

**SCHEDULE 9
FORM OF TRI-PARTY AGREEMENT**

1. DBFM Agreement

This Schedule pertains to 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.

2. DBFM Agreement Reference

This Schedule is referenced in sections 1.3 and 2.6 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 sections 1.4, 2.6, and 4.9 and in 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 _____, 2021

AMONG:

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

AND:

[LEGAL NAME OF CONTRACTOR]
(the "**Contractor**")

AND:

[LEGAL NAME OF SCHOOL JURISDICTION]
(the "**School Jurisdiction**")

PREAMBLE:

The Province and the Contractor have entered into an Agreement of even date herewith to Design, Build, Finance and Maintain Five New High Schools in Alberta (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 Jurisdiction.

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;

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- (b) “**DBFM Agreement**” has the meaning set out in the Preamble, and includes, without limitation, a New DBFM Agreement (as defined in section 2.12 of Schedule 6 to the DBFM Agreement);
- (c) “**FOIP**” means the *Freedom of Information and Protection of Privacy Act* (Alberta), as amended or replaced from time to time;
- (d) “**School**” means an individual School, as defined in the DBFM Agreement, under the jurisdiction of the School Jurisdiction, 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 Jurisdiction, 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

As between the Province and the Contractor, if there is any conflict or inconsistency between the provisions in this Agreement and the provisions of the DBFM Agreement, the provisions in the DBFM Agreement shall govern and the Province and the Contractor agree that the obligations of the Province and the Contractor under this Agreement shall be modified accordingly. As between the Province and the Contractor, if there is any conflict or inconsistency between the provisions in this Agreement and the provisions of the Direct Lender Agreement, the provisions in the Direct Lender Agreement shall govern and the Province and the Contractor agree that the obligations of the Province and the Contractor under this Agreement shall be modified accordingly. The Province shall notify the School Jurisdiction, in writing, if modifications to this Agreement are required pursuant to the above.

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 Jurisdiction, the Contractor and the Province to ensure that the DBFM Agreement is administered properly and expeditiously, and that the Schools function optimally for their intended purpose. Notwithstanding the foregoing, the parties acknowledge and agree that, except as explicitly set out in this Agreement, it is the intent of the parties that all contractual obligations related to the Project and the M&R are governed by the DBFM Agreement, and the Province is responsible to the

Contractor to ensure that the School Jurisdiction does not take any action, or omit taking any action, that results in a breach of the DBFM Agreement by the Province. To the extent such an action occurs, the Contractor shall notify the Province, who will work with the School Jurisdiction to resolve the issue at hand.

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:

- (a) the expiration or termination of the DBFM Agreement; or
- (b) the removal of all of the Schools under the jurisdiction of the School Jurisdiction from the DBFM Agreement.

4. ACCESS TO AND USE OF SCHOOL SITES

4.1 Grant of License

Subject to the provisions of this Section 4, the School Jurisdiction, to the extent of its 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 to access and use, 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 the Direct Lender Agreement), a non-exclusive license to access and use, for the purposes of allowing the Contractor, its subcontractors, and each of their respective agents and employees, any representatives of the holders of the Senior Debt Financing or any Suitable Substitute Contractor (as defined in the Direct Lender Agreement), to perform its obligations under the DBFM Agreement, each of the School Sites and the Schools.

The School Jurisdiction 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.

If the School Jurisdiction has granted utility rights of way, easements or similar interests in land over the School Sites, it shall provide notice to the Contractor within a reasonable period thereafter.

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 Jurisdiction 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 and the Schools, together with any rights granted to the Contractor and its subcontractors and each of their respective agents and employees, any representatives of the holders of the Senior Debt Financing or any Suitable Substitute Contractor (as defined in the Direct Lender Agreement), comes into effect upon the commencement of this Agreement and continues for the term of this Agreement as described in Section 3.1.

4.4 No License Fee

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

4.5 Uninterrupted Access

The School Jurisdiction covenants to the Province that the Province’s non-exclusive license of access to and use of the School Sites and the Schools pursuant to Section 4.1 shall be:

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

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

The School Jurisdiction, to the extent of its ownership interest, agrees with the Province that it shall defend title to the School Sites against any person claiming any interest adverse to the School Jurisdiction, 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 Leasing, Licensing etc.

The School Jurisdiction agrees with the Province that for the term of this Agreement it will not lease or grant any other license in respect of the School Sites or the Schools to any third party or permit any use of the Schools or the School Sites other than as specifically permitted under Section 6.3 of this Agreement.

5. SPECIFIC OBLIGATIONS PRIOR TO SCHOOL AVAILABILITY

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

The School Jurisdiction agrees with the Province and the Contractor that, prior to the day that School Availability is achieved, it shall not access the School Sites or the Schools except in strict accordance with this Section 5.1 or Section 5.7, 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 Jurisdiction gives the Contractor and the Province reasonable notice of the access request, and the Contractor acting reasonably consents to the access;
- (b) the School Jurisdiction strictly complies with all of the Contractor’s reasonable requirements regarding access to the School Sites and the Schools, including but not limited to the Contractor’s safety and other site requirements; and
- (c) the School Jurisdiction 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 and the Schools.

