
SCHEDULE 1**DEFINITIONS AND INTERPRETATION****1. DEFINITIONS**

In this Agreement:

“**Account Trustee**” has the meaning set out in Schedule 20 - Insurance Trust Agreement;

“**Actual Coverage Amount**” has the meaning set out in Section 2.12 of Schedule 5 [Insurance];

“**Ad Hoc School Use**” means any unscheduled use of a School for Educational Activities or Educational Support Activities;

“**Additional Irrecoverable Tax**” means GST or PST incurred by Project Co in respect of the supply of any good or service to Project Co which is consumed, used or supplied, or to be consumed, used or supplied, by Project Co exclusively in the course of carrying out the Design or Construction or performing the Services to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST that Project Co would have recovered or been credited with prior to the applicable Change in Law;

“**Additional Recoverable Tax**” means GST or PST incurred in respect of the supply of any good or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied by Project Co, exclusively in the course of carrying out the Design or Construction or performing the Services to the extent that such GST or PST is able to be recovered or credited with input tax credits, refunds, rebates or exemptions that would not have been recovered or credited prior to the applicable Change in Law;

“**Adjusted Capital Payment**” has the meaning set out in Section 1.2(a) of Schedule 8 [Payments];

“**Adjusted Estimated Market Value**” means the Estimated Market Value:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-Bidding Costs; and
 - (2) any other amounts that the Authority is entitled to set-off or deduct under this Agreement,
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Agreement;

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- (3) all credit balances on any bank account held by or on behalf of Project Co on the date the Estimated Market Value is calculated; and
 - (4) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts have not been included in calculating the Estimated Market Value and, in the case of (b)(1) and (b)(3) above, the Authority has received or been assigned such amounts and is entitled to retain them;

“Adjusted Facility Maintenance Payment” has the meaning set out in Section 1.2(c) of Schedule 8 [Payments];

“Adjusted Highest Compliant Bid Price” means the Highest Compliant Bid Price:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-Bidding Costs; and
 - (2) any other amounts that the Authority is entitled to set-off or deduct under this Agreement; and
 - (3) the amount by which:
 - (A) all reasonable costs and expenses incurred by the Authority, during the period commencing on the day following the Termination Date and ending on the Termination Payment Date (or, as the case may be, the date on which it is agreed or determined that no Termination Payment is payable by the Authority under this Agreement), to carry out and perform (or to procure the carrying out and performance of), in the manner and to the standards contemplated by this Agreement, the obligations, responsibilities, activities and work that would, but for the termination of this Agreement, have been the responsibility and obligation of Project Co under this Agreement (including, without limitation, the rectification and mitigation of all defaults by Project Co occurring prior to such termination); exceeds
 - (B) the amount of the Service Payments, if any, that would have been payable to Project Co but for the termination of this Agreement that relates directly to the provision of Services;
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Agreement;

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- (3) all credit balances on any bank account held by or on behalf of Project Co on the date that the highest priced Compliant Bid is received or, if no Compliant Bid is received on the final date for submission of bids pursuant to the Re-Bidding Process; and
- (4) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts has not been taken into account in the relevant Compliant Bid and, in the case of (b)(1) and (b)(3) above, the Authority has received or been assigned such amounts and is entitled to retain them;

“Adjusted Life Cycle Payment” has the meaning set out in Section 1.2(b) of Schedule 8 [Payments];

“Adjusted Target Energy Consumption” has the meaning set out in Section 2.2 of Appendix 2C [Energy];

“Affiliate” in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where **“control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

“Agreement” means this agreement including any recitals, schedules, appendices and attachments to this agreement, as amended, supplemented or restated from time to time;

“Allowable Capital Expenditure” means the Capital Expenditure incurred by Project Co as a direct consequence of a Relevant Works Change in Law;

“Annual Service Plan” has the meaning set out in Section 3.2 of Schedule 4 [Services Protocols and Specifications];

“Applicant” has the meaning set out in Section 8.1 of the Agreement (Supervening Events);

“Architect” means GEC Architecture, which has been engaged by the Design-Builder to undertake the Design;

“Area Developer” means a company or individual under agreement with a City to provide and develop land for urban land uses, services and access. The Area Developer may have legal requirements and responsibilities for construction and maintenance of the public infrastructure and utilities surrounding the Site;

“**Asset Register**” has the meaning set out in Section 6.3 of Schedule 2 [Design and Construction Protocols];

“**Authority**” means Her Majesty the Queen in Right of the Province of Saskatchewan as Represented by the Minister of Education;

“**Authority Activities**” means any activities carried on or to be carried on by the Authority, any School Board, or other Person or Persons permitted by the Authority or any School Board, in the Schools, related to the provision of educational services, Ad Hoc School Use, Third Party and Community Use, the activities contemplated by Appendix 3A [Functional Program] to Schedule 3 [Design and Construction Specifications] or otherwise by the Agreement, and activities inferable from or incidental or ancillary to any of the foregoing, other than the Services;

“**Authority Event of Default**” has the meaning set out in Section 13.1 of the Agreement (Authority Events of Default);

“**Authority Indemnified Person**” means:

- (a) any School Board;
- (b) any contractor or subcontractor (of any tier) of the Authority or of any School Board;
- (c) any representative, agent or advisor (including legal and financial advisors) of the Authority or any Person referred to in (a) or (b) above, in each case acting in such capacity; and
- (d) any director, officer or employee of the Authority or of any Person referred to in (a), (b) or (c) above, in each case acting in such capacity;

“**Authority Maintained Elements**” means the painted wall finishes and decorations within the individual classrooms and other rooms in the interior areas of the Schools;

“**Authority Person**” means:

- (a) any School Board;
- (b) any director, officer, employee or agent of the Authority or of a School Board;
- (c) any representative, advisor (including any legal and financial advisor), contractor or subcontractor (of any tier) of the Authority or a School Board in any such Person’s capacity as a provider of services directly or indirectly to the Authority or School Board in connection with the Project, other than Project Co, Project Contractors or Sub-Contractors;
- (d) any invitee of the Authority or of a School Board or any of the Authority Persons referred to in (a) or (b) above who enters upon the Sites; or

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- (e) any lessee or tenant of the Authority or of a School Board at a School;

“**Authority Policies**” means,

- (a) with respect to the Board of Education of the Saskatoon Public School Division No. 13 of Saskatchewan, the following policies, or portions of policies where only a portion is indicated, of the Authority or of the Board of Education of the Regina School Division No. 4 of Saskatchewan as at the Financial Submission Date, copies of which have been provided to Project Co:
- (1) Human Rights Equity;
 - (2) No Smoking;
 - (3) Health and Safety;
 - (4) Scent-Free Facilities;
 - (5) Computer Network and Internet;
 - (6) Information Security;
 - (7) Local Authority Freedom of Information and Protection of Privacy;
 - (8) School Year Calendar;
 - (9) School Hours;
 - (10) Emergency Preparedness/Critical Incident Response;
 - (11) Evacuation;
 - (12) Securing the Facility;
 - (13) Fire Safety – Fire Incidents;
 - (14) Tragic Events;
 - (15) Occupational Health and Safety Committee;
 - (16) Employee Injuries;
 - (17) Infections and Communicable Diseases;
 - (18) Chemicals and other Hazardous Materials;
 - (19) Copyright;
 - (20) Food and Beverages in Schools;

- (21) Noon Supervision;
 - (22) Accommodation of Students During Cold or Inclement Weather;
 - (23) Police Information Checks;
 - (24) Reporting Criminal Charges;
 - (25) Conflict of Interest;
 - (26) Confidentiality;
 - (27) Employee Harassment;
 - (28) Sexual Harassment;
 - (29) Violent Incidents Directed Towards Employees;
 - (30) Purchasing of Goods and Services;
 - (31) Disposition of Surplus Real Property;
 - (32) Disposal of Surplus Equipment;
 - (33) Retention and Disposal of Records;
 - (34) Insurance;
 - (35) Education/Business Continuity;
 - (36) School Sites;
 - (37) Provision of Facilities;
 - (38) Community Use of School Facilities;
 - (39) Break-ins, Vandalism and Major Property Loss;
 - (40) Issuing of Keys and Access Devices;
 - (41) Energy Conservation;
 - (42) Car Pooling; and
 - (43) Use of Facilities, Equipment and Supplies;
- (b) with respect to the Board of Education of St. Paul's Roman Catholic Separate School Division No. 20 of Saskatchewan, the following policies, or portions of policies where only a portion is indicated, of the Authority or of the Board of Education of St. Paul's Roman

Catholic Separate School Division No. 20 of Saskatchewan as at the Financial Submission Date, copies of which have been provided to Project Co:

- (1) Personnel and Employee Relations;
 - (A) Nepotism;
 - (B) Service and Support Staff – Supervision, Professional Development and Evaluation;
 - (C) Employee Safety and Violence Prevention;
 - (D) Personal Harassment;
 - (E) Employee Health and Safety; and
 - (F) Expectations for Staff Dress; and
 - (2) Business Administration;
- (c) with respect to the Board of Education of the Prairie Spirit School Division No. 206 of Saskatchewan, the following policies, or portions of policies where only a portion is indicated, of the Authority or of the Board of Education of the Prairie Spirit School Division No. 206 of Saskatchewan as at the Financial Submission Date, copies of which have been provided to Project Co:
- (1) Access to Schools;
 - (2) Internet Use;
 - (3) Advertising and Corporate Sponsorship;
 - (4) Media Relations;
 - (5) Bulletin FB-902E: After Hours Emergency Procedures;
 - (6) Bulletin FB-902C: Typical Insurance Claim Administration;
 - (7) Break-in Theft and Vandalism;
 - (8) Community Use of School Facilities;
 - (9) Facilities – Explanation of Responsibilities; and
 - (10) Facilities;

and the policies of the Board of Education of the Regina School Division No. 4 of Saskatchewan listed in paragraph (a) of this definition where a matter is not covered by the policies listed in this paragraph (c);

including, for all School Boards, subject to Section 2.3 of Schedule 4 [Services Protocols and Specifications], as applicable from time to time, any amendments of those policies and any additional policies;

“**Authority Project Requirements**” means with respect to Commissioning of systems and equipment, the key requirements, project objectives, function of spaces, and measurable performance criteria stipulated in this Agreement;

“**Availability Condition**” means, with respect to a Functional Unit, that the Functional Unit, Maintained Equipment within the Functional Unit and normal access routes are in a state or condition that:

- (a) allows safe and convenient access to all persons who are entitled to enter, leave, occupy or use it, using normal access routes; and
- (b) is complete, operational, safe, functional and fit for its intended use (as contemplated in the Room Data Sheets) and meets the requirements of Schedule 3 [Design and Construction Specifications] and Schedule 4 [Services Protocols and Specifications] specifically applicable to the relevant Functional Unit,

and for Functional Units for the public or Catholic school, as the case may be, on floors other than the ground floor, the elevator for the public or Catholic school, as the case may be, is functional and operating to manufacturer’s specifications;

“**Avoidable Costs**”, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement (including Section 2.5 of this Agreement), would have been saved or avoided as a result of the event or circumstance or its effects;

