



## Participating Schools Agreement

AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ Year 2018

BETWEEN: ACT BLOCK GRANT AUTHORITY INCORPORATED, ABN: 21 292 628 376 (the BGA) a body corporate which, by reason of the Australian Education Act 2013 ('the Act') is a block grant authority as defined in Part 6 Division 3 of the Act and having its office in the Australian Capital Territory,

AND:

Being the Approved Authority for

School,

ABN:

Located at

("the School")

WHEREAS:

- a. Under the Australian Education Act 2013 ("the Act"), the Department of Education provides financial assistance for non-government primary and secondary education;
- b. The BGA, as the relevant authority of the non-government primary and secondary schools in the Australian Capital Territory, has entered into an agreement with the Department of Education who wishes to provide financial assistance for Capital Expenditure in accordance with Part 5 of the Act for non-government primary and secondary education;
- c. The BGA has agreed to accept the financial assistance for Capital Expenditure on the terms and conditions set out in the Act, the Regulations, the Capital Grants Program Guidelines and
- d. The parties further have agreed to enter into this Agreement.

**NOW IT IS HEREBY AGREED as follows:**

**1. INTERPRETATION**

1.1 Definitions in the Agreement

Act	Australian Education Act 2013 and includes any regulations
Approved Project	A capital project for which a capital grant has been approved by the Minister pursuant to the Act and which is in connection with a School or hostel that is a BGA participant;
Australian Government	The government of the Commonwealth of Australia
Capital Expenditure	Has the meaning given in section 6 of the Act;
Commonwealth	The Australian Government
Department	The Commonwealth of Australia as represented by the Department of Education and Training or such other Australian Government agency or department as may from time to time administer the Act;
Facilities	Means building or equipment constructed, refurbished, extended or provided by means of Capital Expenditure;
Funds	Moneys made available by the Australian Government in relation to Approved Projects, any moneys refunded by Schools and any interest earned on those moneys;
Grant	The amount or amounts of financial assistance provided by the BGA as set out in the Minister's determination for an Approved Project
GST Act	A New Tax System ( Goods and Services Tax) Act 1999
GST	Has the meaning given in section 195-1 of the GST Act
Minister	The Australian Government Minister responsible for the Department of Education and Training or an employee of the Department to whom the powers of the Minister have been delegated;
CGP Guidelines	The Capital Grants Program Guidelines sets out the Commonwealth Government's (the

	Commonwealth) detailed administrative requirements applying to the administration of the Capital Grants Program for non-government schools (CGP) by Block Grant Authorities;
Participating School	A body corporate responsible for the operation of a non-government school or hostel and for which the BGA is the block grant authority;
Proceedings	Any court action in any Court of appropriate jurisdiction that may award damages and costs;
Prospective Participating School	A body corporate that proposed to operate, and obtain a grant through the BGA for, a non-government school or a non-government rural student hostel;
Recipient Created Tax Invoice or RCTI	Has the meaning given in section 195-1 of the GST Act
Registered for GST	Registered under the GST Act
School	The non-government school that is a party to this Agreement
Tax invoice	Has the meaning given in section 195-1 of the GST Act
Taxable supply	Has the meaning given in section 195-1 of the GST Act

1.2 A reference to the Act shall be construed as including a reference to the Act as amended from time to time.

## **2. AGREEMENT COMING INTO FORCE**

2.1 This agreement shall come into force when it has been executed on behalf of the parties and shall supersede any previously executed Participating Schools Agreements.

2.2 Grants are made on the conditions set out in the Act, the Regulations, the Capital Grants Program Guidelines and on any further conditions consistent with those conditions that the Minister may impose.

## **3. UNDERTAKINGS BY THE BGA**

3.1 The BGA undertakes to:

- a. Advise the Schools or Prospective Participating Schools each year of the closing date it has set for applications for Funds at least 45 days before that date and of the procedures that

the School or Prospective Participating School needs to follow in the preparation of and submission of any such application;

- b. Accept from the Schools or Prospective Participating School any application for Funds submitted before the closing date referred to in paragraph 3.1 (a); and
- c. Assess the School's or Prospective Participating School's application for Funds and also, where that application is successful, pay the relevant Funds on their receipt to the Participating School.

3.2 The BGA agrees that any information obtained from the Commonwealth in accordance with Clause 4 of this Agreement will not be disclosed by the BGA and its officers or servants and will be used solely for the purpose of processing and administering any application for Funds that the School or Prospective Participating School may lodge with the BGA.

3.3 The BGA, in assessing an application for Funds by the School or Prospective Participating School, shall take all action for which the Capital Grants Program Guidelines provide, but is to be under no liability to the School or Prospective Participating School for, and the School or Prospective Participating School hereby indemnifies the BGA against, any loss or damage suffered by the School or Prospective Participating School in consequence of a decision taken by the BGA or the Commonwealth in relation to the application, including the costs of final sketch plans prepared at the request of the BGA.