5.2 Prime Contractor Prior to Occupancy

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 Jurisdiction and the Province hereby designate the Contractor to be:

- (a) 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 and until and including the day that School Availability is achieved; and
- (b) responsible for the obligations of the “owner” within the meaning of the *Occupational Health and Safety Act* (Alberta) to assume all of the responsibilities of the “owner” in respect of each School and School Site

at all times prior to School Availability and until and including the day that School Availability is achieved,

provided that, to the extent permitted by applicable laws, the Contactor 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” and/or “owner” 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 **after School Availability is achieved** to and including the day immediately preceding the day that the School is occupied by students, the School Jurisdiction agrees with the Province that the School Jurisdiction shall be the “prime contractor” and the “owner” within the meaning of the *Occupational Health and Safety Act* (Alberta) to assume the responsibilities and duties of the “prime contractor” and “owner” for the School and the School Site.

Where the Contractor requires access to a School Site or a School following School Availability to carry out any work to achieve Construction Completion, the Contractor agrees with the School Jurisdiction and the Province that it shall strictly comply with the School Jurisdiction’s safety requirements for the School and the School Site. When carrying out work to achieve Construction Completion, the Contractor agrees with the Province that, prior to commencing such work, the Contractor shall separate the work area by time or space from the remainder of the School Site, and 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 Jurisdiction 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 work to achieve Construction Completion carried out in a work area separated by time and space at the Schools or the School Sites; provided that, to the extent permitted by applicable laws, the Contactor may enter into an agreement with its subcontractors identified in Schedule 17 (Subcontractors) of the DBFM Agreement primarily responsible for carrying out the work designating such subcontractors to be the “prime contractor” for such work.

5.3 Emergency Response Plan and Safety Plan

The School Jurisdiction agrees with the Province that the School Jurisdiction shall review and provide comments on the Emergency Response Plan provided under section 3.10 of Schedule 18 of the DBFM Agreement and on the Safety Plan provided under 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

Subject to Section 5.8, at all times during the Construction Period:

- (a) the School Jurisdiction 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, but at no time will such direction constitute control of the work pursuant to section 10 of the *Occupational Health and Safety Act* (Alberta).

5.5 Construction Progress Schedules

The Province agrees with the School Jurisdiction that it will provide to the School Jurisdiction a copy of the Monthly Construction Progress Reports contemplated by section 4.11.6(b) of Schedule 18 of the DBFM Agreement within a reasonable time after receipt of such reports by the Province from the Contractor.

5.6 Supply and Installation of School Jurisdiction Supplied Furniture and Equipment

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

5.7 School Jurisdiction Installation Work Where School Availability is Delayed

The Province and the Contractor agree with the School Jurisdiction that, if the School Jurisdiction requires access to a School for the purpose of installing the School Jurisdiction Supplied Furniture and Equipment after the Total Availability Target Date but prior to School Availability, then the Province and Contractor will facilitate such access in circumstances where:

- (a) a School is at least 95% complete, as determined by the Contractor acting reasonably, at the time the School Jurisdiction makes an access request in respect of that School;
- (b) the School Jurisdiction gives the Contractor at least three days notice of the requested access;
- (c) the School Jurisdiction agrees to reasonable terms and conditions of such access as required by the Contractor and agrees to strictly comply, and to ensure that any contractors engaged by the School Jurisdiction to perform the work strictly comply, with the Contractor's safety requirements for the School and the School Site;
- (d) the School Jurisdiction 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 Jurisdiction shall ensure that any contractors engaged by the School Jurisdiction to perform the work shall maintain and provide to the School Jurisdiction prior to commencing the work acceptable evidence of the following insurances:
- (i) General liability in an amount not less than \$2,000,000 inclusive per occurrence, in accordance with the *Insurance Act* (Alberta), against bodily injury, and property damage including loss of use thereof. Such insurance shall include, but not be limited to:
- Owner's and contractor's protective liability;
 - Personal injury liability;
 - Non-owned automobile liability;
 - Broad form property damage endorsement;
 - Operation of attached machinery;
 - Sudden and accidental pollution cover;
 - Products and completed operations liability;
 - Blanket written contractual liability; and
- (ii) Automobile liability on all vehicles owned, operated or licensed in the name of the contractor in an amount not less than \$1,000,000.

The School Jurisdiction agrees to provide, as soon as practicable after the School Jurisdiction is in receipt thereof, the Province and the Contractor with acceptable evidence of the policies of insurance described in Section 5.7(e).

During the period referred to in the first paragraph of this Section 5.7, the Province hereby grants the Contractor the direct authority to require the School Jurisdiction employees or contractors to stop their work and leave the School Site and the School if, in the reasonable opinion of the Contractor, the work of the School Jurisdiction employees or contractors is in any way delaying, preventing or interfering with the Contractor's ability to carry out the Project.

