

## MASTER AGREEMENT

**THIS AGREEMENT** is dated for reference the 4<sup>th</sup> day of October, 2010.

**BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA, represented by the Minister of  
Education

(the "Province")

**AND:**

SHELTER INDUSTRIES INC., a corporation formed under the  
laws of British Columbia under registration no. BC0295699 and  
having an office at 3294 – 262<sup>nd</sup> Street, P.O. Box 1318,  
Aldergrove, BC Canada, V4W 2V1

(the "Contractor")

**WHEREAS:**

- A. The Province intends to implement a program (the "Program") for modular classrooms, including for a proposed full day kindergarten program for British Columbia by September 2011.
- B. School Districts will acquire modular classrooms to implement the Program.
- C. The Province issued Request for Proposals No. 3306 entitled "Request for Proposals for Modular Classroom Project" for the design, construction, delivery, installation, commissioning and associated work for modular classrooms for the School Districts (the "Project").
- D. The Contractor submitted a proposal to the Province, extracts of which are included in Schedule F – Proposal Extracts of Appendix 1 – Contract Template.
- E. The Province and the Contractor wish to enter into this Agreement on the terms and conditions set out herein to provide for, among other things, the template for a Modular Classroom Contract and the basis upon which the Contractor will provide the modular classrooms to the School Districts.

**NOW THEREFORE** the parties agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

- (a) “Architect” means a professional architect registered and in good standing under the *Architects Act* (British Columbia);
- (b) “Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;
- (c) “Commencement Date” has the meaning set out in Article 5.1;
- (d) “Contract Documents” has the meaning set out in Article 5.1 of the Form of Agreement portion of the Contract Template;
- (e) “Contract Template” means Appendix 1 – Contract Template;
- (f) “Contractor Material” has the meaning set out in Article 14.2(b)(ii);
- (g) “Contractor’s Representative” has the meaning set out in Article 6.1;
- (h) “Design” means all design for the Project and the completed Work;
- (i) “Design Submittal Schedule” has the meaning set out in Article 9.8;
- (j) “Dispute” means any claim, dispute or difference between the Contractor and the Province arising in any way in connection with this Agreement;
- (k) “Drawings” means all construction drawings for the Project that are prepared by or for the Contractor and that are accepted in writing by the Province’s Representative as provided in this Agreement;
- (l) “Event of Default” has the meaning set out in Article 21.2;
- (m) “Indemnified Parties” has the meaning set out in Article 17.1;
- (n) “Initial Term” has the meaning set out in Article 5.1;
- (o) “Modular Classroom Contract” means an agreement entered into between the Contractor and a School District in the form attached as Appendix 1 – Contract Template;
- (p) “New Material” has the meaning set out in Article 14.2(b)(i);
- (q) “Program” has the meaning set out in Recital A;
- (r) “Progress Monitor” has the meaning set out in Article 12.1;
- (s) “Project” has the meaning set out in Recital C;
- (t) “Project Management Plan” has the meaning set out in Article 11.2;

- (u) “Proposal Extracts” means the extracts of the proposal submitted by the Contractor to the Province that are included in Schedule F – Proposal Extracts of Appendix 1 – Contract Template;
- (v) “Province Confidential Information” has the meaning set out in Article 15.1;
- (w) “Province’s Representative” has the meaning set out in Article 6.2;
- (x) “Quality Management Plan” has the meaning set out in Article 11.1;
- (y) “Received Material” has the meaning set out in Article 14.2(b)(iii);
- (z) “Renewal Term” has the meaning set out in Article 5.2;
- (aa) “School District” means the school districts in the Province of British Columbia that the Province from time to time includes in the Program;
- (bb) “School District Requirements” means the School District’s functional and other requirements for the design and construction of the Project as well as the performance specifications as set out in the Order Summary and Statement of Requirements;
- (cc) “Specifications” means any construction or performance specifications that are prepared for the Project by or for the Contractor and that are accepted in writing by the Province’s Representative as provided in this Agreement;
- (dd) “Subcontractor” is a person or entity, other than the Contractor’s Consultant or other design consultants, having a direct contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design for the Work;
- (ee) “Standards” means any and all Laws, building codes, professional standards and specifications applicable to the Work, or to work such as the Project, as they are in force from time to time or in the latest current version thereof, as the case may be;
- (ff) “Term” has means the Initial Term and any Renewal Term as set out in Article 5; and
- (gg) “Work” means the total Work (as that term is defined in the Modular Classroom Contracts) under all Modular Classroom Contracts unless the Context requires that “Work” refers only to the Work (as that term is defined in the Modular Classroom Contracts) under the applicable Modular Classroom Contract or Contracts.

1.2 A reference in this Agreement to a statute, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes

every amendment to it, every regulation made under it and any enactment passed in substitution therefore or in replacement thereof.