“**Base Case Equity IRR**” means _____, which for greater certainty, is calculated on a pre-tax basis;

“**Base Case Project IRR**” means ▼% being the Nominal internal rate of return for the Project calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell ▼ of the Outputs Summary Sheet;

“**Base Date**” means April 1, 2015;

“**Beneficiary**” has the meaning set out in Section 9.2 of the Agreement (Conduct of Third Person Claims);

“**Best**” means A. M. Best Company;

“**BGSM**” or “**Building Gross Square Metres**” or “**Building Gross Area**” has the meaning set out in Section 2 of Appendix 3A [Functional Program];

“**BMCS**” or “**BMS**” means the building management control system and controls which control the delivery of heat, ventilation and humidity to the School and the Relocatable Classrooms necessary to maintain indoor air quality and thermal comfort, as described in Section 7.7 of Schedule 3 [Design and Construction Specifications];

“**Bond**” has the meaning given in the Trust Indenture;

“**Bond Interest Rate**” means ▼;

“**Bond Maturity Date**” means 6 months prior to the Expiry Date;

“**Builders Risk Policy**” has the meaning set out in Section 2.1(a) of Schedule 5 [Insurance Requirements];

“**Building Element**” means the elements of a School, including without limitation the functional areas listed in Schedule 3 [Design and Construction Specifications];

“**Building Equipment**” means all equipment required to be supplied and installed at a School by Project Co pursuant to the Design and Construction Specifications, but expressly excludes any School Board Supplied Furniture and Equipment and any playground equipment installed by the Authority;

“**Building Systems**” means the architectural, mechanical, electrical and other systems in or servicing the Schools which include without limitation the electrical system, heating and ventilation system, air conditioning, BMCS, plumbing system, fire protection, fire alarm system, security system, master clock and building elevators described in Schedule 3 [Design and Construction Specifications], Schedule 4 [Services Protocols and Specifications] and the appendices to Schedule 4;

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in Saskatchewan;

“**CaGBC**” means the Canada Green Building Council;

“**CaGBC Experienced Modellers List**” at any time means the most recent version of the Canada Green Building Council’s Experienced Modellers List
(http://www.cagbc.org/AM/PDF/CaGBCs_Experienced_Modellers_List-EN.pdf);

“**Capital Expenditure**” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

“**Capital Payment**” has the meaning set out in Section 1.1(a) of Schedule 8 [Payments];

“**Category 1 Equipment and Furniture**” means the equipment and furniture described and listed as “Category 1” in the Equipment and Furniture List and Equipment and Furniture Data Sheets (or similar equipment and furniture);

“Category 2 Equipment and Furniture” means the equipment and furniture described and listed as “Category 2” in the Equipment and Furniture List and Equipment and Furniture Data Sheets (or similar equipment and furniture);

“Category 3 Equipment and Furniture” means the equipment and furniture described and listed as “Category 3” in the Equipment and Furniture List and Equipment and Furniture Data Sheets (or similar equipment and furniture);

“Category 4 Equipment and Furniture” means the equipment and furniture described and listed as “Category 4” in the Equipment and Furniture List and Equipment and Furniture Data Sheets (or similar equipment and furniture);

“Certificate of Service Commencement” has the meaning set out in Section 12.3(a) of Schedule 2 [Design and Construction Protocols];

“CGSM” or **“Component Gross Square Metres”** has the meaning set out in Section 2 of Appendix 3A [Functional Program];

“Change” means a Facility Change or a Services Change, as the context requires;

“Change Certificate” means a certificate issued by the Authority describing and authorizing a Change, the value or method of valuation of the Change, and in the case of a Facility Change occurring prior to a School Service Commencement Date the adjustment, if any, to the Project Schedule (including the School Target Service Commencement Date);

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Authority’s Representative directing Project Co to immediately proceed with a Change, pending the finalization and issuance of a Change Certificate for that Change;

“Change in Control” means with respect to a Person (the **“Relevant Person”**) any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity (including Junior Debt) in the Relevant Person (including the control over the exercise of voting rights conferred on equity share capital or the holders of Junior Debt, unit interests or equity interests (including Junior Debt) or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity (including Junior Debt), issuance of new shares, units or equity (including Junior Debt) or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the Relevant Person (including the holders of any Junior Debt), immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the Relevant Person or of a general partner, manager or trustee of the Relevant Person;
- (b) controlling the decisions made by or on behalf of the Relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of

any class of shareholders or equity holders of any of the Relevant Person, a general partner of the Relevant Person, a manager of the Relevant Person, a trustee of a Relevant Person, or otherwise;

- (c) holding equity (including Junior Debt), either beneficially or otherwise, of the Relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (including Junior Debt), either beneficially or otherwise, of that Relevant Person with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the Relevant Person;

“Change in Law” means the coming into effect in Canada after the Financial Submission Date of:

- (a) any new Law; or
- (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or the Authority, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);
- (d) any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in Saskatchewan;
- (e) any new Law or modification arising from or in any way connected to or having substantially the same effect as any Law which as of the Financial Submission Date:
 - (1) had been introduced as a Bill in the Legislative Assembly of Saskatchewan or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

“Change in Ownership” means, with respect to a Person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of or any other ownership interest in such Person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such Person.

“Change Mark-Up” has the meaning set out in Section 1.11 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report” has the meaning set out in Section 1.7 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report Costs” means the costs, if any, that Project Co would incur to retain third parties (such as design consultants and construction managers) that Project Co would require to prepare the Change Report, including any incremental costs incurred under management service contracts held by Project Co, but excluding the costs of Project Co’s own staff and employees, and the staff and employees of a Project Contractor, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Design, Construction or Services;

“Charge” means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of the Workers’ Compensation Board, Canada Revenue Agency, Labour Standards Division or other Governmental Authority;

“City” means the City of Saskatoon, the City of Martensville, or the City of Warman, as the case may be;

“Cleared Person” has the meaning set out in Section 2.9(e) of Schedule 4 [Services Protocols and Specifications];

“Close Adjacency” has the meaning set out in Section 2 of Appendix 3A [Functional Program];

“CMMS” means the computerized maintenance management system for the Schools;

“Commissioning” means a process of planning, review, testing and verification to ensure the performance of equipment and systems are in accordance with the commissioning requirements set out in this Agreement, all applicable standards and Good Industry Practice, including to ensure that the equipment and systems are operating in accordance with the Authority Project Requirements, Basis of Design, construction documents, and with the manufacturer’s requirements and specifications;

“Commissioning Plan” has the meaning set out in Section 11.3 of Schedule 2 [Design and Construction Protocols];

“Compensation Event” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services, causes an Unavailability Event or causes Direct Losses to Project Co or any Project Co Person:

- (a) breach by the Authority of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Authority under this Agreement;
- (c) misconduct of the Authority, an Authority Person or a School User;
- (d) a negligent act or omission of the Authority, an Authority Person or a School User;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a Permit which is the obligation of the Authority to obtain or maintain is declared invalid or defective by a court of competent jurisdiction;

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- (g) the existence as at the Effective Date of any encumbrance enforceable against or affecting the Sites or Schools other than the Encumbrances;
 - (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Sites;
 - (i) a claim asserting infringement of aboriginal rights (including duty to consult) or aboriginal treaty rights or aboriginal title by any first nation(s);
 - (j) a Protest Action;
 - (k) lawful or unlawful strike, lockout, work-to-rule or other dispute by Public Sector Employees or by the employees of any contractor (other than Project Co) engaged by the Authority or a School Board to provide services in the Schools;
 - (l) the actions referred to in Section 11.5 of the Agreement (Allocation of Costs for Authority Actions) as constituting a Compensation Event;
 - (m) the event referred to in Section 8.4(f)(2) of the Agreement (Parties' Entitlements Upon Occurrence of a Relief Event);
 - (n) the event referred to in Section 8.6(d)(2) of the Agreement (Parties' Entitlements Upon Occurrence of a Force Majeure Event);
 - (o) the event referred to in Sections 5.11(a) or 5.11(c) of Schedule 2 [Design and Construction Protocols];
 - (p) the incidents referred to in Section 1.5 of Schedule 4 [Services Protocols and Specifications];
 - (q) Project Co's compliance with a direction from the Authority under Section 2.3 of Schedule 13 [Dispute Resolution Procedure] when the matter in dispute is subsequently resolved, or settled, in Project Co's favour;
 - (r) the execution of works, other than usual or reasonably expected works, on the Sites or in respect of the Schools not forming part of this Agreement by the Authority or any Person permitted to execute such works by the Authority or any Authority Person;
 - (s) if part of the Schools or part of the portion of the Sites on which the Schools are situated or any interest of Project Co or any Partner is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c) of the Agreement; or
 - (t) any other event which is expressly stated in this Agreement to constitute a Compensation Event;

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Compliant Bid” means a bid, proposal or other submission pursuant to a competitive process which meets the reasonable criteria that the Authority requires the party making the submission to meet as part of the Re-Bidding Process, which unless otherwise agreed by Project Co and the Authority will include:

- (a) compliance with the New Project Agreement terms;
- (b) the financial ability to pay the proposed capital sum as a single, lump sum payment to be made as of the date of the New Project Agreement and the financial ability to comply with the New Project Agreement terms for the price proposed;
- (c) such party is experienced in maintaining and operating a facility similar to the Schools or providing services similar to the Design and Construction and/or Services, as applicable;
- (d) the technical solution proposed by such party is capable of delivery and such party is technically capable of delivering and maintaining the Project or the remainder thereof, as the case may be;
- (e) such party is not a Restricted Person; and
- (f) such party is not Project Co or any of its Affiliates;

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

“Construction” means everything (other than Design) required to achieve Service Commencement, including the construction of the Schools, temporary works and the supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the Schools and the supply, installation, testing and commissioning of all Equipment;

“Construction Documents Phase” has the meaning set out in Section 4.2(b)(3) of Schedule 2 [Design and Construction Protocols];

“Construction Period” means the period commencing on the Effective Date and ending on the Service Commencement Date;

“Construction Period Funding” means funding for the Project in the amount of \$▼ [NTD: Amount to be imported from the Financial Model at Financial Close.] (which is to be of Project Co’s Total

Capital Costs) that will be paid by the Authority in the form of Progress Payments as contemplated by Appendix 8C [Construction Period Funding] to Schedule 8 [Payments];

“**Construction Period Joint Committee**” has the meaning set out in Section 1.6(a) of Schedule 2 [Design and Construction Protocols];

“**Contingent Funding Liabilities**” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“**Contract Year**” means each of:

- (a) the period from the Effective Date to the next March 31st;
- (b) each subsequent period of 12 calendar months commencing on April 1st; and
- (c) the period from the April 1st immediately prior to the Termination Date to and including the Termination Date;

“**Convenient Access**” has the meaning set out in Section 2 of Appendix 3A [Functional Program];

“**Cooling Degree Days**” for a period means the figure obtained or calculated from the Weather Data setting out the extent to which the average outdoor temperature during that period at a Site was greater than a mean temperature of +18 degrees Celsius;