The School Jurisdiction 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 Jurisdiction's employees or contractors as set out above.

5.8 Contractor's Access to Schools to Carry out Construction Completion Work

After School Availability the School Jurisdiction agrees with the Province that the Contractor shall be entitled to carry out its work to achieve Construction Completion at the School in accordance with section 4.11.4 of Schedule 18 of the DBFM Agreement.

The Contractor agrees with the Province that the School Jurisdiction shall have the direct authority to require the Contractor's employees or subcontractors to stop their work to

achieve Construction Completion and leave the School Site and the School if, in the reasonable opinion of the School Jurisdiction, the Contractor's employees or subcontractors are in any way delaying, preventing, or interfering with the work of the School Jurisdiction, provided that the School Jurisdiction will provide reasonable alternate access to the School Site and the School for the Contractor to complete the work to achieve Construction Completion.

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

5.9 Notice of School Availability

On or before November 1, 2023, the Province agrees with the School Jurisdiction that it will notify the School Jurisdiction in writing of any School or Schools it reasonably anticipates will not achieve School Availability by May 31, 2024. After November 1, 2023, if the progress of the Project for these Schools changes, the Province agrees with the School Jurisdiction that it will promptly notify the School Jurisdiction in writing of the updated list of Schools that the Province reasonably believes will not achieve School Availability by the Total Availability Target Date of May 31, 2024.

The Province agrees with the School Jurisdiction that it will promptly notify the School Jurisdiction of the date that each School achieves School Availability and will make reasonable efforts to provide an anticipated date for School Availability.

6. SPECIFIC OBLIGATIONS AFTER SCHOOL AVAILABILITY

6.1 Liaison between Contractor and School Administrators

The School Jurisdiction agrees with the Province that it shall appoint one School Representative for each School, 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 5.1.6 of Schedule 18 of the DBFM Agreement. The Contractor M&R Representative may appoint alternates to serve, as approved by the Province, in addition to or temporarily, in their place, such approved alternatives to be communicated to the School Jurisdiction, in writing. The School Representative, may appoint alternates to serve, in their sole discretion, in addition to or temporarily in their place, by providing written notice to the Province and the Contractor. The Contractor M&R Representative and the School Representative may delegate functions to their alternates, but such delegation must be provided in writing to all parties, and state which duties have been delegated to which individuals.

The Contractor M&R Representative shall be the person responsible for all communications with the School Representative regarding the day to day performance of the M&R at the Schools, complaints, Help Desk requests, any Failures occurring at a School, and the performance of the responsibilities of the School Jurisdiction set out in Section 6.2(a) through (e), and the Contractor shall be entitled to rely upon the communications from the School Representative regarding the day to day performance of

the M&R at the Schools, complaints, Help Desk requests, any Failures occurring at a School, and the performance of the responsibilities of the School Jurisdiction set out in Section 6.2(a) through (e), provided that such communications do not purport to amend or alter the obligations of the Contractor or the Province under the DBFM Agreement.

The Contractor agrees with the Province that, notwithstanding any communications from the School Representative pursuant to the foregoing paragraph, 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.

Any changes to any of the individuals identified in this Section must be made in accordance with Section 10.1.

6.2 Responsibilities of School Jurisdiction

The School Jurisdiction 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 and Monitoring Boilers*

The School Jurisdiction shall carry out all custodial services, including providing qualified staff to carry out these services for the Schools, as set out in Appendix “I” to Schedule 18 of the DBFM Agreement, as it may be amended from time to time, a current copy of which is attached hereto as Schedule “C”. The Province will provide the School Jurisdiction, as soon as is practicable, with any amendments to Appendix “I”, when and if amended. The School Jurisdiction shall also carry out daily monitoring of the boilers in the Schools to observe and record the cycling of the boilers.

The School Jurisdiction shall perform the custodial services at the minimum frequencies set out in Appendix “I” 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 Jurisdiction’s other schools, provided that:

- (i) at a minimum, such custodial services shall not result in a deterioration of any Building Element, Building System, Building Equipment or Exterior Improvement at the Schools; and
- (ii) such custodial services shall be carried out so as to not adversely impact, directly or indirectly, the Contractor’s costs of meeting the M&R Requirements.

In carrying out the custodial services, the School Jurisdiction shall use only environmentally friendly products that are on the manufacturers’ recommended list of cleaning and maintenance products for the applicable Building Equipment, Building Element, Building System or Exterior Improvement.

The School Jurisdiction 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 Jurisdiction agrees that it shall maintain, repair, renew, or replace, as necessary, the following ICT wiring and cabling: voice and data wire and cable.

The School Jurisdiction shall carry out the maintenance, repair, renewal, or replacement of the ICT wiring and cabling so as not to result in a deterioration of any Building Element, Building System or Building Equipment, and so as not to adversely impact, directly or indirectly, the Contractor's costs of meeting the M&R Requirements.

