Province and, if so consented to, that such Modifications shall be carried out by the Contractor in accordance with Section 7.3 of the DBFM Agreement.

The School Board agrees with the Province that neither the School Board nor its employees will undertake any Decorating of the School Building that would result in the affected Building Element no longer meeting the Technical Requirements or result in a material increase in the Contractor's cost of carrying out the M&R.

If any Decorating or unauthorized Modifications are carried out at a School by the School staff or the School Board, then the provisions of section 5.10.2 of Schedule 18 of the DBFM Agreement shall apply, and the School Board agrees with the Province that it will be responsible for any amounts paid by the Province to the Contractor pursuant to that section.

**6.14 Emergency Response**

Pursuant to Section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Board the responsibilities to make determinations pursuant to section 5.11.3 of Schedule 18 of the DBFM Agreement at the Schools during the School M&R Period and the M&R Period where in the opinion of the School Board further serious and substantial damage to a School will occur if immediate action is not taken, and if the Contractor has failed to respond as set out in section 5.11.3.2 of Schedule 18 of the DBFM Agreement to take whatever steps it deems necessary to prevent further loss or damage to the School, and the School Board accepts such delegation.

**6.15 Energy Consumption Data**

In order to allow the Contractor to forecast energy consumption for each School as it is required to do by section 5.12.8 of Schedule 18 of the DBFM Agreement, the School Board agrees with the Province that it shall forward all energy data for each School to the Contractor and the Province on or before July 15 of each year, commencing in 2011.

**6.16 Orientation and Handback on Expiry**

The School Board agrees with the Province that it shall ensure that all appropriate School Board staff and contractors attend:

- (a) the orientation seminars to be provided by the Contractor pursuant to section 4.13 of Schedule 18 of the DBFM Agreement; and
- (b) the handback training sessions referred to pursuant to section 3.11(a) of Schedule 18 of the DBFM Agreement.

**7. GENERAL OBLIGATIONS OF SCHOOL BOARD**

**7.1 General Obligations**

The School Board agrees with the Province that it will:

- (a) support and assist the Province, as reasonably requested and agreed to by the School Board, in the carrying out of the Province's obligations under the DBFM Agreement;
- (b) take all reasonable steps to ensure that the School Board, its officials, trustees, employees, students, contractors, agents and invitees do not do, or fail or refuse to do, anything that would result in the Province breaching any of its obligations under the DBFM Agreement or which would give rise to a Relief Event under the DBFM Agreement. To the extent reasonably possible, the Contractor agrees with the Province that it will give prompt written notice to the Province and the School Board of any act or failure or refusal to act by the School Board, its officials, trustees,

employees, students, contractors, agents and invitees that may or will cause the Province to be in breach of its obligations under the DBFM Agreement or which would give rise to a Relief Event if not immediately corrected, provided that the failure to give such notice will not relieve the School Board of its obligations under this Section 7.1(b) or the Province and the Contractor of their obligations under the DBFM Agreement;

- (c) use all reasonable efforts to ensure that the use and occupation of the Schools by the staff, students, visitors and community users will be reasonable and in accordance with its intended use and purpose, with a view to avoiding, to the greatest extent possible, unnecessary damage to the Schools;
- (d) use all reasonable efforts to preserve the safety and security of the Schools and will cooperate with the Contractor with respect to any loss prevention program instituted by the Contractor; and
- (e) carry out all other obligations of the School Board as set out in this Agreement.

## **7.2 Security Clearances**

Pursuant to section 5.4 of Schedule 18 of the DBFM Agreement, once the Province has received the criminal record searches and child welfare checks from the Contractor it shall review same and forward those that meet the Province's security clearance requirements to the School Board. Within five Business days of receipt, the School Board agrees with the Province that it shall advise the Province of the names of the individuals who clear the School Board's security requirements. The School Board is the final determiner, acting reasonably, of which staff or employees of the Contractor or its subcontractor's may attend at a School to perform M&R.