- 1.3 Unless the context otherwise requires, any reference to any Article by number is a reference to the appropriate Article in this Agreement unless otherwise expressly stated.
- 1.4 The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.
- 1.5 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural or the feminine or the neuter, as the case may be, had been used where the context or the parties so require.
- 1.6 Unless otherwise specified in this Agreement, all references to money are in Canadian dollars.

## **ARTICLE 2 APPENDICES**

- 2.1 The following appendices form an integral part of this Agreement:
  - (a) Appendix 1 Contract Template; and
  - (b) Appendix 2 Pricing and Schedule Commitments.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

- 3.1 The Contractor represents and warrants to the Province, effective as of the date of this Agreement and at all times thereafter during the Term, that:
  - (a) it is a corporation duly organized, validly existing and having the legal capacity to carry on business in British Columbia and is fully authorized, licensed and permitted to comply with the terms of this Agreement;
  - (b) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
  - (c) it has taken all necessary proceedings to authorize the execution and delivery of this Agreement by the Contractor;
  - (d) this Agreement has been legally and properly executed by the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms;

- (e) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement, or any Modular Classroom Contract, including the Proposal Extracts, are materially true and correct to the best of the Contractor's knowledge;
- (f) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement or, any Modular Classroom Contract;
- (g) the observance and performance of the terms and conditions of this Agreement, or any Modular Classroom Contract, will not constitute a material breach by it of or a default by it under:
  - (i) any statute, bylaw or regulation of British Columbia or Canada applicable to or binding upon it,
  - (ii) its constating documents, or
  - (iii) any contract or agreement to which it is a party;
- (h) to the best of its knowledge, it has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada and has complied with all workers compensation legislation and other similar legislation to which it may be subject, and has paid all taxes, fees and assessments calculated to be due by the Contractor under those laws as of the date of this Agreement;
- (i) it is not in breach of any applicable law, including all statutes, regulations and bylaws;
- (j) it holds all permits, licenses, consents and authorizations issued by any level of government or any agency thereof, having proper legal authority, that are required by law to carry out its obligations under this Agreement, the Work and all other obligations under the Modular Classroom Contracts;
- (k) it has the responsibility of informing itself, and has investigated and satisfied itself, of all aspects of the this Agreement, the Work and all other obligations under the Modular Classroom Contracts and all information necessary to perform this Agreement, the Work and all other obligations under the Modular Classroom Contracts;
- (l) it has the necessary skills, expertise and experience to perform this Agreement, the Work and all other obligations under the Modular Classroom Contracts; and
- (m) it has and will provide and maintain throughout the Term sufficient trained staff, facilities, materials, appropriate resources, equipment and approved subcontractual agreements in place and available to enable it to carry out and

perform this Agreement, the Work and all other obligations under the Modular Classroom Contracts.

- 3.2 The Province represents and warrants to the Contractor effective as of the date of this Agreement and at all times thereafter during the Term, that:
- (a) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
  - (b) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Province; and
  - (c) this Agreement has been legally and properly executed by the Province and is legally binding upon and enforceable against the Province in accordance with its terms.
- 3.3 All representations, warranties, covenants and agreements made in this Agreement are material and will conclusively be deemed to have been relied upon by the parties, notwithstanding any prior or subsequent investigation by any such party.

#### **ARTICLE 4 APPOINTMENT**

- 4.1 Subject to the Contractor's compliance with this Agreement, and available funding, the Province will use reasonable efforts to cause School Districts to procure modular classrooms from the Contractor through Modular Classroom Contracts.
- 4.2 The Contractor will carry out the Work for School Districts as and when requested by a School District pursuant to this Agreement and the Modular Classroom Contract.

#### **ARTICLE 5 TERM**

- 5.1 Notwithstanding the date of execution and delivery of this Agreement, the Term of this Agreement will commence on the 4<sup>th</sup> day of October, 2010 (the "Commencement Date") and end on the 30<sup>th</sup> day of September, 2012 (the "Initial Term") unless terminated in accordance with Article 21 or extended in accordance with Article 5.2.
- 5.2 The Province may renew this Agreement on the terms and conditions set out in this Agreement, or other terms and conditions as may be agreed to by the parties, for up to 2 additional one-year periods (each a "Renewal Term") by the Province giving to the Contractor written notice of any such renewal not later than 30 days prior to the end of the Initial Term or the then-current Renewal Term, as the case may be.
- 5.3 Upon the expiry, or sooner termination of this Agreement for any reason, the terms and conditions of this Agreement will continue in full force and effect in respect of any Modular Classroom Contract entered into as a result of this Agreement.

