

AGREEMENT made on the _____ day of _____ Year 2015

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:

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 Programme Operating Manual 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

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| 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; |

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| Australian Government | The government of the Commonwealth of Australia |
| Capital Expenditure | Has the meaning given in section 6 of the Act; |
| Department of Education | The Commonwealth of Australia as represented by the Department of Education 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 or an employee of the Department to whom the powers of the Minister have been delegated; |
| Operating Manual | The Capital Grants Programme Operating Manual sets out the Commonwealth Government's (the Commonwealth) detailed administrative requirements applying to the administration of the Capital Grants Programme 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 |

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| | 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.

2.2 Grants are made on the conditions set out in the Act, the Regulations, the Capital Grants Programme Operating Manual 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 Australian Government 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 Programme Operating Manual 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 Australian Government 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 Australian Government;
- 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; the School must notify the Department at least twelve months in advance of its intention to withdraw from a BGA or to join another BGA; and
- 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 Australian Government. The information is to be provided at the times and in the form specified by the BGA from time to time.

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 Australian Government to provide similar data to the BGA on a confidential basis; and allow the BGA to provide to the Australian Government any information provided to the BGA by the School;
- b. Permit authorised officers of the BGA and of the Australian Government 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, until the BGA has advised the applicant that the Australian Government has approved the grant.

4.3 When accepting a grant 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 Government (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 BGA member school until the school fulfils the condition;
- f. agree to repay to the BGA or to the Commonwealth Government as much of the Grant as the Commonwealth Government determines must be repaid if the BGA, or the BGA member 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. agree to 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 recognition 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;
- l. maximise employment opportunities for Indigenous Australians 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 Indigenous Australians, in line with the Commonwealth Government's policy of seeking to reduce the disproportionately high unemployment rates among these people;
- m. agree to 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 Government 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 Government, 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.
- 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 BGA member 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 Government's right to repayment in any project funded while the school was a member of the previous BGA. A BGA must advise the Commonwealth Government 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. 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 BGA Participant). 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. The school acknowledges and agrees that the Commonwealth may institute legal proceedings directly against the School in order to enforce the Assigned Right; 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 Department of Education

- 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 Department of Education.
- b. The School acknowledges and agrees that where the BGA assigns a right to the Department of Education (the "Assigned Right"), the Department of Education may exercise the Assigned Right and enforce the Assigned Right directly against the School, in DEEWR's name, as the BGA's assignee.
- c. Without limiting paragraph b, the School acknowledges and agrees that the Department of Education 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 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 Operating Manual, 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 Operating Manual.

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 Programme Operating Manual, 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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