## **7.3 Insurance**

The Contractor shall provide the School Board with a copy of all of the Contractor's policies of insurance described in Schedule 11 of the DBFM Agreement. The Contractor agrees with the Province that it shall require its insurer to provide to the School Board any notices of any material changes that restrict coverage or of cancellation of such policies. The School Board shall be entitled to ensure that such policies of insurance for the School are in force for the term of this Agreement. If the Contractor's insurance is subject to a material change that restricts coverage or is cancelled, the Province shall exercise its remedies under the DBFM Agreement. If the Province chooses to proceed under Section 11.5 of the DBFM Agreement, it agrees with the School Board that it shall obtain the required insurance that has been restricted or cancelled or authorize the School Board to obtain such insurance.

The School Board agrees with the Province that it shall obtain and maintain liability insurance to cover liabilities arising from its own operations at the Schools, and shall obtain and maintain insurance for the contents of each School.



**7.4 Indemnification**

Subject to the next paragraph and only to the extent that the Contractor is not entitled to recover compensation under the DBFM Agreement for damages, losses and costs, including third party claims (and including the reasonable cost of defending third party claims, on a solicitor and client basis) in respect of the event or series of events giving rise to this indemnity, the School Board shall indemnify and hold harmless the Contractor and its officials and employees against damages, losses and costs, including third party claims (and including the reasonable cost of defending third party claims, on a solicitor and client basis), arising from the negligence or other tortious conduct of the School Board or any official, employee, agent or contractor of the School Board in relation to the subject matter of this Agreement which is an excluded risk under the Contractor's insurance required by Schedule 11 of the DBFM Agreement.

No claim under the above indemnity shall include any claim by the Contractor for punitive or exemplary damages, indirect or consequential damages, or any claim for economic loss, whether or not the School Board has been advised of the possibility of economic loss, and regardless of whether the action is framed in contract or in negligence.

**7.5 Lender Rights**

The School Board acknowledges that the cost of the construction of the Schools is being partially financed by Lenders of the Contractor and that the Lenders will have a security interest in the Contractor's rights in and to the DBFM Agreement and in this Agreement. The Province shall ensure that the Lenders will not take security in the lands comprising the School Sites or in the School.

Under Schedule 6 (Direct Lender Agreement) of the DBFM Agreement, should the Contractor fail to perform its obligations under the DBFM Agreement resulting in a Default by the Contractor, the Lenders have the right, but not the obligation, to:

- (a) cure the Default of the Contractor;
- (b) assume responsibility for the Contractor's obligations under the DBFM Agreement and in that event assign the DBFM Agreement to a Suitable Substitute Contractor (as defined in Schedule 6 of the DBFM Agreement);
- (c) exercise its Step-in Rights described in section 2.9 of Schedule 6 of the DBFM Agreement; and
- (d) enter into a Novated DBFM Agreement and subsequently assign the Novated DBFM Agreement to a Suitable Substitute Contractor (as defined in Schedule 6 of the DBFM Agreement).

The School Board agrees with the Province to permit the exercise of the above mentioned rights of the Lender upon notice from the Province regarding the exercise of such rights.

**7.6 School Board Step In Notification**

In addition to the rights of the School Board set out in Section 6.14 of this Agreement, the School Board may provide notice to the Province where the School Board reasonably believes that the Province needs to take action pursuant to Section 16.6 of the DBFM Agreement in relation to the Contractor's work because a serious risk exists to public, student or staff security and safety or to the environment. The Province, upon receipt of the School Board's notice, will immediately notify the Contractor and thereafter will promptly instruct the School Board, as its designate under Section 16.6(e) of the DBFM Agreement, to take such action as approved by the Province to avoid or mitigate this risk.

**7.7 Notification of Adverse Events**

The School Board agrees with the Province that it shall immediately notify the Province of any liens registered against the School Sites or lawsuits affecting the Schools or the School Sites or the work of the Contractor at the Schools, of which it is aware.

**7.8 Collaboration Meetings**

Prior to School Availability, the School Board agrees with the Province that it will attend meetings with the Contractor and the Province, established by the Contractor under its Collaboration Plan, to collaborate on and discuss construction requirements, access issues, coordination issues and any other matters arising during construction of the Schools.