**ARTICLE 6  
DESIGNATED REPRESENTATIVES**

- 6.1 The Contractor designates the person identified in Article 23.1 as the Contractor's Representative to whom all communications from the Province will be addressed as specified in Article 23.1 and who has the authority to act for the Contractor in connection with all management, administrative and operational aspects of this Agreement and any Modular Classroom Contract.
- 6.2 The Province designates the person identified in Article 23.1 as the Province's Representative to whom all communications from the Contractor will be addressed as specified in Article 23.1 and who has the authority to act for the Province in connection with all management, administrative and operational aspects of this Agreement and any Modular Classroom Contract.

**ARTICLE 7  
MODULAR CLASSROOM CONTRACTS**

- 7.1 The Contractor agrees that a School District may order modular classrooms from the Contractor and that the form of contract to be used will be in the form attached as Appendix 1 – Contract Template.
- 7.2 The Province will cause any School District that wishes to order modular classrooms from the Contractor to complete and provide a completed Modular Classroom Contract to the Contractor for execution by the Contractor and the School District.
- 7.3 For the purposes of preparing a Modular Classroom Contract, a School District and the Contractor will:
- (a) complete the Form of Agreement portion of the Contract Template;
  - (b) complete the Schedule A - Order Summary portion of the Contract Template;
  - (c) incorporate the other relevant portions of the Modular Classroom Contract by reference from the Contract Template; and
  - (d) not amend any terms of the Contract Template or include any additional terms, without the prior written consent of the Province.
- 7.4 A completed Modular Classroom Contract will contain prices for the Work and other committed terms as set out in Appendix 2 – Pricing and Schedule Commitments.
- 7.5 A completed Modular Classroom Contract will contain a schedule for the Work consistent with Appendix 2 – Pricing and Schedule Commitments.
- 7.6 The Contractor will not amend the Modular Classroom Contract, either prior to execution or after execution or make any changes in the Work (as defined in the Modular Classroom Contract) without the prior written consent of the Province.

- 7.7 The Contractor will carry out the Work, as identified in the Modular Classroom Contract, in a manner that complies with the Modular Classroom Contract.
- 7.8 The Contractor acknowledges and agrees that:
- (a) the Province does not guarantee any payments to be made by a School District to a Contractor under a Modular Classroom Contract, or any related agreement; and
  - (b) the Province has no obligation to make any payments of any kind whatsoever to the Contractor pursuant to this Agreement, a Modular Classroom Contract or any related agreement.
- 7.9 Each Modular Classroom Contract completed pursuant to this Article 7 will contain the following clauses:
- (a) “The parties acknowledge receipt of a copy of the Master Agreement”;
  - (b) The parties are bound by the documents incorporated by reference into this Contract”; and
  - (c) any other clauses included in the Contract Template that refer to the Master Agreement.

## **ARTICLE 8 PROGRAM SCHEDULE**

- 8.1 The Contractor will by October 29, 2010 submit a program schedule (the “Program Schedule”) for review by the Province’s Representative.
- 8.2 The Program Schedule will be an overall schedule for the Program and will include information reasonably required by the Province for the Progress Monitor to fulfil his or her role under Article 12. The Contractor will ensure that the Program Schedule will meet all applicable requirements of this Agreement.
- 8.3 The Contractor will submit an updated Program Schedule at a maximum interval of 1 week, reflecting progress to date and changes to the dates identified in the Program Schedule, and include a comparison to the previously submitted Program Schedule.

## **ARTICLE 9 DESIGN REVIEW SUBMISSION GUIDELINES**

- 9.1 The Contractor will comply with the Province’s review requirements for the Design.
- 9.2 The Contractor will submit the Design to the Province in accordance with this Article 9.
- 9.3 The Contractor will make any revisions to the Design as may reasonably be required from time to time by the Province’s Representative.



- 9.4 The Contractor will give written notice to the Province's Representative immediately upon becoming aware of any error, omission or deficiency in the Design.
- 9.5 The Contractor will:
- (a) cause all portions and aspects of the Drawings and Specifications to be prepared under the direction of, and to be sealed under the professional seal of, the Architect;
  - (b) cause the Architect to confirm to the Province, under his or her professional seal, that in the opinion of the Architect:
    - (i) the Drawings and Specifications implement and otherwise conform to the School District Requirements;
    - (ii) the Drawings and Specifications implement and otherwise conform to the Proposal Extracts;
    - (iii) the Drawings and Specifications have been prepared in accordance with, and substantially comply with, all Standards; and
    - (iv) the Work has been completed in accordance with the Drawings and Specifications; and
  - (c) provide the Province with all letters of professional assurance as required pursuant to all Laws.
- 9.6 Nothing in this Agreement or the Modular Classroom Contracts, makes the Province's Representative or the Province responsible for the Design of the Project, including compliance of the Drawings and Specifications with the School District Requirements and all Standards, and the Contractor will, notwithstanding any acceptance under this Article 9 or other act of the Province or Province's Representative, remain solely liable and responsible for compliance of the Drawings and Specifications with the School District Requirements and all Standards.
- 9.7 The Contractor will provide the Province and the Progress Monitor with Design reports showing the design decision process, criteria and assumptions used to develop the Design.
- 9.8 To enable the Province sufficient time to conduct proper review of Design submittals of the Contractor, within 2 days after execution of this Agreement, the Contractor will deliver to the Province's Representative a schedule (the "Design Submittal Schedule") indicating the dates on which the Contractor will submit Drawings and Specifications and supporting information to the Province's Representative for review at the 100% detailed Design stage.

