

SCHEDULE 7

DISPUTE RESOLUTION PROCEDURE

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 Five New High Schools in Alberta (the "**DBFM Agreement**") between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 Section References and DBFM Agreement References

Unless otherwise provided, references to section numbers are references to Sections in this Schedule. This Schedule is referenced in sections 1.1, 1.3, 5.7 and 6.4 of the DBFM Agreement.

1.3 Definitions

In this Schedule, the following expressions have the following meanings:

"**Dispute**" means any disagreement, failure to agree or other dispute in respect of the application or interpretation of any provision of the DBFM Agreement;

"**Dispute Notice**" means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;

"**Referee**" means the person appointed pursuant to Section 2.2, which person will be impartial as between the parties, independent of the Province and the Contractor, and qualified and experienced in the design and construction of projects in the Province of Alberta similar to the Project and in the maintenance and renewal of projects in the Province of Alberta similar to the Schools in accordance with requirements similar to the M&R Requirements; and

"**Settlement Meeting**" has the meaning given in Section 2.3.

2. DISPUTES

2.1 Dispute Resolution

Except as set out in the DBFM Agreement or any other Schedule thereto, any Dispute will be resolved in accordance with the Dispute Resolution Procedure set out in this

Schedule, which procedure shall be followed in the order set out below unless both parties agree otherwise in writing:

- (a) unless expressly provided otherwise in this Schedule or the DBFM Agreement, the Dispute Resolution Procedure shall be started by delivery of a Dispute Notice by one party to the other;
- (b) the parties shall attempt to resolve the Dispute by a Settlement Meeting under Section 2.3;
- (c) if the Settlement Meeting does not result in resolution of the Dispute, the parties shall engage, and obtain the recommendation of a Referee under Section 2.4; and
- (d) if the Dispute is not resolved through the Referee's recommendation, either party may refer the Dispute to Court.

2.2 Appointment of the Referee

Within one year from Execution of the DBFM Agreement, the Province and the Contractor will appoint and enter into a written agreement with a person acceptable to both as Referee to whom resolution of Disputes (other than Disputes that fall within the mandate of the Project Adjudicator appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure)) may be referred for immediate interim resolution. Notwithstanding the one year deadline in the foregoing sentence, either party can shorten such deadline on written notice to the other party to a date that is at least 15 Business Days after delivery of such written notice.

In the event that the parties cannot agree upon an acceptable person as the Referee within the time period provided, the Referee shall be determined by a Court pursuant to Section 2.5. The person appointed as Referee must be impartial as between the parties, independent of the Province and the Contractor and have the qualifications provided for in the definition of "Referee" in Section 1.3.

The appointment of the Referee will be deemed to be a joint appointment and will be irrevocable by each party without the consent of the other. The appointment of the Referee will continue until the end of the Term unless otherwise agreed to by the parties. If the Referee resigns, dies, or is unwilling or unable to continue to act as Referee before the end of the Term, or the parties' agreement with the Referee expires or is terminated before the end of the Term, the parties shall immediately appoint a replacement.

The fees and expenses of the Referee shall be set by the terms of the agreement between the parties and the Referee. The Referee's fees, disbursements and other costs, as agreed between the parties and the Referee, will be shared equally by the Province and the Contractor. Each party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Referee.

2.3 Settlement Meeting

In the event of a Dispute which is not resolved in the normal course of business, either party may deliver a Dispute Notice to the other party. Within five Business Days from the delivery of the Dispute Notice, officials designated by the Province and the Contractor will meet at a mutually acceptable time and place to attempt to resolve the Dispute (a "**Settlement Meeting**"). The parties through their representatives will make all reasonable efforts to resolve the Dispute. If the Dispute is not resolved through the Settlement Meeting within 10 Business Days from delivery of the Dispute Notice, then the Dispute will be referred to a Referee in accordance with Section 2.4.

All negotiations held pursuant to Section 2.3 are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding. All information exchanged in connection with a Settlement Meeting shall be "Confidential Information" for purposes of the DBFM Agreement.

2.4 Referee

Before proceeding to Court over the Dispute, the parties shall obtain a recommendation on the Dispute from a Referee. The Referee's review will not be required as a prerequisite to court proceedings where the matter in dispute has been previously considered by the Project Adjudicator appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure) or if the parties agree to waive the Referee's review. The Referee will participate in the Dispute as follows:

- (a) the Referee will conduct a review of the Dispute in the manner the Referee decides is most suitable, including on-site inspections and discussions with any persons. The parties will comply with all reasonable requests from the Referee for additional information and documents which the Referee considers necessary for the review. Any information given to the Referee by a party will be given to the other party. All information disclosed in accordance with this Section shall be "Confidential Information" for purposes of the DBFM Agreement;
- (b) the Referee may, with the written approval of the parties, retain others to assist with the review;
- (c) the Referee will deliver to the parties a brief written recommendation on the Dispute within 10 Business Days of referral to the Referee or such longer period as agreed to in writing by both parties;
- (d) a recommendation of a Referee is not binding on the parties, and a Referee's review will be sought only for the purpose of assisting the parties to reach agreement with respect to the Dispute;
- (e) a Referee who has rendered a recommendation on a Dispute may not be retained by either party and may not be called by either party to give

evidence with respect to the Dispute in any subsequent court proceeding to resolve the Dispute, nor will either party refer to or enter into evidence the recommendation of the Referee in such proceeding, unless required by a Court; and

- (f) the Province and the Contractor will agree to release and indemnify the Referee in respect of certain claims provided the Referee has acted in good faith and in accordance with the agreement among the parties.

2.5 Court

If any Dispute which is the subject of a recommendation by the Referee is not resolved by agreement between the parties within 10 Business Days after receipt of the Referee's recommendation or the date the parties have agreed to waive the Referee's review, or if there is any dispute relating to the appointment of the Referee, then either party may refer the Dispute to Court.

3. Strict Compliance with Time Limits

The parties agree that timely resolution of any Dispute is mutually beneficial and, in order to achieve timely resolution, the time limits as set out in this Schedule shall be strictly enforced.

4. Performance of Obligations

Notwithstanding the existence of any Dispute, the Province and the Contractor will, to the extent not precluded by the matter in Dispute, continue with the Project and the M&R as the case may be, and the performance of their respective obligations under the DBFM Agreement (including the Province's obligation to make Payments to the Contractor) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the DBFM Agreement.