During the M&R Period, the School Board agrees with the Province that it will participate in meetings with the Contractor and the Province, established by the Contractor under its Collaboration Plan, to collaborate on and discuss M&R performance issues, custodial services, general communication of the parties, and any other matters arising in connection with the cleaning, maintenance, repairs and renewal of the Schools.

**7.9 Communications Protocol**

The School Board agrees with the Province that it will work jointly with the Province and the Contractor respecting public communications relating to the construction of the Schools and the subsequent M&R work. The School Board agrees with the Province that it will participate in the joint communications subcommittee established by the Province to deal with strategic communications regarding the Schools.

**8. SCHOOL BOARD CONFIDENTIALITY AND FOIP REQUESTS**

**8.1 Confidential Information**

The Contractor and the Province agree that each shall, upon delivering any information to the School Board pursuant to this Agreement that includes information delivered in confidence, identify that information that is delivered in confidence (the "**Confidential Information**"). The School Board agrees with the Province that it shall maintain as hereinafter set out (and shall ensure that its officers, trustees, employees, consultants,

advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the School Board was in the public domain;
- (b) after disclosure to the School Board became part of the public domain through no fault of the School Board or those for whom it is responsible at law;
- (c) was in the possession of the School Board at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the School Board from a third party who had a lawful right to disclose the information.

**8.2 Disclosure of Confidential Information**

The School Board agrees with the Province that it shall not disclose Confidential Information delivered by the Province or the Contractor except:

- (a) to such of its officers, trustees, employees, consultants, advisors and contractors who reasonably require access to the Confidential Information for the due performance of or to further the purposes of this Agreement;
- (b) as required by FOIP or any other applicable law; or
- (c) where the disclosure is consented to by the applicable other party.

**8.3 School Board FOIP Requests**

The Contractor agrees with the Province that Appendix 1 of Schedule 2, all appendices to Schedule 3 and all appendices to Schedule 4 of the DBFM Agreement, and any amendments thereto, may be disclosed by the Province to the School Board. The Contractor acknowledges that the School Board is subject to FOIP.

The School Board agrees that as at the date of this Agreement, the Contractor has established to the satisfaction of the School Board that Appendix 1 of Schedule 2, all appendices to Schedule 3 and all appendices to Schedule 4 of the DBFM Agreement contain information that:

- (a) would reveal trade secrets, or commercial, financial, labour relations, scientific or technical information of the Contractor;
- (b) is being supplied in confidence to the School Board; and
- (c) if disclosed, could reasonably be expected to harm significantly the

competitive position or interfere significantly with the negotiating position of the Contractor,

(the “Sensitive Information”). If there is a request under FOIP for access to any of the Sensitive Information, the School Board will give both the Contractor and the Province notice of the request pursuant to FOIP and will give the Contractor an opportunity to make representations as to why the information should not be disclosed.

The School Board acknowledges that any financial, commercial and technical information contained in Appendix 1 of Schedule 2, all appendices to Schedule 3 and all appendices to Schedule 4 of the DBFM Agreement have been submitted to the School Board in confidence.

**8.4 Ownership of Confidential Information**

The Province shall retain ownership of the Confidential Information it delivers to the School Board, and upon request the School Board shall immediately return such Confidential Information to the Province. No license is hereby granted or otherwise implied, with respect to any property or right of the School Board, presently existing or acquired in the future, or any use of or interest in such Confidential Information except such use expressly contemplated in this Agreement.

**8.5 Protection of Confidential Information**

The School Board shall use all reasonable efforts to protect the Confidential Information delivered by the Province from unauthorized use or disclosure, using the same degree of care used to protect the School Board’s own confidential information from unauthorized disclosure.

**9. DISPUTE RESOLUTION BETWEEN CONTRACTOR AND SCHOOL BOARD**

If a dispute regarding the application or interpretation of this Agreement arises between the Contractor and the School Board, the Contractor M&R Representative and the School Representative or that person’s designate shall, acting reasonably and in good faith, use all reasonable efforts to resolve the same as soon as possible by negotiation. If the dispute cannot be otherwise resolved within 14 Business Days of notice by the Contractor or the School Board to the other, then the issue shall be elevated to the Province for consideration. If the Province takes the position of the School Board on the issue, the Contractor may refer the matter to the Dispute Resolution Procedure set out in Schedule 7 of the DBFM Agreement.