The Contractor will update the Design Submittal Schedule during the Work to reflect any changes to the Design submission dates identified in the Design Submittal Schedule.

- 9.9 Within 15 days after execution of this Agreement, the Contractor will deliver to the Province's Representative the 100% detailed design Drawings and Specifications for the Project.
- 9.10 The Contractor will notify the Province's Representative at least 5 days before providing each Design submittal if that Design submittal is not being provided in accordance with the Design Submittal Schedule.
- 9.11 Except as provided in Article 9.12, the Province's Representative will, within 10 Business Days after a receipt of a Design submittal, or 5 Business days after a revision and re-submittal of a Design submittal, give notice to the Contractor as to whether or not the Province's Representative accepts the Design submittal. If the Province's Representative does not accept the Design submittal, the Province's Representative will provide reasons in the notice given to the Contractor.
- 9.12 If the Contractor fails to give the Province's Representative a minimum of 5 days notice prior to submitting a Design submittal where that submittal has not been provided in accordance with the Design Submittal Schedule, the Province's Representative will have a further 5 days in addition to the 10 Business Days identified in Article 9.11, to give notice to the Contractor whether or not the Province's Representative accepts the Design submittal.
- 9.13 As part of each Design submittal, the Contractor will specifically identify and bring to the attention of the Province's Representative any parts of the Design submittal (if any) that deviate from the Statement of Requirements or the Proposal Extracts included in the Contract Template and will include details and rationale for such non-conformance.
- 9.14 Where the Province's Representative has notified the Contractor that a Design submittal is not accepted, the Contractor will address the reasons identified by the Province's Representative for not accepting the Design submittal and will amend and resubmit that Design submittal within 5 days after receipt of the notice from the Province's Representative.
- 9.15 Within 15 days after acceptance of the 100% Design submittal by the Province's Representative, the Contractor will finalize and complete "for-construction" Drawings and Specifications. The Contractor will provide 4 copies of the final "for-construction" Drawings and Specifications to the Province's Representative. The "for-construction" Drawings and Specifications will replace and supersede all previous Drawings and Specifications and will be the Drawings and Specifications used by the Contractor for construction of the Project.
- 9.16 The Design submittals must contain sufficient information and be organized in a manner to facilitate review and acceptance by the Province's Representative. Accordingly, the format, organization, content and details of the Design submittals must be satisfactory to the Province's Representative.

- 9.17 Without limiting the generality of Article 9.16, the Design submittals must be formatted in a manner and contain detail that is satisfactory to the Province's Representative. The Design submittals must have clearly identified sections for:
- (a) architectural design;
  - (b) site development;
  - (c) structural design;
  - (d) mechanical design;
  - (e) electrical design; and
  - (f) sustainable design.
- 9.18 Each Design submittal must contain:
- (a) 5 sets of Drawings at 50% scale and 1 set of Drawings at full scale;
  - (b) 5 sets of Specifications;
  - (c) 5 sets of supporting material (such as: code analysis, energy cost models, acoustic design reports, correspondence, etc.);
  - (d) relevant design calculations and material specifications;
  - (e) any other information the Contractor determines will assist the Province's Representative (such as: models or three-dimensional renderings); and
  - (f) any other information that the Province's Representative may request.
- 9.19 The parties may develop a protocol to facilitate or expedite communication and transmittal of documentation. If agreed by the Province, the protocol may include provisions for delivery of submittals directly to the Province's consultants.

## **ARTICLE 10 PROTOTYPE**

- 10.1 The Contractor will, at its cost, prior to or concurrently with submitting the 100% Design pursuant to Article 9, prepare a full scale "prototype", with the same dimensions and sizing and location as the items to be constructed, of one of the modular classroom in sufficient detail to include all finishes, millwork, services and included equipment and furniture so that the Province and School Districts can consider all features of the Design. The Contractor will provide the "prototype" at its primary manufacturing facility in Aldergrove, British Columbia.