“**Cost to Date**” as at a date means the total amounts paid or payable by Project Co to the Design-Builder under the Design-Build Agreement (including interest during the construction and the amount of any holdback required under the *Builders’ Lien Act* (Saskatchewan)) for Construction performed by the Design-Builder, as certified by the Independent Certifier as contemplated in Section 2.4 of Schedule 2 [Design and Construction Protocols];

“**CPTED**” means Crime Prevention Through Environmental Design;

“**Cumulative Allowable Capital Expenditure**” means the cumulative amount of all the Allowable Capital Expenditures from time to time during the Term;

“**Data Room**” means the website established by the Authority and containing documents related to the Project;

“**dBA**” has the meaning set out in Appendix 3C [Sound Transmission Ratings] of Schedule 3 [Design and Construction Specifications];

“**Debt**” of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;

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- (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
 - (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
 - (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, except leases arising in the ordinary course of business;
 - (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
 - (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
 - (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
 - (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

“Debt Service Reserve Account” means a debt service reserve account with account number in the name of Project Co established with the Account Bank (as defined in the Trust Indenture), together with any replacement and substitute accounts opened with the consent of the Indenture Trustee and any sub-accounts of the foregoing;

“Decoration” means any decoration of the interior walls of the Schools by School Users, authorized by the Authority, including the hanging and attachment of items such as artwork, pictures, teaching aids, seasonal decorations, etc., and including the installation of fixtures such as display boards, pencil sharpeners, soap and paper towel dispensers, etc., to the extent that such activities do not impact the integrity of the Maintained Elements, alter the Design of the Schools or affect the function of any Building System;

“Deduction” means a deduction from a Service Payment, calculated in accordance with Schedule 8 [Payments];

“Deemed Corporate Project Co” has the meaning set out in Section 5.1 of Schedule 9 [Compensation on Termination];

“Default Rate” on any day means per annum over the Prime Rate;

“Defect” means any defect or fault, including omission, in the Schools which occurs due to a failure by Project Co to comply with the Design and Construction obligations under this Agreement;

“**Deficiency**” has the meaning set out in Section 12.1 of Schedule 2 [Design and Construction Protocols];

“**Deficiency Deadline**” has the meaning set out in Section 12.5 of Schedule 2 [Design and Construction Protocols];

“**Deliver**”, “**Delivery**” and “**Delivered**” mean delivery to the Schools or to another location as agreed with the Authority;

“**Demand Maintenance**” means ad hoc and responsive unscheduled Maintenance;

“**Demand Requisition**” means any request for service, report of a Service Failure, report of an Unavailability Event or any other report or inquiry made to the Help Desk or to Project Co, including reports generated electronically by the BMS, the CMMS or other electronic monitoring systems operated by Project Co in the Schools;

“**Design**” means everything required for the design of the Schools except for any design that is expressly excluded from Project Co’s responsibility under this Agreement;

“**Design and Construction Protocols**” means the provisions of Schedule 2 [Design and Construction Protocols];

“**Design and Construction Representative**” has the meaning set out in Section 1.1 of Schedule 2 [Design and Construction Protocols];

“**Design and Construction Specifications**” means the provisions of Schedule 3 [Design and Construction Specifications];

“**Design Development Phase**” has the meaning set out in Section 4.2(b)(2) of Schedule 2 [Design and Construction Protocols];

“**Design Professionals**” means the Architect, the Architect’s sub-consultants and the design consultants engaged directly by the Design-Builder or Project Co, including engineers and technical experts, who provide services with respect to the Design;

“**Design-Build Agreement**” means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to the Authority, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“**Design-Builder**” means Bird-Wright Joint Venture or any assignee or replacement permitted under this Agreement;

“**Designated School Users**” has the meaning set out in Section 1.3(d) of Schedule 4 [Services Protocols and Specifications];

“Development Changes” has the meaning set out in Section 5.1 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record” has the meaning set out in Section 5.2 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record Confirmation” has the meaning set out in Section 5.3 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Register” has the meaning set out in Section 5.6 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Direct Losses” means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Project Co, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Service Payments; and
 - (2) net of Avoidable Costs related to such condition, event or omission,

and in calculating any amount of any additional Capital Expenditure, labour or similar cost claimed by Project Co under this definition of “Direct Losses”, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 1.11 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Disclosed Data” means any information, data, documents and reports made available or issued to Project Co or any Project Contractor or Sub-Contractor in connection with the Project by or on behalf of the Authority, including the Site Reports and any information relating to the Sites or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

“Discriminatory Change in Tax Law” means a Change in Law which results in the imposition of Taxes or a change in Taxes which specifically apply to discriminate against:

- (a) the Project or school projects procured and contracted on a public-private partnership basis similar to the Project;

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- (b) Project Co or its Partners or Persons that have contracted on similar school projects procured and contracted with the Authority or other statutory or public body on a public-private partnership basis similar to the Project;
 - (c) the design, provision, operation or maintenance of schools and not to other types of facilities; or
 - (d) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar school projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons;

“Dispute” means any disagreement, failure to agree or other dispute between the Authority and Project Co arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

“Dispute Notice” has the meaning set out in Section 1.2 of Schedule 13 [Dispute Resolution Procedure];

“Dispute Resolution Procedure” has the meaning set out in Section 1.1 of Schedule 13 [Dispute Resolution Procedure];

“Distribution” means, without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner’s contribution stated in the limited partnership certificate or any other reorganization or variation to partnership capital;
 - (3) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable

terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and

(6) other payment to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

(b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Threshold Equity IRR in the Financial Model;

“Draft Reinstatement Plan” has the meaning set out in Section 6.5(a) of the Agreement (Project Co's Obligations – Material Damage or Destruction);

“Early Works” means the Design and Construction undertaken pursuant to the Early Works Agreement;

“Early Works Agreement” means the agreement dated June 26, 2015 between Project Co, the Authority and the Early Works Contractor relating to the performance of certain of the Design and Construction prior to the Effective Date;

“Early Works Contractor” has the meaning set out in Section 2.14 of the Project Agreement;

“Educational Activities” means all curriculum, teaching, career guidance, extra-curricular, remedial, training, practice, vocational, scholastic and educational activities provided for the benefit of students to be undertaken at each School, and includes, in the case of the Board of Education of St. Paul's Roman Catholic Separate School Division No. 20 of Saskatchewan, religious activities and religious celebrations;

“Educational Support Activities” means all parent and administrative support functions carried out in support of the Educational Activities, including but not limited to, parent-teacher interviews, professional development activities of teaching staff, staff meetings, curriculum development activities, before and after school care activities and other activities, that support Educational Activities;

“Effective Date” means the date of this Agreement;

“Eligible Change in Law Event” means the occurrence of:

- (a) a Relevant Change in Law;
- (b) a Relevant Works Change in Law;
- (c) a Discriminatory Change in Tax Law; or

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- (d) an Input Tax Recoverability Change in Law;

“Emergency” means any situation, event, occurrence, multiple occurrences or circumstances:

- (a) that:
- (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any Persons (including School Users and Authority Persons) or any part of or the whole of the Schools;
 - (ii) causes or may cause material damage or material harm to property, buildings and/or equipment; and/or
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Schools, any part of the Sites, the conduct of the Project, or the conduct of the Authority Activities;

and which, in the opinion of the Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) any police service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to any Laws which may require access to the Schools from time to time;

“Employee Information” means written details related to employees employed by Project Co or any of the Project Contractors or Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that the Authority may reasonably require in relation to the calculation of Employee Payments in respect of Project Co or any relevant Project Contractor or Sub-Contractors;

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

“Encumbrances” means those Charges against title to the Sites described in the land title searches attached as Appendix 7A [Description of Sites and Encumbrances] to Schedule 7 [Sites] and any additional Charges against the Sites permitted under Schedule 7 [Sites];

“Energy” means energy used in the Schools and created by, or produced from, electricity, thermal sources, steam, gas, oil, coal and any other fossil-based fuel or biomass, including wood products and fuel oil for emergency generators;

“Energy Consumption” for a period means the Gigajoules of Energy consumed at the Schools during that period including all energy consumed as a result of the construction, operation and maintenance of all Relocatable Classrooms during the Test Period;

“Energy Cost” means the cost of the Energy Consumption at the Schools for a given period equal to the sum of all Energy related Utility bills for that period;

“Energy Management Plan” has the meaning set out in Section 3.6 of Schedule 4 [Services Protocols and Specifications];

“Energy Model” has the meaning set out in Attachment 1 to Appendix 2C [Energy];

“Environmental Credit” means any incentive, income, credit, rebate, right, benefit or advantage provided by a Governmental Authority or industry group relating to energy, design, materials or environmental matters including means of production of energy, input sources, use of products or materials, efficiencies, and type and level of emissions;

“Environmental Laws” means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

“Environmental Management Plan” has the meaning set out in Section 3.5 of Schedule 4 [Services Protocols and Specifications];

“Equipment” means collectively the Category 1 Equipment and Furniture, the Category 2 Equipment and Furniture, the Category 3 Equipment and Furniture and the Category 4 Equipment and Furniture;

“Equipment and Furniture List” has the meaning set out in Section 8 of Appendix 2D [Equipment and Furniture];

“Equipment and Furniture Committee” means the committee established pursuant to Section 9.6 of Appendix 2D [Equipment and Furniture];

“Equipment and Furniture Data Sheets” means the equipment and furniture data sheets set out in Attachment 2 to Appendix 2D [Equipment and Furniture] containing specifications for items of equipment and furniture on the Equipment and Furniture List, as those data sheets may be updated in accordance with this Agreement;

“Equipment and Furniture Procurement Schedule” means the Equipment procurement schedule attached as Attachment 3 to Appendix 2D [Equipment and Furniture], as updated in accordance with Section 9.4 of Appendix 2D [Equipment and Furniture];

“Equity Capital” means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than of the coupon payable to the Senior Lenders;

“Equity IRR” means Project Co’s Nominal blended equity internal rate of return calculated on an after-tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell ▼ of the Outputs Summary Sheet, having regard to Distributions made and projected to be made;

“Equity Sale IRR” means the Equity IRR calculated to the date of any sale of Equity Capital calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts;

“Estimated Market Value” means the amount (calculated as at the day following the Termination Date) determined to be the Fair Market Value of a New Project Agreement pursuant to Section 3.2 or 3.3 of Schedule 9 [Compensation on Termination];

“Event” means an incident or state of affairs affecting the Availability Condition of a Functional Unit or requiring Services to be performed or both;

“Evidence Based Design” has the meaning set out in Section 3.4.2 of Schedule 3 [Design and Construction Specifications];

“Excess Equity Gain” means an amount equal to the greater of zero and the difference between:

- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
- (b) the Threshold Equity Sale Amount;

“Excusing Event” means, in respect of a School, any of the following events or circumstances if it occurs on or after the School Service Commencement Date and interferes adversely with, or causes a failure of, the performance of the Services or causes an Unavailability Event in respect of such School:

