



## Participating Schools Agreement

AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ Year 2021

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

AND:

XXX

Being the Approved Authority for

XXX School, ABN: XXX

Located at XXX

(the School)

RECITALS:

- a. Under the Act, the Department of Education, Skills and Employment (the Department) provides financial assistance for non-government primary and secondary education;
- b. The ACTBGA, 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, 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 ACTBGA 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 the 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
Agreement	This Participating Schools Agreement
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 ACTBGA participant;
Australian Government	The government of the Commonwealth of Australia
Capital Grants Program	The Capital Grants Program (CGP) provides funding to assist non-government primary and secondary school communities to improve capital infrastructure where they otherwise may not have access to sufficient capital resources;
Capital Grants Program Guidelines	The Capital Grants Program Guidelines (CGP Guidelines) sets out the Commonwealth's detailed administrative requirements applying to the administration of the Capital Grants Program for non-government schools by Block Grant Authorities;
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, Skills and Employment or such other Australian Government agency or department as may from time to time administer the Act;
Facilities	Building or equipment constructed, refurbished, extended or provided by means of Capital Expenditure;
Funds	Monies made available by the Australian Government in relation to Approved Projects, any monies refunded by Schools and any interest earned on those monies;
Grant	The amount or amounts of financial assistance provided by the ACTBGA 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, Skills and Employment or an employee of the Department to whom the powers of the Minister have been delegated;
Participating School	A body corporate responsible for the operation of a non-government school or hostel and for which the ACTBGA is the BGA;
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 ACTBGA 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 The 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 ACTBGA**

3.1 The ACTBGA 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 ACTBGA agrees that any information obtained from the Australian Government in accordance with Clause 4 of the Agreement will not be disclosed by the ACTBGA 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 ACTBGA.

3.3 The ACTBGA, 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 ACTBGA against, any loss or damage suffered by the School or Prospective Participating School in consequence of a decision taken by the ACTBGA or the Commonwealth in relation to the application, including the costs of final sketch plans prepared at the request of the ACTBGA.

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

4.1 The School agrees to:

- a. Accept the ACTBGA'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 ACTBGA for a minimum period of three years, and provide the ACTBGA with at least twelve months' notice of its intention to withdraw from the ACTBGA;
- c. In addition to the obligations under clause 4.3, provide such further information as the ACTBGA may reasonably require from time to time to enable the ACTBGA to comply with its obligations to the Commonwealth. The information is to be provided at the times and in the form specified by the ACTBGA 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 ACTBGA 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 ACTBGA; allow the Commonwealth to provide similar data to the ACTBGA on a confidential basis; and allow the ACTBGA to provide to the Commonwealth any information provided to the ACTBGA by the School;
- b. Permit authorised officers of the ACTBGA 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 ACTBGA for a grant, not accept tenders, nor enter into commitments with contractors/builders, until the ACTBGA has advised the applicant that the Commonwealth 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 ACTBGA of this insurance cover as part of the grant application process;
- b. seek the ACTBGA'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 ACTBGA) 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 ACTBGA (e.g. by not providing required information), the ACTBGA may delay payment to the School until the School fulfils the condition;
- f. repay to the ACTBGA or to the Commonwealth as much of the Grant as the Commonwealth determines must be repaid if the ACTBGA, 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 ACTBGA 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 2016. 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 a 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 ACTBGA at the stage when it first occurs. The School, with the possible assistance of the ACTBGA, must then ensure that the conflict is resolved with written advice provided to the ACTBGA on the nature of the conflict and how it has been resolved;
- n. specifically identify to the ACTBGA 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@dese.gov.au](mailto:SchoolOpenings@dese.gov.au) inbox if they have any questions regarding recognition;
- q. provide an independent accountant's certificate to the ACTBGA 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 ACTBGA 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 ACTBGA 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's 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 ACTBGA and/or the Commonwealth to inspect the completed project;
- y. allow the ACTBGA to assign some or all of the ACTBGA's rights under the Agreement (including the ACTBGA'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, where the ACTBGA 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 ACTBGA's assignee.
- b. 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 ACTBGA and the School are both registered for GST.
- 5.2 The School agrees that the ACTBGA can issue Recipient Created Tax Invoices in respect of Taxable Supplies made to the BGA under the Agreement.

- 5.3 The ACTBGA 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 ACTBGA 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 ACTBGA under the Agreement.

## **6 TERMINATION OF AGREEMENT**

6.1 The 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 Commonwealth and the ACTBGA; 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 terminate the Agreement; or,
- c. the ACTBGA notifies the School in writing of its intentions to terminate the Agreement:

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

- (i) The Approved Project has been completed and the ACTBGA has given to the Commonwealth the certificates referred to in the CGP Guidelines, or
- (ii) The Funds received by the School from the ACTBGA for an Approved Project have been repaid to the ACTBGA and by the ACTBGA to the Commonwealth, 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 ACTBGA in a manner that is inconsistent with the Act, the Regulations or the Capital Grants Program Guidelines, the ACTBGA may take whatever action it deems necessary, including the bringing of Proceedings against the School in order to recover damages caused to the ACTBGA by the misuse of the Funds.

## **8 NON COMPLIANCE**

8.1 In situations where the School is not meeting the conditions set out in the Agreement, and as the ACTBGA has an obligation under Regulation 38 of the *Australian Education Regulation 2013* to prepare and audit financial statements, the ACTBGA reserves the right to not accept an application from that School for additional grant funding administered by the ACTBGA, until such time as the ACTBGA is satisfied that the issue or circumstances surrounding the non-compliance is reasonably resolved.

8.2 The ACTBGA will refer matters involving a material breach of the Agreement, or ongoing unresolved non-compliance, to the Department for further action



## **9 CRIMINAL OFFENCE**

In providing any data or any other information required to be given pursuant to the Act, the Regulation, the Guidelines or the Agreement, the School acknowledges that giving false or misleading information is a serious offence under Section 137.1 of the *Commonwealth Criminal Code*.

**IN WITNESS WHEREOF** the 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**

.....

Board Chair

In the presence of:

.....

Public Officer

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

.....

(Name)

.....

(Position)

In the presence of:

.....