**ARTICLE 11**  
**QUALITY MANAGEMENT PLANS AND PROJECT MANAGEMENT PLANS**

- 11.1 The Contractor will establish, implement and provide for the review and acceptance by the Province, by no later than 30 days after the date of this Agreement, a plan (the “Quality Management Plan”) consistent with the preliminary Quality Management Plan included in the Proposal Extracts. The Quality Management Plan will:
- (a) meet all applicable requirements of this Contract;
  - (b) outline the quality control and quality assurance procedures to be implemented; and,
  - (c) ensure that the Work will meet the requirements set out therein and in this Contract.
- 11.2 The Contractor will establish, implement and provide for the review and acceptance by the Province, by no later than 30 days after the date of this Agreement, a plan (the “Project Management Plan”) consistent with the preliminary Project Management Plan included in the Proposal Extracts. The Project Management Plan will describe, in detail, the manner in which the Contractor will design and construct the Project.

**ARTICLE 12**  
**PROGRESS MONITOR**

- 12.1 The Province will, for each Modular Classroom Contract, appoint a representative to provide progress monitoring services (the “Progress Monitor”).
- 12.2 The Province may cancel the appointment of a person as Progress Monitor and appoint another person to act as Progress Monitor.
- 12.3 The role of the Progress Monitor under each Modular Classroom Contract is:
- (a) to provide the Province with complete and timely information about individual Modular Classroom Contracts and the Work;
  - (b) to provide a summary report to the Province on a monthly basis that includes:
    - (i) site planning and preparation milestones and indicators, including a list of activities that may indicate likelihood of meeting a milestone;
    - (ii) fabrication, delivery, installation and commissioning milestones and indicators; and
    - (iii) Construction project milestones and indicators.
  - (c) to report emergent performance issues, both anticipated and known, to the Province on a weekly basis;

- (d) to collect, analyze and document performance data from the Contractor;
  - (e) to contact each School District and the Contractor on a weekly basis;
  - (f) to obtain performance issue mitigation and management plans, progress reports and resolution reports from the Contractor;
  - (g) to act as a designated liaison between the Province and the Contractor for the purposes of receiving submissions from the Contractor; and coordinating distribution to appropriate designates, and receiving and returning the Province's response to the Contractor.
- 12.4 The Province may change the role of the Progress Monitor from time to time.
- 12.5 The Progress Monitor is not an authorized decision maker or certifier on behalf of the Province or any School District.
- 12.6 The Contractor will provide all cooperation, assistance and information required by the Progress Monitor, including the following:
- (a) managing the delivery of all Work (to ensure performance issues are avoided or identified early and mitigated and managed;
  - (b) providing the Program Schedule as required by this Agreement;
  - (c) providing further information as the Progress Monitor or the Province may require to validate progress on the Work and performance issue mitigation and management;
  - (d) granting the Progress Monitor access to production facilities to inspect and verify work in progress; and
  - (e) reporting to Progress Monitor any anticipated or known progress issues that may impact budget or schedule and the proposed course of action to mitigate and manage each performance issue.

### **ARTICLE 13 COVENANTS OF THE CONTRACTOR**

- 13.1 The Contractor will:
- (a) make application for, obtain and remit to the Province any applicable refund or remission of federal or provincial tax or duty available with respect to any items used in connection with this Agreement or any Modular Classroom Contract but not including input tax credits relating to HST;
  - (b) comply with all applicable laws;

- (c) comply with all promises, commitments and assurances made by it in the Proposal Extracts and in Appendix 2 – Pricing and Schedule Commitments except to the extent that to do so would be contrary to an express provision of this Agreement; and
- (d) comply with all Modular Classroom Contracts.

#### **ARTICLE 14 RECORDS AND REPORTS**

- 14.1 The Contractor will establish and maintain accurate books of account and records relating to this Agreement and to the Work provided under any Modular Classroom Contract to the reasonable satisfaction of the Province.
- 14.2 The Contractor will, upon the request from time to time of the Province:
- (a) fully inform the Province of work done and to be done by the Contractor in connection with carrying out the Work pursuant to a Modular Classroom Contract and, if so requested, submit such information in writing; and
  - (b) permit the Province at all reasonable times to inspect, examine, review and copy any and all findings, software, data, specifications, drawings, reports, documents and other material, whether complete or not, that, as a result of this Agreement or any Modular Classroom Contract, have been:
    - (i) produced specifically by the Contractor for the Province (the “New Material”),
    - (ii) provided by the Contractor or incorporated by the Contractor in the New Material, and that were:
      - (A) pre-existing at the time of execution of this Agreement, or
      - (B) developed independently of this Agreement, or(collectively the “Contractor Material”)
    - (iii) provided by, or on behalf of, the Province or any other person to the Contractor (the “Received Material”).

#### **ARTICLE 15 SECURITY AND CONFIDENTIALITY**

- 15.1 The Contractor will treat as confidential and will not, without the prior written consent of the Province, publish, release or disclose or permit to be published, released or disclosed either before or after the expiration or sooner termination of this Agreement, or any Modular Classroom Contract, all information in the Received Material and the New Material (other than any Contractor Material) and any other information supplied to,

obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement or any Modular Classroom Contract (the “Province Confidential Information”) except:

- (a) insofar as such publication, release or disclosure is:
  - (i) necessary to enable the Contractor to fulfil its obligations under this Agreement or any Modular Classroom Contract,
  - (ii) required by law including, without limitation, the *Freedom of Information and Protection of Privacy Act (British Columbia)*, or
  - (iii) general public knowledge; or
- (b) to the Contractor’s auditors or legal advisors.