- (a) Scheduled Maintenance (including Life Cycle Requirements) performed in accordance with the Annual Service Plan, except that:
 - (1) improperly performed Scheduled Maintenance and the effects thereof will not constitute an Excusing Event; and
 - (2) if the Scheduled Maintenance continues beyond the period or duration set out in the Annual Service Plan and Project Co is not entitled to relief for such continuation due to a Supervening Event other than as set out in this paragraph (a), the Excusing Event will terminate at the end of the period or duration set out in the Annual Service Plan;

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- (b) the carrying out by Project Co of Minor Works required by the Authority in accordance with this Agreement;
 - (c) failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Services by any such body as a result of maintenance or other work;
 - (d) compliance by Project Co with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;
 - (e) the outbreak or effects of any Medical Contamination, to the extent it does not constitute a Compensation Event;
 - (f) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with the Design and Construction Specifications, failure or shortage of power;
 - (g) fluctuations of ambient room temperatures in Functional Units directly attributable to the opening of doors or windows by Authority Persons or School Users;
 - (h) the implementation of a Change to the extent that Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate;
 - (i) any other event which is expressly stated in this Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Exempt Refinancing” means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;
 - (2) movement of monies between the Project Accounts (as defined in the Trust Indenture) in accordance with the terms of the Trust Indenture;
 - (3) late or non-provision of information or consents;
 - (4) amendments to Project Contracts;

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- (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or
 - (9) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment, variation or supplement of an agreement approved by the Authority as part of any Change;
 - (d) a sale of Junior Debt or Units in Project Co by Partners or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in Project Co;
 - (e) a Qualifying Bank Transaction;
 - (f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Project Co by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Project Co by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion; or
 - (g) a secondary transaction in the bond market;

“Expiry Date” means the earlier of:

- (a) 30 years from the original Target Service Commencement Date; and
- (b) 30 years from the Service Commencement Date;

“Exterior Improvements” means without limitation all transportation and drop off areas, refuse areas, parking lots, hard surface play areas, sidewalks, fencing, signage, retaining walls, bicycle racks, flag poles, railings and all landscaped areas, including without limitation grass, trees, shrubs and other decorative plants, all as described in Parts 10 and 11 of Schedule 3 [Design and Construction Specifications], and excludes School Board Supplied Furniture and Equipment and playground equipment installed by the Authority;

“Facility Change” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design or Construction obligations under this Agreement, or a Renovation;

“Facility Maintenance Payment” has the meaning set out in Section 1.1(c) of Schedule 8 [Payments];

“Failure” means an Unavailability Event or a Service Failure;

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Financial Close” means the first date that funding is available under the Lending Agreements;

“Financial Model” means Project Co’s financial model for the Project attached as Schedule 15 [Financial Model], a copy of which is attached to this Agreement in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

“Financial Submission Date” means May 21, 2015;

“First Nations and Metis Design and Construction Engagement Plan” has the meaning set out in Section 3.11 of Schedule 2 [Design and Construction Protocols];

“Five Year Maintenance Plan” has the meaning set out in Section 3.3 of Schedule 4 [Services Protocols and Specifications];

“FM Services” has the meaning set out in Section 4.2 of Schedule 4 [Services Protocols and Specifications];

“Force Majeure Event” means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;

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- (d) flood, except to the extent that such flood arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person; or
 - (e) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Agreement;

“Forecast Service Commencement Date” has the meaning set out in Section 6.8 of the Agreement (Economic Reinstatement Test During Construction);

“Functional Program” has the meaning set out in Section 2.2 of Schedule 3 [Design and Construction Specifications];

“Functional Unit” means each room or space listed in Appendix 8A to Schedule 8 [Payments];

“GAAP” means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

“GJ” means Gigajoule;

“Good Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, Court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project;

“Gross Floor Area” of a School means the sum of the floor areas of the School included within the outside face of the exterior walls for all stories that have floor surfaces;

“GST” means the goods and services tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);

“H&S Conviction” has the meaning set out in Section 12.1(g) of the Agreement (Project Co Events of Default);

“Handback Amount” means Project Co’s estimate of the cost of carrying out the Handback Works Plan;

“Handback Certificate” has the meaning set out in Section 3.2(a) of Appendix 4B [Handback Requirements];

“**Handback Holdback**” has the meaning set out in Section 2.1(a) of Appendix 4B [Handback Requirements];

“**Handback Requirements**” means the requirements for the condition of the Schools on the Expiry Date described in Section 1.1 of Appendix 4B [Handback Requirements];

“**Handback Survey**” has the meaning set out in Section 1.2 of Appendix 4B [Handback Requirements];

“**Handback Works**” has the meaning set out in Section 1.3(a) of Appendix 4B [Handback Requirements];

“**Handback Works Plan**” has the meaning set out in Section 1.3(b) of Appendix 4B [Handback Requirements];

“**Has Knowledge**”, “**Have Knowledge**” or “**Having Knowledge**” means, under circumstances in which a reasonable person would take cognizance of it:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnership(s) or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnership(s) or a senior employee of the partnership with responsibility for matters to which the information relates;
- (e) for the Authority, when information has come to the attention of:
 - (1) a director or officer of the Authority;
 - (2) a senior employee of the Authority with responsibility for matters to which the information relates; or
 - (3) the Authority’s Design and Construction Representative or Operating Period Representative;
- (f) for Project Co, when information has come to the attention of:

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- (1) a director or officer of a Partner;
 - (2) a senior employee of Project Co or a Partner with responsibility for matters to which the information relates; or
 - (3) Project Co's Design and Construction Representative or Operating Period Representative;

"Hazardous Substance" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

"Heating Degree Days" for a period means the figure obtained or calculated from the Weather Data setting out the extent to which the average outdoor temperature during that period at a Site was less than a mean temperature of +18 degrees Celsius;

"Help Desk" means the contact point established by Project Co in respect of the Help Desk Services for the notification of Demand Requisitions, the occurrence of Events and other matters arising in relation to the provision of Services;

"Help Desk Report" means any Demand Requisition, request for Services, report of a Service Failure or Unavailability Event or any other enquiry or report made to the Help Desk by a School User or automatically generated by the BMS or the CMMS;

"Help Desk Services" has the meaning set out in Section 4.3 of Schedule 4 [Services Protocols and Specifications];

"Highest Compliant Bid Price" means the price offered by the Person making the Compliant Bid (if any) with the highest bid price;

"High Service Failure" means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a High Service Failure;

"Holding Company" means, with respect to a corporation, another corporation of which the first corporation is a "subsidiary" as defined in the *Business Corporations Act* (Saskatchewan) as at the date of this Agreement;

"Immediately Adjacent" has the meaning set out in Section 2 of Appendix 3A [Functional Program];

"Implied Equity Value" means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital;

"Income Tax" means any tax imposed on the income of a Person by any Canadian (whether federal, provincial or otherwise) Governmental Authority;

“**Indemnifier**” has the meaning set out in Section 9.2 of the Agreement (Conduct of Third Party Claims);

“**Indenture Trustee**” means Computershare Trust Company of Canada, and its successors and assigns;

“**Independent Certifier**” has the meaning set out in Section 2.1 of Schedule 2 [Design and Construction Protocols];

“**Independent Energy Consultant**” means one or more individuals engaged jointly by Project Co and the Authority to complete the adjustments to the energy target, described in Section 2.2 of Appendix 2C [Energy], and who are listed on the CaGBC Experienced Modellers List;

“**Index Linked**”, with respect to an amount at any time, means that the amount is adjusted as at each April 1st commencing April 1, 2016 by:

- (a) multiplying it by the Inflation Index as at the immediately preceding January; and
- (b) dividing it by the Inflation Index as at the Base Date;

“**Indicative Design**” has the meaning set out in Section 2.4 of Schedule 3 [Design and Construction Specifications];

“**Indirect Losses**” means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or
- (b) the Authority or any Authority Person (other than a Person who is an Authority Person solely by virtue of being an invitee of the Authority or any of Authority Persons) or an Authority Indemnified Person;

and will be deemed not to include any loss of Service Payments or other amounts expressly payable by the Authority to Project Co under this Agreement;

“**Inflation Index**” means the Consumer Price Index, for All-Items in Canada, as published by Statistics Canada or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

“**Initiating Party**” has the meaning set out in Section 1.6(b)(2) of Schedule 13 [Dispute Resolution Procedure];

“Innovation Proposal” has the meaning set out in Section 3.1 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Initial Relocatable Classroom” has the meaning set out in Section 1.1 of Appendix 8D [Relocatable Classroom Payments] to Schedule 8 [Payments];

“Initial Relocatable Classroom Payment” has the meaning set out in Section 1.1 of Appendix 8D [Relocatable Classroom Payments] to Schedule 8 [Payments];

“Input Tax Recoverability Change in Law” means a Change in Law, other than a Discriminatory Change in Tax Law, which results in Additional Irrecoverable Tax or Additional Recoverable Tax;

“Install”, **“Installation”** and **“Installed”** mean, as applicable, connection to necessary building services, including plumbing, heating, cooling, ventilation and electricity, and connection to necessary communication or network interfaces or devices, and affixing to building structures, including ceilings and walls;

“Instructional Areas” means all teaching areas within a School including without limitation classrooms, Relocatable Classrooms, multi-purpose rooms, music rooms, art rooms, early childhood services classrooms, and also including without limitation any areas of a School used for community use, such as the community resource centre and servery;

“Insurance Proceeds” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority; and
- (b) for the purposes of Sections 6.3, 6.4, 6.7A and 6.12 of the Agreement, insurance proceeds received by Project Co or the Senior Lenders from:
 - (1) the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance]; or
 - (2) the business interruption insurance described in Section 3.4 of Schedule 5 [Insurance];

“Insurance Receivables” means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority; and
- (b) for the purposes of Sections 6.3 and 6.7A of the Agreement, insurance proceeds received by Project Co or the Senior Lenders from:

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- (1) the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance]; or
 - (2) the business interruption insurance described in Section 3.4 of Schedule 5 [Insurance];

“Insurance Review Date” means each anniversary of the Service Commencement Date, except if such date occurs after the end of the Term, in which case the Insurance Review Date will be the last renewal date of the Operating Period Insurance and prior to the Expiry Date;

“Insurance Trust Account” means an account with account number _____ at the Account Bank (as defined in the Trust Indenture) opened in accordance with the Insurance Trust Agreement, together with any replacement and substitute accounts opened pursuant to the Insurance Trust Agreement and any sub-accounts of the foregoing;

“Insurance Trust Agreement” means the insurance trust agreement to be entered into between the Authority, the Senior Lenders, Project Co and the Account Trustee in the form set out in Schedule 20 - Insurance Trust Agreement;

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

“**Intended Uses**” means the uses for the Schools as described in the Design and Construction Specifications;

“**Inventory Reduction**” has the meaning set out in Section 6.1 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Inventory Reduction Compensation Payment**” has the meaning set out in Section 6.2(d)(3) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Inventory Reduction Notice**” has the meaning set out in Section 6.1 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Issued for Construction Drawings**” has the meaning set out in Section 4.2 of Schedule 2 [Design and Construction Protocols];