(c) Maintenance and Renewal of School Jurisdiction Supplied Furniture and Equipment

The School Jurisdiction shall maintain, repair and renew all School Jurisdiction Supplied Furniture and Equipment, and shall do so as to not adversely impact, directly or indirectly, the Contractor's costs of meeting the M&R Requirements.

(d) Occupant Support

The School Jurisdiction shall provide all occupant support services that are necessary and incidental to the Educational Activities, Educational Support Activities, Adhoc School Use, Community Use and Acceptable Third Party Use 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, and shall do so as to not adversely impact, directly or indirectly, the Contractor's costs of meeting the M&R Requirements during the Term.

(e) Recycling Program

Except for those waste materials, recyclable materials and rubbish that are the subject of section 5.1.3 of Schedule 18 of the DBFM Agreement, the School Jurisdiction shall, for each School commencing from School Availability, carry out a program dedicated to the separation, collection, storage and disposal of materials for recycling including, at a minimum, paper, corrugated cardboard, glass, plastics and metals, and shall do so as to not adversely impact, directly or indirectly, the Contractor's costs of meeting the M&R Requirements.

6.3 School Use

The parties acknowledge and agree that the School are important and essential component of the community and that they are intended to be used as such. Such essential use specifically includes Community Use (as such term is defined in the DBFM

Agreement). It is acknowledged and agreed by the parties that Community Use of the School is desirable, encouraged, and expected.

The School Jurisdiction 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. The Province shall provide the School Jurisdiction with an executed or amended version of Schedule 18 to the DBFM Agreement, as it may be amended from time to time.

The Province agrees with the Contractor that, if the Province determines, acting reasonably, that an Acceptable Third Party Use increases or decreases the cost to the Contractor of carrying out the M&R or the M&R Requirements or otherwise requires Modifications to a School, then the Province shall proceed in accordance with the Change Order process in the DBFM Agreement. The Contractor may dispute any determination of the Province in accordance with the Dispute Resolution Procedure.

Pursuant to section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Jurisdiction 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 Jurisdiction accepts such delegation:

- (a) section 5.2.2.1 requirement to notify the Contractor of the School Holidays and Examination Periods for each School;
- (b) section 5.2.2.2 requirement to, on or before September 1st, and updated on or before January 7th and June 1st, of each School Year during the School M&R Period and the M&R Period, notify the Contractor in writing of scheduled Community Use and any Acceptable Third Party Use for each School for the ensuing period, as the case may be, together with nature of the use, the Areas of the School that will be used and the dates and times planned for such Community Use or Acceptable Third Party Use;
- (c) section 5.2.2.3 requirement to, as soon as the School Jurisdiction is made aware of any unscheduled Community Use, the Province will immediately notify the Contractor of such unscheduled Community Use; and
- (d) section 5.2.2.4 requirement to provide the Contractor with reasonable notice of the times and days of any Adhoc School Use (which shall not be less than 72 hours) together with the nature of the use and the Areas of the School that will be used.

The Province may, from time to time, in its sole discretion, with notice to the School Jurisdiction and the Contractor, amend the terms of such delegation.

6.4 M&R Scheduling

In addition to acknowledging the restrictions on performing the M&R during a School Day, as more expressly set out in section 5.3.1 of Schedule 18 of the DBFM Agreement,

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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; and
- (b) not more than three School Days, but not less than one School Day, 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 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 Jurisdiction 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:

- (a) 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
- (b) 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 Jurisdiction; and, in the case of Adhoc School Use, the School Jurisdiction 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 After School Occupancy

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 Jurisdiction hereby designate the Contractor to be:

- (a) the "prime contractor" within the meaning of the *Occupational Health and Safety Act* (Alberta) to carry out the responsibilities and duties of "prime

contractor” 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; and

- (b) responsible for the obligations of the “owner” within the meaning of the *Occupational Health and Safety Act* (Alberta) to carry out the responsibilities and duties of “prime contractor” 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” and/or “owner” 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 separate the work area by time or space from the remainder of the School Site, and 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 Educational Activities, Educational Support Activities, Community Use, Acceptable Third Party Use or Adhoc School Use, the work area must be separated and enclosed. For clarity, where the work areas need not be enclosed, the Contractor shall be the “prime contractor” as defined under the *Occupational Health and Safety Act* (Alberta).

6.6 Emergency Response Plan and Safety Plan

The School Jurisdiction agrees with the Province that the School Jurisdiction 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 the 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 Jurisdiction agrees with the Province that the School Jurisdiction shall have 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 Building Equipment into the School Jurisdiction’s emergency response plan and safety plan for each School.

The School Jurisdiction and the Contractor agree with the Province to complete their obligation to coordinate the inclusion of the Contractor’s Emergency Response Plan and Safety Plan requirements as described above in respect of each School within 60 days of

the School achieving School Availability. The School Jurisdiction 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.