15.2 Without restricting the generality of Article 15.1, the Contractor will comply with such directions as the Province may make, acting reasonably, with respect to ensuring confidentiality, which directions may include without limitation the following:

- (a) restrictions upon personnel to be permitted access to confidential information;
- (b) restrictions upon time and place of access and methods of reproduction, if any;
- (c) restrictions upon uses to which such information, New Material or Received Material may be put by the Contractor; and
- (d) imposition of other procedures to ensure secrecy, both prior to and subsequent to termination of this Agreement or any Modular Classroom Contract.

15.3 The Contractor will not make any public announcement relating to this Agreement or any Modular Classroom Contract without the prior written approval of the Province or as required by law, but acknowledges that the Province may, in its sole discretion and without consultation with the Contractor, make any public announcement relating this Agreement or any Modular Classroom Contract.

15.4 Without restricting the generality of Article 15.3, the Contractor will submit to the Province for its prior written approval all advertising, written sales promotion, press releases, public notices and all other publicity matters or materials relating to this Agreement, any Modular Classroom Contract or any other transaction contemplated by this Agreement or any Modular Classroom Contract or in which the Province’s name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied, and will not publish or use such advertising, written sales promotion, press releases, public notices or any other publicity matters or materials without prior consultation with and the written approval of the Province. Notwithstanding the foregoing, the Contractor may include the Province’s name and a factual description of the Work performed under any Modular Classroom Contract only on employee bulletin

boards, in internal business planning documents and whenever otherwise required by reason of legal, accounting or regulatory requirements.

- 15.5 The Contractor will comply with the Province's requests relating to signage, as specified from time to time.

## **ARTICLE 16 OWNERSHIP OF MATERIAL**

- 16.1 The Contractor acknowledges that the Province exclusively owns all property rights in the Received Material and the New Material which are not intellectual property rights. The Received Material and the New Material will be delivered by the Contractor to the Province immediately upon the Province's request.
- 16.2 The Province is the owner of the intellectual property rights, including copyright, in:
- (a) the Received Material that the Contractor receives from the Province; and
  - (b) the New Material, other than any Contractor Material.
- 16.3 Upon the Province's request, the Contractor will deliver to the Province documents satisfactory to the Province:
- (a) confirming the vesting of ownership and copyright in the New Material (except for any Contractor Material contained in the New Material) to the Province; and
  - (b) waiving in the Province's favour any moral rights that the Contractor (or its employees) or a subcontractor (or its employees) may have in the New Material.
- 16.4 The Province acknowledges that the copyright in the Contractor Material is not owned by the Province.
- 16.5 Upon any Contractor Material being embedded or incorporated in the New Material, the Contractor grants to the Province a non-exclusive, perpetual, irrevocable, royalty-free, world-wide license to use, reproduce, modify and distribute any of the Contractor Material contained in the New Material, solely in connection with the use of such New Material as long as the Contractor Material remains embedded or incorporated in the New Material and is not separated therefrom.
- 16.6 The Contractor will obtain and pay for all intellectual property rights (including of any patent, copy right, industrial design, trademark or trade secret) all royalties and licence fees required for the performance of the Contractor under this Agreement and the Modular Classroom Contracts and will, without limiting Article 17– Indemnity, indemnify and hold the Indemnified Parties harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Work under this Contract which are attributable to infringement or an alleged infringement of any intellectual property right by the Contractor or anyone for whose acts it may be liable.



**ARTICLE 17  
INDEMNITY**

- 17.1 The Contractor will indemnify and save harmless and assume the defence of the School Districts, the Province and their respective officers, employees, representatives (including the School District's Representatives and the Progress Monitor), consultants and agents (collectively the "Indemnified Parties"), from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that any of the Indemnified Parties may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement or the applicable Modular Classroom Contract, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act, omission, negligence or misconduct of the Contractor or of any representative, agent, employee, officer, director, consultant or Subcontractor of the Contractor, excepting only liability to the extent arising out of the independent negligent acts of the Indemnified Parties.
- 17.2 The Contractor agrees that all indemnities under the Modular Classroom Contract in favour of the Province and its officers, employees, representatives (including the Progress Monitor), consultants and agents may be enforced directly against the Contractor. The Contractor further agrees that all indemnities under a Modular Classroom Contract in favour of a School District and its officers, employees, representatives (including the School District's Representative), consultants and agents and any representatives may be enforced directly against the Contractor.