**10. COMMUNICATIONS**

**10.1 Notices**

Any notice, consent, approval or other communication under any provision of this

Agreement must be in writing to be effective, and is effective when delivered by any means, including e-mail or fax transmission, to the following respective addresses:

- (a) if to the Province:

**Alberta Infrastructure**

Attention:

fax:

e-mail:

**and to Education**

- (b) if to the Contractor:

Attention:

fax:

e-mail:

- (c) if to the School Board

Attention:

fax:

e-mail:

Any party may change its address information by giving notice to the other parties in the above manner.

**11. MISCELLANEOUS**

**11.1 School Board Authority**

The School Board represents to the Province and the Contractor, that:

- (a) the obligations of the School Board under this Agreement have been duly authorized by the School Board.
- (b) the Schools will be used for Educational Activities, Educational Support Activities and Community Use, each as defined in Schedule 18 (Technical Requirements).

**11.2 ASSIGNMENT**

- (a) The Province shall not assign or transfer its rights and obligations under this Agreement except to a permitted assignee of its interest in the DBFM Agreement in accordance with Section 22.4 of the DBFM

Agreement.

- (b) The Contractor shall not assign or transfer its rights and obligations under this Agreement except concurrently with the assignment or transfer by the Contractor to an assignee of the Contractor's rights and obligations under the DBFM Agreement in accordance with Section 22.1 of the DBFM Agreement.
- (c) The School Board agrees with the Province that it shall not assign or transfer its rights and obligations under this Agreement except in accordance with this Section 11.2(c). The Province and the Contractor will, upon request by any potential successor to the School Board, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement. The School Board may not otherwise transfer or assign its rights and obligations under this Agreement except with the prior consent of the Province, which may withhold such consent if the Province, acting reasonably, considers that such assignment may in any material way impair or prejudice the rights of the Province under the DBFM Agreement.

**11.3 Applicable Law and Jurisdiction**

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Except as may be agreed to by the parties, Alberta courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of Alberta courts.

**11.4 Amendment and Waiver**

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each party hereto. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by any of the parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

**11.5 Additional Assurances**

Each party agrees to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent; but this Section 11.5 shall not in any event be construed as obligating the Province to amend or enact any statute or regulation.

**11.6 Alberta Infrastructure and Alberta Education**

This Agreement is entered into by the Province as an indivisible legal entity. Although signing of this Agreement on behalf of the Province is effected by both Alberta Infrastructure and Alberta Education, the Province represents and warrants that unless and until the Province provides the Contractor and the School Board with notice to the contrary, this Agreement will be administered solely by Alberta Infrastructure.

**11.7 Counterparts**

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax transmission shall constitute good delivery.

**11.8 Survival of Obligations**

All obligations under this Agreement that necessarily extend beyond the term of this Agreement in order to fully achieve their intended purpose shall survive expiry or termination of this Agreement, including without limiting the generality of the foregoing:

- (a) all indemnification and hold harmless obligations, insofar as they apply to events that occurred prior to expiry or termination of this Agreement;
- (b) the obligations in relation to Confidential Information and FOIP set out in Section 8.

**11.9 Entire Agreement**

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, meetings, discussions, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

IN WITNESS WHEREOF each of the parties has executed this Agreement as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**, as represented by the  
Minister of Infrastructure

by \_\_\_\_\_

**SCHEDULE 9 – DBFM AGREEMENT**

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**, as represented by the  
Minister of Education

By \_\_\_\_\_  
Name:  
Title:

**[CONTRACTOR]**

By \_\_\_\_\_  
Name:  
Title:

**[SCHOOL BOARD]**

By \_\_\_\_\_  
Name:  
Title:



**SCHEDULE “A”  
LIST OF SCHOOLS**

<b>School Board</b>	<b>School Community Project</b>	<b>Approximate Municipal Address</b>	<b>Grade Structure</b>	<b>Approved Capacity of School</b>

**SCHEDULE “B”**

**SCHOOL SITES**

The location of the School Sites under the jurisdiction of the School Board are indicated on the attached drawings, with the boundaries of such School Sites indicated thereon.