The Contractor agrees with the School Jurisdiction to participate in School specific safety orientations and to ensure its employees and subcontractors follow School specific safety procedures implemented by the School Jurisdiction, including but not limited to: sign in/out procedures, lockdown protocols, or otherwise.

6.7 Systems Monitoring and Response

The School Jurisdiction and the Contractor agree with the Province that, in addition to the Contractor's obligation to do so, the School Jurisdiction may monitor alarms arising from the security system and the fire alarm system for each School. The School Jurisdiction 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. Notwithstanding that the School Jurisdiction elects not to monitor alarms arising from the security system and the fire alarm system for each School, the Contractor agrees to ensure that the School Jurisdiction will be notified, as quickly as practicable in the circumstances, of any alarm such that the School Jurisdiction may respond to such alarm in accordance with the below responsibilities.

The School Jurisdiction and the Contractor agree with each other and the Province that they are both responsible for ensuring that the Schools are physically secured. While the School Jurisdiction is primarily responsible for ensuring that the Schools are physically secured, to the extent that the Contractor is performing work Outside the School Day and After Hours, the Contractor shall also be responsible for ensuring that the Schools are physically secured and coordinating such physical security of the Schools with School staff before leaving the School.

The School Jurisdiction agrees with the Province and the Contractor that the School Jurisdiction is responsible for initially attending on-site to each alarm arising from the security system at each School, as they would be for any school operated by the School Jurisdiction.

6.8 Help Desk

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

- (a) by undertaking informal day to day observation and monitoring of each School and its condition relative to the Contractor’s M&R obligations and communicating any issues to the Province; and
- (b) within five School Days of receipt, by reviewing the monthly incident listing provided by the Contractor to the School Jurisdiction 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 each School.

The School Jurisdiction will not be liable to the Province or to the Contractor for failure or delay in assisting the Province as described in this Section, 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 shall be responsible, but the School Jurisdiction shall be required to assist, as requested by the Province (unless the Province later delegates this responsibility to the School Jurisdiction on notice in writing to the parties), 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:

- (a) section 5.9.2 (Area Inaccessibility);
- (b) section 5.9.3 (Inaccessible but Used);
- (c) section 5.9.4 (School Building Inaccessibility); and
- (d) section 5.9.8.1(a) and (b) (Notice of Inaccessibility).

The Province may, from time to time, in its sole discretion, with notice to the School Jurisdiction and the Contractor, elect to delegate responsibility under this Section to the School Jurisdiction.

6.12 Repairs

Pursuant to section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Jurisdiction the responsibilities to attend at an affected School pursuant to section 5.11.4(b) 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 Jurisdiction accepts such delegation and agrees to provide the Province with the results of the inspection. The Province may, from time to time, in its sole discretion, with notice to the School Jurisdiction and the Contractor, amend the terms of such delegation.

6.13 Decorating or Unauthorized Modifications to School

The following definitions from section 1.2 Schedule 18 of the DBFM Agreement are replicated here for ease of reference:

“**Decorating**” means painting of any surface within the School Building, hanging of pictures, posters or drawings on the walls, hanging of ceiling decorations, flags, party favours, and any other decorative addition to the School Building not contemplated in the Technical Requirements; and

“**Modifications**” means renovations, alterations, improvements or expansions at a School and any deletions at a School.

The School Jurisdiction 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 Jurisdiction agrees with the Province that neither the School Jurisdiction nor its employees, tenants or licensees 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 or meeting the Handback Requirements.

Notwithstanding the foregoing, the Province and the Contractor acknowledge and agree that the School Jurisdiction’s primary aim is the delivery of education and that Decorating classrooms with educational materials and student projects is an essential element of educating students. The parties acknowledge and agree that the items listed on Schedule “D” hereto constitute a non-exhaustive “Pre-approved Decorating List” that will not require any further steps by the School Jurisdiction before implementation. Further, the Contractor and the Province agree, acting reasonably, to collaborate with the School Jurisdiction to identify additional Decorating items to be added to the “Pre-approved Decorating List” from time to time.

6.14 Emergency Response

Pursuant to section 2.6 of the DBFM Agreement, the Province hereby delegates to the School Jurisdiction the responsibilities to make determinations with respect to emergency response failures at the Schools during the School M&R Period and the M&R Period pursuant to section 5.11.3 of Schedule 18 of the DBFM Agreement, where in the opinion of the School Jurisdiction 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 available under the DBFM Agreement that the School Jurisdiction deems necessary, as delegatee of the Province, to prevent further loss or damage to the School, and the School Jurisdiction accepts such delegation. The Province may, from time to time, in its sole discretion, with notice to the School Jurisdiction and the Contractor, amend the terms of such delegation.

6.15 Energy and Water Consumption Data

In order to allow the Contractor to report on energy and water consumption for each School as the Contractor is required to do pursuant to section 5.12.8 of Schedule 18 of the DBFM Agreement, the School Jurisdiction agrees with the Province that the School Jurisdiction shall forward all energy and water consumption data for each School to the Contractor and the Province on or before July 15 of each year, commencing in 2024. For clarity, the foregoing shall not require the School Jurisdiction to create, prepare or compile any such data.