“**Joint Technical Review**” has the meaning set out in Section 1.4(a) of Schedule 4 [Services Protocols and Specifications];

“**Junior Debt**” means indebtedness issued by Project Co to any of its Partners or Affiliates of Partners which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Partner or any Affiliate of a Partner; and
- (c) capitalized interest, and interest on overdue interest;

“**Key Individuals**” has the meaning set out in Section 2.8 of the Agreement [Key Individuals];

“**Law**” or “**Laws**” means any law or laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any building codes (including, for purposes of this Agreement, the National Building Code of Canada);

“**LEAN**” means to maximize customer value while minimizing waste. The core idea is a student-first approach that puts the needs and values of students and staff at the forefront and uses proven methods to continuously improve the education system;

“**LEED® Canada NC 2009**” means CaGBC’s Leadership in Energy and Environmental Design Green Building Rating System for New Construction and Major Renovations LEED® Canada NC 2009;

“**LEED® Certification Plan**” means the Project Co approach to achieving the required LEED® rating at each School and is to include, but not be limited to, full and detailed written statements, narratives,

drawings, diagrams and point tracking lists concerning all LEED® prerequisites and credits as further set out in Schedule 3 [Design and Construction Specifications];

“**LEED® Rating System**” means the rating system set out in LEED® Canada NC 2009;

“**LEED® Silver Certification**” means the award of LEED® Silver certification from the CaGBC;

“**Lenders’ Remedies Agreement**” means the agreement between the Authority, the Senior Lenders and Project Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

“**Lenders’ Technical Advisor**” means the Person appointed by the Senior Lenders from time to time to advise the Senior Lenders on technical matters, including with respect to certain conditions precedent to advances under the Senior Financing Agreements;

“**Lending Agreements**” means, collectively, the Senior Financing Agreements and any agreements evidencing or entered into with respect to the Junior Debt;

“**Liability Payment**” has the meaning set out in Section 9.3 of the Agreement (General Obligation to Pursue Third Person Recovery);

“**Licence**” has the meaning set out in Section 1.1(a) of Schedule 7 [Sites];

“**Life Cycle Component**” means each component of plant, equipment or other items to be supplied, installed, constructed and commissioned as part of the Schools as described in the Life Cycle Schedule but, for greater certainty, does not include improvements, furniture and equipment installed by a tenant of the Schools;

“**Life Cycle Costs**” means all costs incurred to satisfy the Life Cycle Requirements;

“**Life Cycle Payment**” means the payment described in Section 1.1(b) of Schedule 8 [Payments];

“**Life Cycle Plan**” has the meaning set out in Section 3.4 of Schedule 4 [Services Protocols and Specifications];

“**Life Cycle Requirements**” means the replacement and refurbishment of all Life Cycle Components by Project Co as contemplated in this Agreement;

“**Life Cycle Schedule**” has the meaning set out in Section 3.1(a) of Schedule 4 [Services Protocols and Specifications];

“**Linked Unit**” means, with respect to a Functional Unit, any other Functional Unit which is designated in Appendix 8A as being linked to the first Functional Unit;

“Liquid Market” means that there are sufficient willing parties (being at least two parties each of whom is capable of submitting a Compliant Bid in a Re-Bidding Process and each of whom deals with the Authority at arm’s length) in the market for agreements in Canada for the provision of services under public private partnerships or other basis similar to this Agreement for the price that is likely to be achieved through a competitive process to be a reliable indicator of the Fair Market Value of a New Project Agreement, provided that any entity controlled and established by the Senior Lenders specifically for the purposes of this Project will not be counted for the purpose of determining whether there are sufficient willing bidders in the market;

“Longstop Date” means the date that is 365 days after the Target Service Commencement Date;

“Long Stop Return Date” has the meaning set out in Section 3.10 of Schedule 8 [Payments];

“Low Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a Low Service Failure, or a Service Failure which has not been designated as a Medium Service Failure or High Service Failure;

“Maintained Elements” means all elements of the Schools and Sites constructed or installed pursuant to this Agreement including:

- (a) the Building Systems;
- (b) improvements to the Sites, including the external areas and elements described in Table 4 of Attachment 1 to Appendix 4C [FM Services];
- (c) the Maintained Equipment; and
- (d) all millwork installed by Project Co,

and expressly excludes any Category 1 Equipment and Furniture, Category 2 Equipment and Furniture and Category 4 Equipment and Furniture and the assumption of responsibilities by the Authority related to Decoration of interior walls of the Schools as described in Section 1.6 of Schedule 4 [Services Protocols and Specifications];

“Maintained Equipment” means Category 3 Equipment and Furniture;

“Maintenance” means commissioning, testing, servicing, maintenance, repair, renewal or replacement of the Maintained Elements;

“Maintenance Access Times” means the times set out in the Annual Service Plan during which Project Co may perform Maintenance Services;

“Maintenance Services” means Demand Maintenance and Scheduled Maintenance;

“Material Contract Party” means a party to a Material Contract, other than Project Co;

“Material Contracts” means:

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- (a) the Project Contracts; and
 - (b) any agreement for products, services or management to Project Co between Project Co and a current or former Affiliate of Project Co or a current or former Partner of Project Co;

“Material Project Contractor Collateral Agreement” means the agreement to be entered into between the Authority, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Medical Contamination” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit students or staff to the relevant area or to use the area for the purpose for which it is intended; and
- (b) the area cannot be made safe for the admission of students or staff;

“Medium Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a Medium Service Failure;

“Minor Works” means a Change that is requested by the Authority with respect to a School at any time after the applicable School Service Commencement Date with a value that does not exceed \$25,000, Index Linked, unless otherwise agreed by the Authority;

“Minor Works Rates” has the meaning set out in Section 2.1(a) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Net Cash Flow” means the future interest payments and principal repayments to be made by Project Co to the Senior Lenders;

“Net Change Value” has the meaning set out in Section 1.10(a) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

“New Project Agreement” means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the applicable School Target Service Commencement Dates, the applicable School Longstop Dates, the Target Service Commencement Date and the Longstop Date by

such reasonable period as is agreed by the Authority and the New Project Co to meet such extended School Target Service Commencement Dates, School Longstop Dates, Target Service Commencement Date and Longstop Date;

- (b) any accrued Deductions pursuant to Schedule 8 [Payments] will be cancelled;
- (c) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Operating Period would otherwise have expired;
- (d) the Authority may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Project Co is using all reasonable efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied; and
- (e) any other amendments as may be specified by the Authority that do not adversely affect any compensation which would otherwise be payable to Project Co pursuant to Schedule 9 [Compensation on Termination];

“New Project Co” means the Person who has entered into or who will enter into the New Project Agreement with the Authority;

“New Service Provider Start Date” means:

- (a) the earliest School Service Commencement Date; or
- (b) if any Service Provider is replaced by a new Service Provider, the date on which the Services begin to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided;

“New Service Provider Transition Period” has the meaning set out in Section 2.15 of Schedule 8 [Payments];

“Nominal” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

“Non-Targeted Energy Consumption” means electrical energy consumed by the Schools excluding electricity consumed by Targeted Electrical Components and including all applicable energy consumed as a result of the construction, operation and maintenance of all Relocatable Classrooms during the Test Period;

“Notice of Intention to Arbitrate” has the meaning set out in Section 1.6(a) of Schedule 13 [Dispute Resolution Procedure];

“Notice of Objection to Arbitration” has the meaning set out in Section 1.6(b) of Schedule 13 [Dispute Resolution Procedure];

“Notifying Party” has the meaning set out in Section 3.12 of Schedule 5 [Insurance];

“**NSM**” or “**Net Square Metres**” or “**Net Area**” has the meaning set out in Section 2 of Appendix 3A [Functional Program];

“**Opening Enrolment**” means, in respect of a School, the opening student enrolment of the School as set out in Appendix 3A to Schedule 3;

“**Operating Period**” means

- (a) in respect of any School, the period between the School Service Commencement Date for that School and the Service Commencement Date; and
- (b) when all Schools have reached their respective School Service Commencement Dates, the period between the Service Commencement Date and the Termination Date;

“**Operating Period Insurance**” means the policies of insurance described in Section 1.3 of Schedule 5 [Insurance];

“**Operating Period Joint Committee**” has the meaning set out in Section 1.2(a) of Schedule 4 [Services Protocols and Specifications];

“**Operating Period Representative**” has the meaning set out in Section 1.1(a) of Schedule 4 [Services Protocols and Specifications];

“**Outputs Summary Sheet**” means the sheet labelled “Model Summary” in the Financial Model;

“**Parking Facilities**” means all parking areas required to be Designed and Constructed by Project Co pursuant to this Agreement;

“**Partner**” means either of Project Co Partner (Bird) and Project Co Partner (Concert);

“**Partner Loan**” means any funds contributed to Project Co by a Partner or an Affiliate of a Partner in relation to the Project;

“**Paying Party**” has the meaning set out in Section 9.3 of the Agreement (General Obligation to Pursue Third Person Recovery);

“**Payment Adjustment Report**” has the meaning set out in Section 6.1(f)(2) of Schedule 8 [Payments];

“**Payment Period**” means a calendar month;

“**PDS**” has the meaning set out in Section 5.16 of Schedule 2 [Design and Construction Protocols];

“**Peak Enrolment**” means, in respect of a School, the peak student enrolment of the School as set out in Appendix 3A to Schedule 3;

“**Performance Indicators**” means the performance indicators described in each of Appendix 4C [FM Services] and Appendix 4D [Help Desk Services];

“**Performance Monitoring Program**” means the performance monitoring system, equipment and procedures in place for monitoring performance of the Services as more particularly described in Section 5.1 of Schedule 4 [Services Protocols and Specifications];

“**Performance Monitoring Report**” has the meaning described in Section 5.2 of Schedule 4 [Services Protocols and Specifications];

“**Permanent PDS Record**” has the meaning set out in Section 5.16(b)(4) of Schedule 2 [Design and Construction Protocols];

“**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 2.11 of this Schedule 8 [Payments];

“**Permanent Repair Deadline**” has the meaning set out in Section 2.11(a)(4) of Schedule 8 [Payments];

“**Permits**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement;

“**Permitted Debt**” means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with GAAP having been placed on the Project Co’s books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of Partner Loans,

but does not include any Senior Debt;

“**Persistent Breach**” means a breach or series of breaches by Project Co of any term, covenant or undertaking to the Authority (other than a breach for which Deduction could be made) which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from the Authority to Project Co; or

(b) occurred 3 or more times in the previous 12 months,

demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“**Person**” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“**Personal Information**” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act* (Saskatchewan) or the *Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan), which is collected, acquired, obtained by Project Co or the Authority in relation to or in the course of providing the Design, the Construction or the Services under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act* (Saskatchewan) or the *Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan) (as applicable);

“**Phasing Plan**” has the meaning set out in Section 5.9(a) of Schedule 2 [Design and Construction Protocols];

“**Planned Refinancing**” means a Refinancing that is identified as a Planned Refinancing in Schedule 19 [Planned Refinancing] but only to the extent and amount of a Planned Refinancing Gain for that Refinancing;