**ARTICLE 18  
LEGAL RELATIONSHIP**

- 18.1 The Contractor is an independent contractor and not the employee, agent or partner of the Province.
- 18.2 The Contractor will not do anything that would result in personnel the Contractor hires being considered the employees of the Province.
- 18.3 The Contractor will not commit or purport to commit the Province to pay any money.

**ARTICLE 19  
ASSIGNMENT AND SUBCONTRACTING**

- 19.1 The Contractor will not, without the prior written consent of the Province:
- (a) assign, either directly or indirectly, this Agreement or any Modular classroom Contract or any right of the Contractor under this Agreement or any Modular Classroom Contract; or
  - (b) subcontract any obligation of the Contractor under this Agreement or any major requirement or obligation under a Modular Classroom Contract.

- 19.2 No subcontract entered into by the Contractor will relieve the Contractor from any of its obligations under this Agreement or any Modular Classroom Contract or impose any obligation or liability upon the Province to any such subcontractor. The Contractor must ensure that any subcontractor it retains fully complies with this Agreement and any Modular Classroom Contract when performing the subcontracted obligations.
- 19.3 The Province may assign this Agreement at any time, in its sole discretion, and without the consent of the Contractor.

## **ARTICLE 20 DISPUTE RESOLUTION**

- 20.1 If a Dispute arises, the Contractor will abide by the Province's Representative's decision with respect to the Dispute, diligently proceed with the performance of this Agreement and all Modular Classroom Contracts while reserving its rights to claim or dispute the instructions or the Province's position concerning the Dispute.
- 20.2 The Province and the Contractor will:
- (a) make bona fide efforts to resolve any Dispute arising between them by amicable negotiations; and
  - (b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the resolution of any claim or Dispute.
- 20.3 In order to facilitate the negotiations in Article 20.2(a), the Contractor will provide full written particulars of the nature, entitlement and magnitude of any claim or Dispute and any request for an extension of time being sought and the Province will provide a description of its position to the Contractor with respect to such claim or Dispute, any claim advanced by the Province or any Dispute including the provisions of the Agreement relied upon and any relevant facts, information and documents.
- 20.4 Within 7 days of a Dispute arising, the Contractor's Representative or Province's Representative, as the case may be and provided the parties have received all information requested pursuant to Article 20.2(a) and Article 20.3, will give the other party written notice of the Dispute and the Contractor's Representative and the Province's Representative will use bona fide efforts as identified by Article 20.2(a) to resolve the Dispute.
- 20.5 If the Province's Representative and the Contractor's Representative fail to resolve the Dispute within 10 days after receipt of the notice pursuant to Article 20.4, the parties will refer the Dispute and all information to the nominated senior representative of the Province and the nominated senior officer of the Contractor for resolution.
- 20.6 If the nominated senior representative of the Province and the nominated senior officer of the Contractor fail to resolve the Dispute within 10 days after the Dispute has been referred to them, the Dispute will be referred to a single arbitrator and finally resolved by

binding arbitration under the rules of the British Columbia Mediation and Arbitration Institute.

- 20.7 The arbitrator will be chosen by mutual agreement between the Contractor and the Province. If an arbitrator has not been appointed within 14 days of the date that the Dispute has been referred to an arbitrator pursuant to Article 20.6, the arbitrator will be appointed by the British Columbia Mediation and Arbitration Institute.
- 20.8 Any of the times specified in this Article 20 may be varied by mutual agreement between the Contractor's Representative and the Province's Representative. In addition, the Province and the Contractor may by written agreement vary the requirements of this Article 20, including to provide for resolution of the Dispute through mediation.
- 20.9 If required by the Province, resolution of a Dispute will be consolidated with resolution of any other dispute under any Modular Classroom Contract.
- 20.10 Pursuit of the resolution of a Dispute under any part of this Article 20 does not relieve either party of its responsibility to ensure timely performance of its obligations under this Agreement.

## **ARTICLE 21 TERMINATION**

- 21.1 The Province may terminate this Agreement for any reason, in its sole discretion, on giving 60 days' written notice of termination to the Contractor.
- 21.2 Notwithstanding any other provision of this Agreement, any of the following events will constitute a default (an "Event of Default"):
- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement;
  - (b) any representation or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
  - (c) the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency; or
  - (d) the Contractor fails to observe, perform or comply with any provision of any Modular Classroom Contract.
- 21.3 On the happening of an Event of Default, or any time thereafter, the Province may do any one or more of the following:
- (a) pursue any remedy available to it at law or in equity;
  - (b) waive the Event of Default; and

- (c) deliver written notice to the Contractor specifying the Event of Default and requiring rectification within 30 days of the date of delivery of such notice, or within any other longer period as specified by the Province in such notice.
- 21.4 Where an Event of Default is not remedied within 30 days of delivery of notice, or such other period as specified by the Province, under Article 21.3(c) above, the Province, in its sole discretion, may terminate this Agreement by notice in writing to the Contractor.
- 21.5 The rights, powers and remedies conferred on the Province under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity, and the exercise by the Province of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

**ARTICLE 22  
WAIVER**

- 22.1 A waiver of any term of this Agreement or any breach by a party of this Agreement is effective only if it is in writing and signed by the party providing the waiver and is not a waiver of any other term or any other breach.