6.16 Orientation and Handback on Expiry

The School Jurisdiction agrees with the Province that the School Jurisdiction shall ensure that all appropriate School Jurisdiction employees 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.

6.17 Other Employees

In respect of each School and School Site, if another third party “employer” (the “**Other Employer**”) requires access to the School or the School Site to perform work and the Contractor demonstrates to the satisfaction of the Province and the School Jurisdiction, both acting reasonably, that the Other Employer’s work site can be separated by time and space from the Contractor’s work site, the Province or the School Jurisdiction, as the case may be, shall require the Other Employer to:

- (a) separate the Other Employer’s work site by time and space from the Contractor’s work site;
- (b) acknowledge that, for the purpose of the *Occupational Health and Safety Act* (Alberta), the Other Employer is the “owner” for the Other Employer’s work site and is the “prime contractor”, if there are two or more “employers” involved in work at the Other Employer’s work site at the same time and “prime contractor” status has not been assigned by written agreement; and

- (c) cooperate with the Contractor (and any other contractors working in the area) and jointly develop and agree on a written occupational health and safety system or process.

The Contractor (or its applicable subcontractor) shall, to the extent required of a “prime contractor” by the *Occupational Health and Safety Act* (Alberta), establish and maintain a health and safety system or process to ensure compliance by its subcontractors with the *Occupational Health and Safety Act* (Alberta) and its subordinate regulations.

6.18 Direction of Work by the School Jurisdiction

The School Jurisdiction agrees with the Province, that, except as expressly provided for in this Agreement, it shall have no right to direct the means or methods of any work performed by the Contractor under the DBFM Agreement. Except as expressly provided for in this Agreement, any issues the School Jurisdiction has with the Contractor should be communicated in a timely manner, in writing, to the Province.

7. GENERAL OBLIGATIONS OF SCHOOL JURISDICTION

7.1 General Obligations

The School Jurisdiction agrees with the Province that the School Jurisdiction will:

- (a) support and assist the Province, as reasonably requested, in carrying out the Province’s obligations under the DBFM Agreement;
- (b) take all reasonable steps to ensure that the School Jurisdiction, its officials, trustees, employees, students, tenants, licensees, contractors, agents and invitees do not do, or fail or refuse to do, anything that would result in the Province materially breaching any of its obligations under the DBFM Agreement **OR** which would give rise to a Relief Event under the DBFM Agreement, provided that the Province has disseminated to the School Jurisdiction, in advance, the relevant portions of the executed or amended versions of the DBFM Agreement, as they may be amended from time to time. To the extent reasonably possible, the Contractor agrees with the Province that it will give prompt written notice to the Province and the School Jurisdiction of any act or failure or refusal to act by the School Jurisdiction, its officials, trustees, employees, students, tenants, licensees, 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 Jurisdiction 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 School Jurisdiction employees, students, tenants, licensees, visitors and community users will be reasonable and in accordance with

the uses permitted by this Agreement, 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 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 Jurisdiction 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 required criminal record searches and/or *Child Intervention Record Check* from the Contractor it shall review same and forward those that meet the Province's security clearance requirements to the School Jurisdiction. Within five Business days of receipt, the School Jurisdiction agrees with the Province that it shall advise the Province of the names of the individuals who clear the School Jurisdiction's security requirements. The School Jurisdiction makes the final determination, acting reasonably, as to which staff or employees of the Contractor or its subcontractors may attend at a School to perform the M&R or work related to a Change Order.

7.3 Insurance

The Province agrees with the School Jurisdiction that it will provide to the School Jurisdiction a copy of the Contractor's policies of insurance described in Schedule 11 of the DBFM Agreement within a reasonable time after the Province has received the policies and determined them to be satisfactory to the Province. The Contractor agrees with the Province and the School Jurisdiction that it shall require its insurer to provide to the School Jurisdiction any notices of any material changes that restrict coverage or of cancellation of such policies. The School Jurisdiction shall be entitled to ensure that such policies of insurance for the Schools 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 may exercise its remedies under the DBFM Agreement. If the Province chooses to proceed under section 11.5 of the DBFM Agreement, the Province agrees with the School Jurisdiction that the Province shall obtain the required insurance that has been restricted or cancelled or authorize the School Jurisdiction to obtain such insurance.

The School Jurisdiction agrees with the Province that the School Jurisdiction shall obtain and maintain liability insurance to cover liabilities arising from the School Jurisdiction's operations at the Schools, and shall obtain and maintain insurance for the contents of each School.

7.4 Indemnification

Under section 16.1 of the DBFM Agreement, the Contractor has provided an indemnity to the Province and the School Jurisdiction, and their respective officials and employees

SCHEDULE 9 – DBFM AGREEMENT

against all 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: (a) the Contractor's breach of any provision of the DBFM Agreement; (b) the negligence or other tortious conduct of the Contractor or any official, director, officer, employee, agent or subcontractor of the Contractor in relation to the Project or the M&R; or (c) any third party claim alleging infringement by the Contractor or its subcontractors, in relation to the Project or the M&R, of any intellectual property rights of third parties.