“**Planned Refinancing Gain**” means the extent and amount that a Refinancing Gain arising from a Planned Refinancing was fully taken into account and set out in the calculation of the Service Payments or other payments hereunder and expressly set out in Schedule 19 [Planned Refinancing] as of the Effective Date;

“**Plans**” means the Start-Up Plan, the Annual Service Plan, the Five Year Maintenance Plans, the Lifecycle Plan, the Environmental Management Plan and the Energy Management Plan;

“**Preliminary Change Instruction**” has the meaning set out in Section 1.3 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Preliminary Estimate**” means a high-level preliminary estimate of the cost of a contemplated Change, in sufficient detail and accuracy to permit the Authority to make a reasonably informed decision as to whether to proceed with the contemplated Change, including:

- (a) preliminary cost estimates of the main elements of the contemplated Change;
- (b) a preliminary implementation schedule and work plan for the implementation of the contemplated Change;

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- (c) a description of the impact of the contemplated Change on the Schools during implementation or in the use of the Schools; and
 - (d) a reasonable estimate of the Change Report Costs;

“Pre-Refinancing Equity IRR” means the Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

“Prime Rate” means the annual rate of interest announced by Canadian Imperial Bank of Commerce Bank (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Principal Insured Risk” means a risk that would be insured against by policies for the insurance referred to in Section 1 of Schedule 5 [Insurance];

“Procurement” means the procurement and purchase of Project Co Procured Equipment and Furniture pursuant to Section 6 of Appendix 2D [Equipment and Furniture];

“Progress Payments” means the payments that become due to Project Co under Appendix 8C [Construction Period Funding] to Schedule 8 [Payments] in relation to the Construction Period Funding;

“Project” means the design, construction, financing, testing, commissioning, maintenance and life cycle rehabilitation of the Schools and all other works and ancillary services in accordance with this Agreement;

“Project Co” means Joint Use Mutual Partnership #2;

“Project Co Event of Default” has the meaning set out in Section 12.1 of the Agreement (Project Co Events of Default);

“Project Co Hazardous Substances” means any Hazardous Substances:

- (a) brought onto, or adjacent to, the Sites or the Schools by Project Co or any Project Co Person during the Term; or
- (b) described in, or reasonably inferable, apparent or discoverable from the Disclosed Data made available or issued by the Authority prior to the Financial Submission Date;

“Project Co Insolvency Event” means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or

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- (b) any proceedings with respect to Project Co being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days; or
 - (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
 - (d) Project Co ceasing to carry on business;

"Project Co Material Breach" means:

- (a) a failure by Project Co to pay any amount due and owing to the Authority under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Authority;
- (b) a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
 - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance] to name the Authority as an insured party); or
 - (3) provide evidence to the Authority as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;
- (d) except as provided for in (a) through (c) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to the Authority (other than a breach for which a Deduction could be made), or any representation or warranty made by Project Co to the Authority in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
 - (1) a risk to the safety of the public;
 - (2) a risk of material liability of the Authority to third Persons;

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- (3) an adverse effect on the performance of the Design, the Construction or the Services and as a result thereof that the Authority is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co; or
 - (e) a breach by Project Co of Section 5 of the Agreement (Financing of the Project), other than a breach described in Section 12.1(i) of the Agreement; or
 - (f) any other fact or circumstance designated as a "Project Co Material Breach" under this Agreement, including those specified in Sections 8.3 and 9.3 of Schedule 2 [Design and Construction Protocols];

"Project Co Partner (Bird)" means Bird Capital SJUSP 2 Inc. and its permitted successors and assigns;

"Project Co Partner (Concert)" means CIIC Joint Use Mutual Partnership 2 Investment LP and its permitted successors and assigns;

"Project Co Person" means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person's capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Sites;

"Project Co Procured Equipment and Furniture" means Category 3 Equipment and Furniture and Category 4 Equipment and Furniture;

"Project Co's Quality Consultant" has the meaning set out in Section 7.3 of Schedule 2 [Design and Construction Protocols];

"Project Co's Rights" has the meaning set out in Section 8.13 of the Agreement (Equivalent Project Relief);

"Project Contractor" means the Design-Builder or any Service Provider and **"Project Contractors"** means any 2 or more of them;

"Project Contractor Breakage Costs" means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

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- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
 - (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms;
 - (c) such amount is a Distribution; and
 - (d) such amount includes any loss of overhead or profit of the Service Providers or their Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the applicable Project Contract or Sub-Contract);

"Project Contracts" means the Design-Build Agreement and the Services Contract;

"Project Design Objectives" has the meaning set out in Section 3.3 of Schedule 3 [Design and Construction Specifications];

"Project Intellectual Property" means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Project Co, any Project Contractor, any Sub-Contractor or any other third party, directly, for the purposes of the Design or Construction of the Schools, the maintenance, improvement or testing of the Schools, or otherwise for the purposes of this Agreement but does not include the Financial Model;

"Project Reinstatement Ratio" has the meaning set out in Section 6.8 of the Agreement (Economic Reinstatement Test During Construction);

"Project Risk Premium" means $\nabla\%$ [being the difference between (i) $\nabla\%$ (equal to the financial close pre tax Project IRR) and (ii) $\nabla\%$, (being the yield as determined by the parties at financial close on the Government of Canada $\nabla\%$ Bond maturing $\nabla\%$)] **[NTD: To be determined at financial close.]**;

"Project Schedule" has the meaning set out in Section 9.1 of Schedule 2 [Design and Construction Protocols];

"Proposal Extracts (Design and Construction)" means the provisions of Appendix 2F [Proposal Extracts (Design and Construction)];

"Proposal Extracts (Services)" means the proposal extracts attached as Appendix 4A to Schedule 4 [Services Protocols and Specifications];

"Protest Action" means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the Schools); or

(b) the construction or operation of schools in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

“**Prudent Coverage Amount**” has the meaning set out in Section 2.12 of Schedule 5 [Insurance];

“**PST**” means the Tax imposed pursuant to the PST Act;

“**PST Act**” has the meaning set out in Section 10.5 of the Agreement (PST);

“**Public Sector Employees**” means Persons employed in the public service as defined by the *Public Service Act, 1998* (Saskatchewan);

“**QMS**” means Project Co’s quality management system;

“**Qualified Insurers**” means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia that:

- (a) has a financial strength rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a financial size category not lower than VII, such ratings being those established by Best; or
- (b) has a long-term financial strength rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a short-term financial strength rating of not lower than “A-3” for three out of the previous five years and a financial enhancement rating of not lower than “A” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by S&P;

“**Qualifying Bank Transaction**” means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“**Qualifying Institution**” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

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- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
 - (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
 - (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
 - (f) any other institution consented to in writing by the Authority as a “Qualifying Institution“;

“**Qualifying Refinancing**” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing or a Planned Refinancing, except to the extent that any Planned Refinancing gives rise to a Refinancing Gain over and above the Planned Refinancing Gain, and in such case only to the extent of such additional Refinancing Gain;

“**Quality Assurance Plan**” has the meaning set out in Section 7.5 of Schedule 2 [Design and Construction Protocols];

“**Quality Assurance Program**” has the meaning set out in Section 7.4 of Schedule 2 [Design and Construction Protocols];

“**Quality Management Plan**” means the quality plan established by Project Co, based on the QMS and updated annually, to measure and monitor delivery of the Services and other obligations set out in Schedule 4 [Services Protocols and Specifications];

“**Quality System**” means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

“Reasonable Wear and Tear” means normal day-to-day wear and tear that could reasonably be expected to exist at schools similar to the Schools, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Schools such that the Schools or any of the Building Elements, Building Systems, Building Equipment and Exterior Improvements of the Schools fail to meet the Availability Conditions, the performance requirements and standards set out in Schedule 3 [Design and Construction Specifications] or any other requirements of this Agreement, and which, for certainty, excludes Vandalism and Excessive Damage and Decoration;

“Re-Bidding Costs” means the reasonable costs incurred by the Authority in connection with the Re-Bidding Process or the calculation of the Estimated Market Value;

“Re-Bidding Process” means the process by which the Authority requests bids from parties interested in entering into a New Project Agreement, evaluates the responses from such of those parties that submit Compliant Bids and enters into a New Project Agreement with a New Project Co in accordance with Section 2 of Schedule 9 [Compensation on Termination];

“Re-Bidding Process Monitor” means a third party appointed by Project Co pursuant to Section 2.10 of Schedule 9 [Compensation on Termination];

“Receiving Party” has the meaning set out in Section 9.3 of the Agreement (General Obligation to Pursue Third Person Recovery);

“Rectification” means, following the occurrence of an Event, making good the Event so that the subject matter of the Event complies with the levels of performance required pursuant to this Agreement, including (a) restoring all functional capability and (b) ensuring that all affected Functional Units comply with the Availability Condition; **“Rectify”** and **“Rectified”** will be construed accordingly;

“Rectification Period” for an Event means:

- (a) for an Unavailability Event:
 - (1) 48 hours for a Priority Level 3 Functional Unit;
 - (2) 24 hours for a Priority Level 2 Functional Unit;
 - (3) 12 hours for a Priority Level 1 Functional Unit; and
 - (4) with respect to parking stalls:
 - (A) 2 hours between the hours of 7 a.m. and 5 p.m. on Business Days; and
 - (B) 1 day at all other times; and
- (b) for a Service Failure:
 - (1) for which a time has been specified as the “Rectification Period” in Schedule 4 [Services Protocols and Specifications], the time so specified;

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- (2) for which “N/A” has been specified as the “Rectification Period” in Schedule 4 [Services Protocols and Specifications], there is no Rectification Period;
 - (3) relating to reports or other documentation required to be delivered by Project Co, 24 hours; and
 - (4) not referred to in (1), (2) or (3) above:
 - (A) 4 hours for a High Service Failure;
 - (B) 1 Business Day for a Medium Service Failure; and
 - (C) 5 Business Days for a Low Service Failure,

in each case calculated:

- (c) from the time that the Event is reported to the Help Desk; or
- (d) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period;

“**Referee**” has the meaning set out in Section 1.4 of Schedule 13 [Dispute Resolution Procedure];

“**Referee Agreement**” has the meaning set out in Section 1.4(c) of Schedule 13 [Dispute Resolution Procedure];

“**Referee Notice**” has the meaning set out in Section 1.4 of Schedule 13 [Dispute Resolution Procedure];

“**Refinancing**” means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders’ Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt

or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or

- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2 of the Agreement (Financing of Lump Sum Payment Amounts);

"Refinancing Gain" means an amount equal to the greater of zero and $[(A - B) - C]$, where:

A = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) immediately prior to the Refinancing (taking into account all effects (including the costs and expenses of the Authority pursuant to Section 5.8 of the Agreement) of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (but taking into account only those effects of the Refinancing that were fully reflected in the Financial Model as of the Effective Date and no other effects (including the costs and expenses of the Authority pursuant to Section 5.8 of the Agreement) of the Refinancing, and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing;

"Reinstatement Plan" has the meaning set out in Section 6.5(c) of the Agreement (Project Co's Obligations – Material Damage or Destruction);