#### **4. UNDERTAKINGS BY THE PARTICIPATING SCHOOL OR PROSPECTIVE PARTICIPATING SCHOOL**

4.1 The School agrees to:

- a. Accept the BGA's administrative processes and procedures including variations to those processes and procedures as may be required from time to time by the Commonwealth;
- b. Remain a member of the BGA for a minimum period of three years and provide the BGA with at least twelve months' notice of its intention to withdraw from the BGA;
- c. In addition to the obligations under clause 4.3, provide such further information as the BGA may reasonably require from time to time to enable the BGA to comply with its obligations to the Commonwealth. The information is to be provided at the times and in the form specified by the BGA from time to time; and
- d. Maintain records of all agreements, applications, assessments, tendering, payments and accountability processes and documents (and made available to the BGA for scrutiny) for at least seven years after the completion of each project. Assessment documentation must be sufficiently comprehensive to justify the conclusions reached on eligibility and ranking criterion for each application.

4.2 When applying for grants, the School or Prospective Participating School agrees to:

- a. Provide financial, enrolment and other relevant data to the BGA; allow the Commonwealth to provide similar data to the BGA on a confidential basis; and allow the BGA to provide to the Commonwealth any information provided to the BGA by the School;

- b. Permit access by authorised officers of the BGA and of the Commonwealth to enter the School at a mutually agreed time to inspect facilities and associated documentation in connection with any grant application or Approved Project; and
- c. If recommended by the BGA for a grant, not accept tenders, nor enter into commitments with contractors/builders, until the BGA has advised the applicant that the Commonwealth has approved the grant.

#### 4.3 When accepting a grant of offer the School agrees to:

- a. hold adequate insurance cover over the school's existing buildings and facilities and provide evidence to the BGA of this insurance cover as part of the grant application process;
- b. seek the BGA's approval prior to any variation to the approved project or alterations in the scope of works;
- c. contribute at least the amount specified in the grant offer;
- d. apply the funds provided by the Commonwealth (via the BGA) for the approved project only for the purpose of meeting expenditure on that project;
- e. accept that if the school is not complying with their agreement with the BGA (e.g. by not providing required information), the BGA may delay payment to the school until the school fulfils the condition;
- f. repay to the BGA or to the Commonwealth as much of the Grant as the Commonwealth determines must be repaid if the BGA, or the school, has failed to comply with a condition on which the grant was made;
- g. spend grant payments, including any interest earned on the grant payments, as soon as possible, and not later than six months after the date of receipt;
- h. repay the grant in full to the BGA if, by the end of the funding year, the school is not approved for Recurrent Funding and/or has not received final state/territory registration and/or the approved authority is not approved by the Department;
- i. enter into a legally binding contract with successful contractors to proceed with the project before the end of the program year in which the first instalment of the grant is payable;
- j. use and document tendering procedures that encapsulate the principle of 'public invitation' and that are based on standard tendering practice;
- k. comply with, and include in contracts with contractors for the performance of any construction or building activity, the requirements contained in The Building Code. The school must also comply with the Australian Government Building and Construction OHS Accreditation Scheme;
- l. maximise employment opportunities for Aboriginal and Torres Strait Islander people where a project is undertaken specifically for an Indigenous Australian community or where the project is located in an area likely to provide employment or training opportunities for Aboriginal and Torres Strait Islander people, to reduce the disproportionately high unemployment rates among these people;

- m. identify any perceived or actual conflict of interest to the BGA at the stage when it first occurs. The school, with the possible assistance of the BGA, must then ensure that the conflict is resolved with written advice provided to the BGA on the nature of the conflict and how it has been resolved;
- n. specifically identify to the BGA any provision under any subcontract the school has entered into, or proposes to enter into in relation to the project which requires the school to make an incentive payment to any person involved in the development and construction of the project and which is designed to reward completion of the project at a cost under budget or ahead of time;
- o. ensure that the project is completed to a satisfactory standard and within a reasonable time in accordance with the approved project description and with all relevant, local government requirements;
- p. comply with the recognition requirements for CGP funding; schools should contact the SchoolOpenings@education.gov.au inbox if they have any questions regarding recognition;
- q. provide an independent accountant's certificate to the BGA within three months of completion of the project;
- r. use the facilities for the purpose of providing school level educational services for the locations, levels of education and students that have been approved;
- s. in the case of projects with grants greater than \$75,000, comply with Section 109 of the Australian Education Act 2013 and Section 64 of the Australian Education Regulation, which provide the Commonwealth with a right to repayment:
  - i. notify the BGA if the school ceases to use the facilities principally for primary or secondary education or sells or otherwise disposes of the facilities within the Designated Period specified in the table below; and
  - ii. repay to the BGA or to the Commonwealth, the calculated portion of the grant, calculated in accordance with the table below, if the school ceases to use the facilities principally for primary or secondary education or sells or otherwise disposes of the facilities within the Designated Period.