Under section 16.2 of the DBFM Agreement, the Province has provided certain indemnities to the Contractor related to the DBFM Agreement.

Subject to the limitations on damages set out in the following paragraph, to the extent that the Contractor is not entitled to recover compensation under the DBFM Agreement, the School Jurisdiction shall indemnify and hold harmless the Contractor and its officials, directors, officers 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 Jurisdiction or any official, employee, tenant, licensee, agent or contractor of the School Jurisdiction in relation to the subject matter of this Agreement, but only to the extent such loss is not covered 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 pure economic loss, whether or not the School Jurisdiction has been advised of the possibility of pure economic loss, and regardless of whether the action is framed in contract or in negligence.

7.5 Lender Rights

The School Jurisdiction acknowledges that the cost of the construction of the Schools is being partially financed by one or more lenders of the Contractor and that the lender 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 Schools.

Under the Direct Lender Agreement, upon the occurrence of specified events, the Lender (being the lender or lenders (or any trustee or other representative of such lenders) party to the Direct Lender Agreement) has, depending on the circumstances, the right, but not the obligation, to:

- (a) cure Defaults of the Contractor or to cure subsisting grounds that gave rise to certain Termination Events;
- (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 to the DBFM Agreement);

- (c) exercise its Step-in Rights described in section 2.9 of the Direct Lender Agreement; or
- (d) enter into a New DBFM Agreement (as defined in Schedule 6 to the DBFM Agreement) and subsequently assign the New DBFM Agreement to a Suitable Substitute Contractor.

The School Jurisdiction 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. The Province shall notify the School Jurisdiction, in writing, if the Lender exercises such rights.

7.6 School Jurisdiction Step In Notification

In addition to the rights of the School Jurisdiction set out in Section 6.14 of this Agreement, the School Jurisdiction may provide notice to the Province where the School Jurisdiction 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 employee security and safety or to the environment. The Province, upon receipt of the School Jurisdiction's notice, will immediately notify the Contractor and thereafter will promptly instruct the School Jurisdiction, as the Province's 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 Jurisdiction 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

The School Jurisdiction agrees with the Province that, prior to School Availability, the School Jurisdiction 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.

The School Jurisdiction agrees with the Province that, during the M&R Period, the School Jurisdiction 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, Change Order work, and any other matters arising in connection with the cleaning, maintenance, repairs and renewal of the Schools.

7.9 Communications Protocol

The School Jurisdiction agrees with the Province that the School Jurisdiction 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 Jurisdiction agrees with the Province that the School Jurisdiction will participate in the joint communications subcommittee established by the Province to deal with strategic communications regarding the Schools.

8. SCHOOL JURISDICTION CONFIDENTIALITY AND FOIP REQUESTS

8.1 Confidential Information

The Province agrees to, prior to delivering to the School Jurisdiction pursuant to this Agreement any of its own information (or any information of the Contractor that is Confidential Information as defined in the DBFM Agreement) that includes information delivered in confidence, clearly identify such information as being delivered in confidence (the "**Confidential Information**"). The School Jurisdiction agrees with the Province that the School Jurisdiction 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 Jurisdiction was in the public domain;
- (b) after disclosure to the School Jurisdiction became part of the public domain through no fault of the School Jurisdiction or those for whom it is responsible at law;
- (c) was in the possession of the School Jurisdiction at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the School Jurisdiction from a third party who had a lawful right to disclose the information.

The Contractor agrees that any information delivered by it to the School Jurisdiction directly (and not through the Province or upon the express written direction of the Province) shall not be considered Confidential Information under this Agreement.

8.2 Disclosure of Confidential Information

The School Jurisdiction agrees with the Province that the School Jurisdiction shall not disclose Confidential Information delivered by the Province, or subject to the last paragraph of Section 8.1, 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 Jurisdiction 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 Jurisdiction in accordance with the confidentiality obligations of this Agreement. The Contractor acknowledges that the School Jurisdiction is subject to FOIP.

The School Jurisdiction agrees that as at the date of this Agreement, the Contractor has established to the satisfaction of the School Jurisdiction 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 Jurisdiction; 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 Jurisdiction 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 Jurisdiction 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 Jurisdiction in confidence.

8.4 Ownership of Confidential Information

For the purposes of this Agreement, the Province shall retain ownership of the Confidential Information it delivers to the School Jurisdiction, whether such information is created by the Province or the Contractor, and upon request, the School Jurisdiction shall immediately return such Confidential Information to the Province. No license in such Confidential Information is hereby granted to the School Jurisdiction or otherwise implied, nor does the School Jurisdiction have any rights of use or interest in the Confidential Information, except as expressly contemplated in this Agreement.

8.5 Protection of Confidential Information

The School Jurisdiction 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 Jurisdiction’s own confidential information from unauthorized disclosure.