"Reinstatement Works" has the meaning set out in Section 6.5(a) of the Agreement (Project Co's Obligations – Material Damage or Destruction)

"Relevant Change in Law" means a Change in Law (other than a Discriminatory Change in Tax Law):

- (a) which specifically applies to
- (1) the Project or school projects whose design, construction, financing, maintenance and service provision are procured on a public-private partnership basis similar to that of the Project;

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- (2) Project Co, its Partners or Project Contractors or Persons that have contracted on similar school projects procured and contracted with the Authority or other statutory or public body on a public-private partnership basis similar to the Project; or
 - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar school projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons; or
- (b) which principally affects or principally relates to the provision or operation of schools,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, the Construction or the Services;

“Relevant Works Change in Law” means a Change in Law during the Operating Period (other than a Relevant Change in Law or a Discriminatory Change in Tax Law) which causes Project Co to incur Capital Expenditures to perform works affecting the Schools (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Schools) which is not work which Project Co would otherwise be required to perform under this Agreement;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services or causes an Unavailability Event:

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, building maintenance or facilities management industry or a significant sector thereof;
- (d) any delay of more than 3 days in respect or any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;

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- (g) accidental loss or damage to the Schools or any roads servicing the Sites;
 - (h) blockade or embargo to the extent it does not constitute a Force Majeure Event;
 - (i) failure or shortage of fuel or transport; and
 - (j) any other event which is stated in the Agreement to constitute a Relief Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Relocatable Classroom” means a non-permanent, removable, relocatable modular unit, which may include without limitation a classroom, corridor, and mechanical room, and excludes the School;

“Relocatable Classroom Payment” means the payment described in Appendix 8D [Relocatable Classroom Payments] to Schedule 8 [Payments];

“Renovation” means an alteration of the Schools, or an addition, re-construction or demolition of a portion of the Schools, undertaken at any time after the applicable School Service Commencement Dates other than pursuant to the Life Cycle Requirements;

“Repair” means a repair to the Schools undertaken at any time after the applicable School Service Commencement Dates except for the completion of Deficiencies and other than pursuant to the Life Cycle Requirements;

“Reporting Error” has the meaning set out in Section 5.5 of Schedule 4 [Services Protocols and Specifications];

“Reporting Failure” has the meaning set out in Section 5.4 of Schedule 4 [Services Protocols and Specifications];

“Representative” means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

“Respond” and **“Response”** mean:

- (a) with respect to all Services, the appropriate personnel attending the location of the Event, making the location, and all affected locations safe, in accordance with Good Industry Practice, and providing a plan acceptable to the Authority, acting reasonably, for the Rectification of the Event; and
- (b) with respect to Routine matters for all Services, means either the foregoing or an electronic response from the Help Desk confirming the details of the Event and providing a plan acceptable to the Authority, acting reasonably, for the Rectification of the Event;

“**Responding Party**” has the meaning set out in Section 1.6(b)(2) of Schedule 13 [Dispute Resolution Procedure];

“**Response Time**” means the period of time following a Demand Requisition or other electronic report or recording by the BMS during which Project Co must Respond, each as indicated as a “Response Time” for the relevant Service in the Performance Indicators;

“**Restricted Person**” means any Person who, or any member of a group of Persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the Person falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any claim of the Authority or the Province of Saskatchewan in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under this Agreement;
- (g) has a material interest in the production of tobacco products; or
- (h) has been convicted of an offence under the *Competition Act* (Canada), the *Corruption of Foreign Public Officials Act* (Canada), the *Financial Administration Act* (Canada), or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence or a fraud or similar offence under the *Criminal Code* (Canada);

“**Return Date**” has the meaning set out in Section 3.3(d) of Schedule 8 [Payments];

“**Reviewed Drawings and Specifications**” has the meaning set out in Section 6(a) of Appendix 2B [User Consultation and Design Review];

“**Room Data Sheets**” means the room data sheets in Appendix 3B [Functional Program Room Data Sheets];

“**Routine**” means all matters, other than Emergency or Urgent matters, that are not immediately detrimental to health or safety and which will not cause material operational problems, physical or environmental damage or health and safety risks if not attended to or remedied quickly;

“**S&P**” means Standard and Poor’s;

“**Schedule of Accommodations**” means the schedule presented in Attachment 1 to Appendix 3A [Functional Program] to Schedule 3 [Design and Construction Specifications];

“**Scheduled Maintenance**” means planned and preventive Maintenance;

“**Scheduled Maintenance Plan**” has the meaning set out in Section 2.2 of Appendix 4C to Schedule 4 [Services Protocols and Specifications];

“**Schematic Design Phase**” has the meaning set out in Section 4.2(b)(1) of Schedule 2 [Design and Construction Protocols];

“**School**” means the buildings, related structures, Utility connections, landscaping and other improvements to be constructed by Project Co pursuant to this Agreement on the applicable Site, including, for certainty, the Initial Relocatable Classrooms and the Relocatable Classrooms;

“**School Board**” means the Board of Education of the Saskatoon Public School Division No. 13 of Saskatchewan, the Board of Education of the Prairie Spirit School Division No. 206 of Saskatchewan and/or the Board of Education of St. Paul’s Roman Catholic Separate School Division No. 20 of Saskatchewan as the case may be;

“**School Board Representative**” has the meaning set out in Section 1.3(a) of Schedule 4 [Services Protocols and Specifications] to this Agreement;

“**School Board Supplied Furniture and Equipment**” means Category 1 Equipment and Furniture, Category 2 Equipment and Furniture and any other furniture and equipment supplied by the School Boards over the Term of this Agreement;

“**School Condition Report**” has the meaning set out in Section 1.4(d) of Schedule 4 [Services Protocols and Specifications];

“**School Longstop Date**” means, for a School, the date that is 365 days after the School Target Service Commencement Date for that School;

“**School Move-in Schedule**”, for each School, has the meaning set out in Section 9.5 of Schedule 2 [Design and Construction Protocols];

“**School Service Commencement**” means that all of the following have been achieved in relation to a School:

- (a) the Architect has certified that “substantial performance” of the School, within the meaning of Section 1(3) of the *Builders' Lien Act* (Saskatchewan), has been achieved;
- (b) an occupancy permit has been issued for the School or the applicable City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the School by the Authority for the Authority Activities;
- (c) Project Co has delivered to the Authority a report from the commissioning agent retained by Project Co under Section 11.1 of Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before School Service Commencement for the School;
- (d) Project Co has completed the training of School Board staff as required by Section 11.2 of Schedule 2 [Design and Construction Protocols];
- (e) Project Co has delivered to the Authority a Life Cycle Schedule for the School as required by Section 3.1 of Schedule 4 [Services Protocols and Specifications]; and
- (f) Project Co has delivered to the Authority a Start-up Plan for the School as required by Section 3.1 of Schedule 4 [Services Protocols and Specifications];

“**School Service Commencement Date**” means, for a School, the later of:

- (a) the date when all criteria for School Service Commencement for the School that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols]; and
- (b) the School Target Service Commencement Date for the School;

“**School Target Service Commencement Date**” means, for each School, June 30, 2017, unless updated in accordance with Schedule 2 [Design and Construction Protocols];

“**School Threat and Risk Assessment**” has the meaning set out in Section 3.10 of Schedule 2 [Design and Construction Protocols];

“**School Users**” means the Authority, Authority Persons, students, teachers, volunteers and visitors using or present at the Schools;

“**Senior Debt**” means:

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- (a) all amounts of principal and interest outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
 - (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
 - (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Service Amount” means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

“Senior Debt Termination Amount” has the meaning set out in Section 1.1(b)(1) of Schedule 9 [Compensation on Termination];

“Senior Financing Agreements” means:

- (a) the Trust Indenture;
- (b) the Bonds; and
- (c) the security agreements entered into pursuant to the Trust indenture described in (a),

certified copies of each of which have been delivered by Project Co to the Authority, and as amended from time to time in accordance with the terms of this Agreement;

“Senior Lenders” means lenders to whom Senior Debt is owed;

“Service Commencement” means that School Service Commencement has been achieved for all Schools;

“Service Commencement Date” means the date when all School Service Commencement has been achieved for all Schools;

“Service Failure” means any failure by Project Co, other than an Unavailability Event, to provide the Services in accordance with this Agreement and in particular in accordance with Schedule 4 [Services Protocols and Specifications], and includes a failure to satisfy any Performance Indicator;

“Service Failure Deduction” means a Deduction which may be made in respect of a Service Failure;

“Service Payment” means the sum calculated in accordance with Section 1.1 of Schedule 8 [Payments];

“Service Provider” means Johnson Controls Canada LP, by its general partner, Johnson Controls BE Ltd., or any assignee or replacement permitted under this Agreement;

“Services” means everything other than Design and Construction that Project Co is required to do to satisfy its obligations under this Agreement, including;

- (a) the FM Services; and
- (b) the Help Desk Services;

“Services Change” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Services obligations under this Agreement;

“Services Contract” means the agreement between Project Co and the Service Provider, a certified copy of which has been delivered by Project Co to the Authority, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Services Protocols and Specifications” means the provisions of Schedule 4 [Services Protocols and Specifications];

“Services Quality Plan” means the quality assurance control plan described in Section 4.2(f) of Schedule 4 [Services Protocols and Specifications];

“Setup” includes:

- (a) transportation and movement within the Schools from the delivery location to the final installation location;
- (b) placement in the final location within the Schools; and
- (c) any necessary unwrapping, unpacking and assembly;

“Site Conditions” means the site conditions for each Site described in Appendix 7B [Site Conditions and Site Servicing] to Schedule 7 [Sites];

“Site Plan” means the illustration of each respective Site in Appendix 2G [Site Plan];

“Site Reports” means all reports that the Authority has made available to Project Co regarding existing conditions at the Sites, including the following:

- (a) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Greens on Gardiner School, Regina, Saskatchewan” by Tetra Tech EBA, dated September 2014;
- (b) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Harbour Landing School, Regina, Saskatchewan” by Tetra Tech EBA, dated September 2014;

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- (c) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Rosewood School, Regina, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (d) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Greens on Gardiner School, Regina, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (e) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Harbour Landing School, Regina, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (f) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Rosewood School, Regina, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (g) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Lake Vista School, Martensville, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (h) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Evergreen School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (i) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Hampton Village School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (j) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Rosewood School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (k) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Stonebridge School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (l) “Phase 1 Environmental Site Assessment, Saskatchewan Schools Bundled Projects Technical Services, Tradition School, Warman, Saskatchewan” by Tetra Tech EBA, dated September 2014;
 - (m) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Lake Vista School, Martensville, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (n) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Evergreen School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated August 2014;

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- (o) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Hampton Village School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (p) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Rosewood School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated August 2014;
 - (q) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Stonebridge School, Saskatoon, Saskatchewan” by Tetra Tech EBA, dated August 2014; and
 - (r) “Geotechnical Assessment Report, Saskatchewan Schools Bundled Projects Technical Services, Tradition School, Warman, Saskatchewan” by Tetra Tech EBA, dated August 2014;