Item	Grant	Designated use period
1	\$75,001 to \$500,000	Two years plus one additional year for each \$50,000 of financial assistance that is over \$100,000
2	\$500,001 to \$1.5 million	10 years plus one additional year for every \$100,000 of financial assistance that is over \$500,000
3	Over \$1.5 million	20 years

- t. not transfer to another BGA until the project has been completed, all grant payments have been received, and accountability requirements for the particular project have been finalised, notwithstanding that the 12 months' notice required of schools must be given before such finalisation;
- u. ensure that, if the school is transferring to another BGA, the BGA to which it is transferring accepts responsibility for protecting the Commonwealth's right to repayment in any project funded while the school was a member of the previous BGA. A BGA must advise the Commonwealth that it has agreed to accept such a responsibility;
- v. pay all funding instalments received into an account opened with a financial institution such as a bank, building society or credit union operating in Australia. The school must identify

the receipt and expenditure of those monies in separate accounts within the school's accounting record;

- w. keep adequate financial documents and records relating to the CGP project to enable:
  - i. all income and expenditure related to the CGP project to be identified in the school accounts;
  - ii. confirmation of the completion and final expenditure on the project, such as a Certificate of Occupancy; and
  - iii. the preparation of financial statements in accordance with Australian Accounting Standards and generally accepted practices.
- x. allow the BGA and/or the Commonwealth to inspect the completed project;
- y. allow the BGA to assign some or all of the BGA's rights under this Agreement (including the BGA's rights to recover all or a portion of the Grant from the school) to the Commonwealth.; and
- z. comply with any additional conditions specifically imposed by the Minister in relation to the approved grant.

#### 4.4 Agreement to Assignment to the Commonwealth

- a. The School acknowledges and agrees that the BGA may assign some or all of the BGA's rights under this Agreement (including the BGA's rights to recover all or a portion of the Grant from the School) in the circumstances set out in this Agreement to the Commonwealth.
- b. The School acknowledges and agrees that, where the BGA assigns a right to the Commonwealth (the "Assigned Right"), the Commonwealth may exercise the Assigned Right and enforce the Assigned Right directly against the School, in the Commonwealth's name, as the BGA's assignee.
- c. Without limiting paragraph b, the School acknowledges and agrees that the Commonwealth may institute legal proceedings directly against the School in order to enforce the Assigned Right.

## 5. GST AND RECIPIENT CREATED TAX INVOICES

5.1 It is agreed that the BGA and the School are both registered for GST.

5.2 The School agrees that the BGA can issue Recipient Created Tax Invoices in respect of Taxable Supplies made to the BGA under this Agreement.

5.3 The BGA will notify the School immediately if it ceases to be Registered for GST and if it ceases to satisfy any of the requirements of a Determination made by Commissioner of Taxation under subsection 29-70 (3) of the GST Act.

5.4 The School will notify the BGA immediately if it ceases to be Registered for GST.

5.5 The School will not issue Tax Invoices in respect of Taxable Supplies made to the BGA under this agreement.

## **6 TERMINATION OF AGREEMENT**

6.1 This agreement may be terminated by either party giving notice to the other if any of the following events occur:

- a. Upon the termination of the Agreement between the Australian Government and the BGA;  
or
- b. Upon the expiry of a period of 12 months from the date the School notifies the Department and the BGA in writing of its intention to determine this agreement; or
- c. the BGA notifies the School in writing of its intentions to terminate this agreement:

Provided that, where the School has accepted Funds from the BGA for an Approved Project, either:

- (i) The Approved Project has been completed and the BGA has given to the Australian Government the certificates referred to in the CGP Guidelines, or
- (ii) The Funds received by the School from the BGA for an Approved Project have been repaid to the BGA and by the BGA to the Australian Government, if required, in accordance with the requirements of the CGP Guidelines.

## **7 LIABILITY FOR DAMAGES**

7.1 if the School uses the Funds it receives from the BGA in a manner that is inconsistent with the Act, the Regulations or the Capital Grants Program Guidelines, the BGA may take whatever action it deems necessary, including the bringing of Proceedings against the School in order to recover damages caused to the BGA by the misuse of the Funds.

**IN WITNESS WHEREOF** this agreement has been respectively signed on behalf of the parties hereto on the day and year first above written.

**SIGNED FOR AND ON BEHALF OF  
THE ACT BLOCK GRANT AUTHORITY INCORPORATED**

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Board Chair

In the presence of:

.....

Public Officer

**SIGNED** on behalf of the School by:

.....

(Name)

.....

(Position)

In the presence of:

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