9. DISPUTE RESOLUTION BETWEEN CONTRACTOR AND SCHOOL JURISDICTION

9.1 Dispute Resolution Process

The parties acknowledge and agree that Alberta Education funds the Schools and the School Jurisdiction and has delegated to Alberta Infrastructure the administration of this Agreement and the DBFM Agreement.

If a dispute regarding the application or interpretation of this Agreement arises between the Contractor and the School Jurisdiction, the parties shall notify the Province, who will convene a meeting with the Contractor M&R Representative and the School Representative or such party’s designates, and the parties, acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible by negotiation. If the dispute cannot be otherwise resolved within 14 Business Days, then the issue shall be decided by Alberta Infrastructure on behalf of the Province, in its sole discretion. If the Province takes the position of the Contractor on the issue, the matter shall be considered closed for the purpose of this Agreement, and the School Jurisdiction may further dispute the matter, in its sole discretion, in accordance with the terms of the separate contractual arrangements between the School Jurisdiction and the Province related to the School. If the Province takes the position of the School Jurisdiction 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, to the following respective addresses:

- (a) if to the Province:

Alberta Infrastructure
Attention: _____, Deputy Minister
3rd Floor Infrastructure Building
6950 - 113 Street, Edmonton, Alberta T6H 5V7
E-mail: _____@gov.ab.ca

with a copy to:

Alberta Infrastructure

Attention: Suzanne Bugeaud, Facilities Manager, P3 Office
3rd Floor Infrastructure Building
6950 - 113 Street, Edmonton, Alberta T6H 5V7
E-mail: suzanne.bugeaud@gov.ab.ca

and to,

Alberta Education

Attention: _____, Deputy Minister
7th floor Commerce Place
10155 - 102 Street, Edmonton, Alberta T5J 4L5
E-mail: _____@gov.ab.ca

(b) if to the Contractor:

Insert name of Contractor
Attention: *insert contact*
insert address
E-mail: *insert email*

with a copy to,

Insert name of Contractor's partner
Attention: *insert contact*
insert address
email: *insert email*

(c) if to the School Jurisdiction:

Insert name of School Jurisdiction
Attention: *insert contact*
insert address
E-mail: *insert email*

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

11. MISCELLANEOUS

11.2 School Jurisdiction Authority

The School Jurisdiction represents to the Province and the Contractor, that the obligations of the School Jurisdiction under this Agreement have been duly authorized by the School Jurisdiction.

11.3 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 Jurisdiction 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 Jurisdiction, 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 Jurisdiction may not otherwise transfer or assign its rights and obligations under this Agreement except with the prior consent of the Province, which consent may be withheld 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.

The parties acknowledge and agree that the exercise of the rights under the Direct Lender Agreement may necessitate or require the assignment or transfer of the Contractor's rights and obligations under this Agreement or the replacement of the Contractor as a party to this Agreement. The School Jurisdiction expressly consents to such assignment, transfer or replacement.

11.4 Applicable Law

This Agreement shall be governed by the laws in force in Alberta.

11.5 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.

11.6 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.

11.7 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 Jurisdiction with notice to the contrary, this Agreement will be administered solely by Alberta Infrastructure.

11.8 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 Portable Document Format transmission shall constitute good delivery.

11.9 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; and
- (b) the obligations in relation to Confidential Information and FOIP set out in Section 8.

11.10 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the School Jurisdiction, the Province and the Contractor in connection with the subject matter of this Agreement and supersedes all prior agreements, 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.

SCHEDULE 9 – DBFM 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 and the Minister of Education

By: _____
Name:
Deputy Minister, Alberta Infrastructure

By: _____
Name:
Deputy Minister, Alberta Education

INSERT FULL LEGAL NAME OF CONTRACTOR

By: _____
Name:
Title:

By: _____
Name:
Title:

INSERT FULL LEGAL NAME OF SCHOOL JURISDICTION

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 9 – DBFM AGREEMENT

**SCHEDULE “A”
LIST OF SCHOOLS**

[insert list of schools for the School Jurisdiction]

SCHEDULE 9 – DBFM AGREEMENT

SCHEDULE “B”

SCHOOL SITES

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

**SCHEDULE 9 – DBFM AGREEMENT
EXECUTION VERSION**

SCHEDULE “C”

APPENDIX “I” TO SCHEDULE 18 OF THE DBFM AGREEMENT

See attached.

**SCHEDULE 9 – DBFM AGREEMENT
EXECUTION VERSION**

SCHEDULE “D”

Pre-Approved Decorating List

1. Subject to compliance with applicable laws, the temporary fastening to the interior walls and doors of the School Building by way of non-marking, removable adhesive putty, of educational supports, such as (but not limited to):
 - (a) posters;
 - (b) schedules;
 - (c) lists;
 - (d) alphabet;
 - (e) themed decorations;
 - (f) calendar;
 - (g) words (such as spelling or sight words); and
 - (h) student work/art.