“**Site Servicing**” means the site servicing for each site described in Appendix 7B [Site Conditions and Site Servicing] to Schedule 7 [Sites];

“**Site Weather Monitoring Station**” means the weather monitoring station operated by Environment Canada located at Saskatoon Diefenbaker International Airport or, if data from the weather monitoring stations is unavailable, such other properly located and calibrated weather monitoring stations acceptable to each of Authority and Project Co, acting reasonably, or otherwise determined pursuant to Schedule 13 [Dispute Resolution Procedure];

“**Sites**” means the sites described in Appendix 7A [Description of Sites and Encumbrances] and in Appendix 2G [Site Plans] for each respective School;

“**Stable Enrolment**” means, in respect of a School, the stable student enrolment of the School as set out in Section 2.1.3 of Schedule 3;

“**Standards and Guidelines**” means the standards, guidelines, policies or requirements, prescribed by any Governmental Authority or any professional body, industry association or similar organization, specifically referred to or incorporated by reference in Schedule 3 [Design and Construction Specifications];

“**Start-up Plan**” means the plan described in Section 3.1(b) of Schedule 4 [Services Protocols and Specifications];

“**STC**” has the meaning set out in Section 1.4.42 of Schedule 3 [Design and Construction Specifications];

“**Storage**” means the provision of secure space with appropriate environment to allow received Equipment to be set, placed, loaded, unloaded or otherwise warehoused without damage while awaiting Setup, and “**Store**”, “**Stored**” and “**Storing**” have corresponding meanings;

“**Sub-Contract**” means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Agreement, as amended or replaced from time to time;

“**Sub-Contractor**” means any Person that enters into a Sub-Contract;

“**Sub-Contractor Termination Notice**” has the meaning set out in Section 5.8 of Schedule 4 [Services Protocols and Specifications];

“**Submittal**” has the meaning set out in Section 1 of Appendix 2B [User Consultation and Design Review];

“**Submittal Schedule**” has the meaning set out in Section 2(a) of Appendix 2B [User Consultation and Design Review];

“**Suitable Substitute Project Co**” has the meaning given to it in the Lenders’ Remedies Agreement;

“**Supervening Event**” means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“**Supervening Event Notice**” has the meaning set out in Section 8.2(a) of the Agreement (Procedures Upon the Occurrence of a Supervening Event);

“**Targeted Electrical Components**” means all:

- (a) hardwired lighting; and
- (b) electrically operated HVAC systems and mechanical equipment, including pumps, fans, chillers, condensers, evaporators, heat pumps, dry coolers, cooling towers, heating boilers, domestic hot water heaters, dehumidifiers, humidifiers, fan heaters, and radiators;

“**Target Energy Consumption**”

“**Targeted Energy Consumption**” means Energy Consumption minus Non-Targeted Energy Consumption, including all applicable energy consumed as a result of the construction, operation and

maintenance of all Relocatable Classrooms during the Test Period, such consumption to be calculated from the applicable BMS and metering systems;

“Target Service Commencement Date” means June 30, 2017, unless updated in accordance with Schedule 2 [Design and Construction Protocols];

“Tax” or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“Taxable Shareholder Portion” has the meaning set out in Section 5.1 of Schedule 9 [Compensation on Termination];

“Temporary Alternative Accommodation” means accommodation offered to the Authority by Project Co as a substitute for any Unavailable Functional Unit pursuant to Section 3.1 of Schedule 8 [Payments];

“Temporary Alternative Accommodation Notice” has the meaning set out in Section 3.1 of Schedule 8 [Payments];

“Temporary Availability Condition” has the meaning set out in Section 2.11(a)(2) of Schedule 8 [Payments];

“Temporary Repair” means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification;

“Temporary Repair Proposal” has the meaning set out in Section 2.11(a) of Schedule 8 [Payments];

“Term” has the meaning set out in Section 2.1 of the Agreement (Term and Termination);

“Termination Date” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Agreement pursuant to Section 2.1 of the Agreement (Term and Termination) takes effect in accordance with the terms of the Agreement;

“Termination Date Benchmark Canada Bond Yield” means the yield to maturity on a benchmark Government of Canada Bond of the same maturity as the average life of the outstanding Senior Debt, Junior Debt and equity on the Termination Date;

“Termination Date Discount Rate” means a discount rate equal to the Project Risk Premium plus the Termination Date Benchmark Canada Bond Yield;

“Termination Payment” means the amount owing by the Authority to Project Co pursuant to Schedule 9 [Compensation on Termination];

“Termination Payment Date” means the date on which the Authority must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

“Test Period” means the 12 month period commencing on the first day of the first complete calendar month that is at least six months but not more than 12 months after the Service Commencement Date;

“Third Party and Community Use” means any use of a School, other than for Educational Activities, pursuant to a lease or license or access agreement between a School Board and a third party, or any arrangements for the non-commercial use of a School for community-based programs, including without limitation community sports, arts and crafts, meetings, club activities, church services, election activities and any other community based function;

“3P – Production Preparation Process” means to structure a world-class quality of education that can be delivered at the required demand volume (time) and in the correct timing (just in time) with simple and defect-free processes. The focus is the student and the challenge is to start “with a blank sheet of paper” (no preconceptions or limitations);

“Threshold Equity IRR” means being the Equity IRR as set out in the Financial Model;

“Threshold Equity Sale Amount” means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR;

“Threshold Equity Sale IRR” means ;

“Total Capital Costs” means Project Co’s costs to achieve Service Commencement (including but not limited to direct construction costs, fees paid to professional services firms specifically engaged to develop the Project and construction financing costs) as shown in the Financial Model;

“Total Unavailability”, in respect of each School, occurs when:

- (a) Functional Units identified in Appendix 8A representing at least 25% of the Gross Floor Area of that School are Unavailable at the same time and the Rectification Period has expired with respect to each such Unavailable Functional Unit;
- (b) 50% or more of the washrooms in that School are Unavailable at the same time and a Rectification Period has expired with respect to each such washroom and the Authority has not approved a mitigation plan proposed by Project Co in accordance with this Agreement; and/or

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- (c) any of the required fire exits are not accessible and the Rectification Period has expired with respect to each Event that caused such lack of access and the Authority, acting reasonably and in good faith, has not approved a mitigation plan put forward by Project Co;

“Transfer Restriction Date” has the meaning set out in Section 16.1(d)(1) of the Agreement (Limitations on Assignment of Project by Project Co);

“Transition” means the tolerance level for the making of Deductions in respect of Service Failures as described in Section 2.15 of Schedule 8 [Payments];

“Trust Indenture” means the trust indenture dated as of August __, 2015 between Project Co and the Indenture Trustee, as it may be supplemented, amended, restated or otherwise modified from time to time;

“Unavailable” and **“Unavailability”** mean, with respect to a Functional Unit, that such Functional Unit or an applicable Linked Unit is in a state or condition that does not comply with the Availability Condition;

“Unavailability Deduction” means a Deduction which may be made in respect of an Unavailability Event;

“Unavailability Event” means an incident or state of affairs which causes one or more Functional Units to be Unavailable;

“Undisclosed Environmental Liabilities” means all Hazardous Substances located in, on, below or adjacent to the Sites, other than Project Co Hazardous Substances;

“Uninsurable” means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“Uninsurable Risk” has the meaning set out in Section 6.12 of the Agreement (Consequences of Risks Becoming Uninsurable);

“Unit Deduction Amounts” means the amount of the Deduction specified in Appendix 8A per Functional Unit for an Unavailability Event, which amounts are Index Linked;

“Units” means units or other equity interests of any class in the capital of Project Co;

“**Updated Project Schedule**” has the meaning set out in Section 9.2 of Schedule 2 [Design and Construction Protocols];

“**Urgent**” means any matter that may reasonably be expected to cause material operational problems, physical or environmental damage or health and safety risks if not attended to or remedied quickly;

“**User Consultation Group**” has the meaning set out in Section 4.2(a) of Schedule 2 [Design and Construction Protocols];

“**User Space**” means independent School spaces, or other independently operated community spaces within each School;

Utility” or “**Utilities**” includes:

- (a) utility electrical power;
- (b) back-up and stand-by emergency power;
- (c) steam and chilled water;
- (d) water;
- (e) sanitary waste;
- (f) storm water;
- (g) gas, oil and any other fossil-based fuel; and
- (h) telephone and data cabling;

“**Utility Company**” means any company designated by the Authority to provide Utilities to the Schools or the Sites;

“**Valuator**” means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

“**Vandalism and Excessive Damage**” means any damage to, or destruction of, the Schools or any part thereof, which requires Repair and which is caused by the malicious, intentional, wilful, negligent or careless conduct of one or more School Users or other individuals where such conduct was not reasonably contemplated by the Design and Intended Uses of the Schools or any part thereof; and

“**Weather Data**” means the record by the Site Weather Monitoring Station of daily temperature and the calculation of the extent to which the average outdoor temperature during that day was greater or less than a mean temperature of +18 degrees Celsius.

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Section, Schedule or Appendix is a reference to a Section of, Schedule to or Appendix to a Schedule to this Agreement; each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4B [Handback Requirements] means the second Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Central Standard time;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;

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- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) whenever this Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
- (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
- (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) the Authority will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Authority’s Representative) who have responsibilities in connection with the conduct of the Services or the Project;
- (n) without limiting the extent of its actual knowledge, Project Co will for all purposes of this Agreement be deemed to have such knowledge in respect of the Design, the Construction and the Services as is held (or ought reasonably to be held) by those employees or agents of Project Co, or any Project Contractor or Sub-Contractor, who have responsibilities in connection with the carrying out of the Design, the Construction or the Services to which the fact, matter or thing relates or is applicable;
- (o) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (p) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (q) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (r) any consent contemplated to be given under this Agreement must be in writing;
- (s) general words are not given a restrictive meaning:

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- (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
 - (t) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
 - (u) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit, provided that the foregoing will not require the Authority to:
 - (1) take any action which is contrary to the public interest, as determined by the Authority in its discretion; or
 - (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
 - (v) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
 - (w) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
 - (x) where this Agreement requires the calculation of something that is calculated in the Financial Model, including Net Present Value of Distributions and Equity IRR but not including Payments and Deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
 - (y) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
 - (z) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this

Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and

- (aa) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Authority, by the Authority Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. PRIORITY OF AGREEMENTS AND SCHEDULES

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method or performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Agreement will prevail over any of the Schedules hereto other than Schedule 11 (Material Project Contractor Collateral Agreement) or Schedule 10 (Lenders' Remedies Agreement);
- (c) the provisions of the Lenders' Remedies Agreement will prevail over the Material Project Contractor Collateral Agreement;
- (d) the provisions of this Agreement (other than the provisions of Appendix 2F [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]) will prevail over the provisions of Appendix 2F [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]; provided however that in determining whether an ambiguity, conflict or inconsistency exists between Appendix 2F [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] and any other provisions in this Agreement, to the extent that Appendix 2F [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] include additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction or Services, the provision that applies to the specific part of the Design, Construction or Services shall prevail for that specific part of the Design, Construction or Services.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.

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