**ARTICLE 23  
NOTICE**

- 23.1 Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or electronic transmission to the address or electronic mail address of each party set out below:

- (a) if to the Province:

Ministry of Education  
Province of British Columbia  
P.O. Box 9151, Stn Prov Govt  
#4 – 620 Superior Street  
Victoria, BC V8W 9H1

Attention: Phillip Chambers

Email: [phillip.chambers@gov.bc.ca](mailto:phillip.chambers@gov.bc.ca)

- (b) if to the Contractor:

Shelter Industries Inc.  
3294 – 262<sup>nd</sup> Street

P.O. Box 1318  
Aldergrove, BC V4W 2V1

Attention: Chris Yamamoto

Email: cyamamoto@shelterindustries.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

- 23.2 Any such notice or communication will be considered to have been received:
- (a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
  - (b) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
    - (i) the receiving party has, by electronic transmission or by hand delivery acknowledged to the notifying party that it has received such notice; or
    - (ii) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery.
- 23.3 Delivery by mail will not be considered timely notice under this Agreement.
- 23.4 In the event of an emergency or urgent matter, in addition to the notice required by this Article 23, a verbal notice will be given as soon as the party giving the notice becomes aware of any material event or circumstance that gives rise to the requirement for a written notice being given.

## **ARTICLE 24 MISCELLANEOUS**

- 24.1 This Agreement will be governed by and is to be construed in accordance with the laws of the Province of British Columbia.
- 24.2 Time is of the essence in this Agreement.
- 24.3 No amendment or modification of this Agreement is effective unless it is in writing and signed by the parties.
- 24.4 This Agreement, including the Appendices and any modifications thereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

- 24.5 All provisions of this Agreement in favour of the parties and all rights and remedies of the parties, either in law or equity, will survive the expiration or sooner termination of this Agreement or any Modular Classroom Contract.
- 24.6 The Appendices attached to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 24.7 If there is a conflict or inconsistency between any of the provisions of any of the following documents:
- (a) the main body of this Agreement; and
  - (b) the Appendices;
- the order of precedence will be in the order set out above.
- 24.8 If any provision of this Agreement is found to be invalid, illegal or unenforceable, it will be severable from this Agreement and the remaining provisions will not be affected thereby and will be valid, legal and enforceable.
- 24.9 The parties will do, or cause to be done, all such further acts and things as may be reasonably necessary to give full effect to this Agreement, including executing and delivering, or causing the execution and delivery of, such further instruments and taking such further actions as reasonably requested by the other party in order to cure any defect in the execution of this Agreement.
- 24.10 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 24.11 A party may deliver an executed copy of this Agreement by electronic means but that party will immediately deliver to the other parties an originally executed copy of this Agreement.

24.12 Where the Contractor is a joint venture, partnership or consortium, each member is jointly and severally liable for the obligations of the Contractor.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the reference date on the first page of this Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the Minister of Education or a duly authorized representative

Per: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Title]

**SHELTER INDUSTRIES INC.**

Per: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Title]

**Appendix 1**  
**Contract Template**



## **Appendix 2**

### **Pricing and Schedule Commitments**

- 1) The first section is the base price per modular classroom in the 4 permitted configurations.
- 2) The second section is the option pricing for the customizable feature available to School Districts. If an option selected would reduce the price (i.e. School District installs the foundation), enter a negative price using a minus sign not brackets.
- 3) The third section is for input of delivery costs.
- 4) The fourth section is for input of installation costs.
- 5) The fifth section is for input of additional cost information that is not linked to the school district site information sheet.
- 6) The sixth section is for input of foundation cost information for foundations provided by the Contractor.

## **Part 2 – Schedule Commitments**

1. The Contractor provides Design Submittal Schedule – October 6, 2010 (see Section 9.8)
2. Foundation Permit submittals including plans and specifications required by SDs providing their own foundations – October 8, 2010
3. Development Permit submittals for School Districts that require a Development Permit – October 15, 2010
4. Building Permit submittals – November 30, 2010
5. The Contractor to contact all School Districts during the month of October 2010
6. The Contractor to enter into Modular Classroom Contracts with all SDs by November 30, 2010
7. Substantial Completion of all modular classrooms with Site Readiness Dates up to and including June 30, 2011 – by July 31, 2011
8. Substantial Completion of all modular classrooms with Site Readiness Dates in the month of July 2011 – by August 19, 2011