

## PROCEDURAL GUIDELINE – CAPITAL GRANT PROGRAM

# PARTICIPATION AGREEMENTS

## 1. Background

- 1.1 To access Commonwealth funding programs relating to Capital Projects, a school must become a member of the SAIS Block Grant Authority (BGA). This requires the school's Approved Authority to sign a Participation Agreement with the BGA.
- 1.2 The current Commonwealth capital funding program is the Capital Grants Program (CGP).
- 1.3 The Approved Authority, as defined in Section 24 of the [Capital Grants Program Guidelines 2019](#), "is a legal entity that the Commonwealth has approved to administer funding for a school. The Commonwealth expects that the approved authority will have management and operational authority over the school and its administration. An approved authority has certain legal responsibilities for the funding of, and the delivery of education to, its schools."

The Approved Authority can be the school, a school system or other legal entity.

- 1.4 The Participation Agreement sets out the rights and responsibilities of the BGA, the Approved Authority and the school in applying for, accepting, and managing a Grant.

## 2. Agreements

- 2.1 The BGA will maintain an accurate register of its members schools and will notify the Commonwealth in writing within 14 days of a new BGA member school, withdrawal of an existing BGA member school, or any other relevant change to its register.
- 2.2 As a reminder of the school's responsibilities, when a Capital Grant is approved the BGA will send a copy of the signed Participation Agreement to the school with the Schedule 2 that outlines the approved grant.
- 2.3 The BGA will ensure the content of Participation Agreements is fully compliant with the CGP Guidelines and any future capital funding programs.
- 2.4 From time to time, changes to the CGP Guidelines and/or the introduction of new capital funding programs will require member schools to sign new Participation Agreements.

## 3. Related Polices

[Procedural Guideline Capital Grant Program – New Schools](#)

*Attachment 1 – Copy of Participation Agreement (August 2022)*

*Draft August 2022*

*Review on release of updated CGP Guidelines*



DATED            day of                            20

**SA INDEPENDENT SCHOOLS BLOCK GRANT AUTHORITY**  
(ABN 22 552 496 361)

- and -

**Name of Approved Authority**

ABN: **xx xxx xxx xxx**

- the Approved Authority for -

**Name of School**

**PARTICIPATION AGREEMENT**

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**THIS AGREEMENT** is made

**BETWEEN** SA INDEPENDENT SCHOOLS BLOCK GRANT AUTHORITY (ABN 22 552 496 361)  
of 128 Greenhill Road UNLEY SA 5061 ("**SAIS BGA**")

**AND** **Name of Approved Authority**, ABN **xx xxx xxx xxx** of **address** on behalf of the School(s) and  
Campus(es) named in Schedule One, ("**Approved Authority**")

## **RECITALS**

- (a) SAIS BGA is a body corporate that falls within the definition of Block Grant Authority under Division 3 of Part 6 of the Act and is authorised by the Minister to make payments of capital grants to non-government schools under the Australian Government Capital Grants Program and other Government Programs.
- (b) The Approved Authority of a non-government school has agreed to be represented by SAIS BGA and SAIS BGA has agreed to represent the Approved Authority for the purpose of the Capital Grants Program and other Government Programs on the terms and conditions of this Agreement.
- (c) The Approved Authority may wish to make an Application to SAIS BGA for a Grant from the Capital Grants Program or other Government Programs on the terms and conditions set out in this Agreement.
- (d) Where SAIS BGA is recommending, and the Australian Government is approving, the making of a Grant to the Approved Authority for the Approved Project, it is done so on the terms and conditions set out in this Agreement.
- (e) If offered, the Approved Authority wishes to accept the Grant on the terms and conditions set out in this Agreement.

## **THE PARTIES AGREE**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

**"Act"** means the Australian Education Act 2013 and includes the Regulation under it and all consolidations, amendments, re-enactments or replacements.

**"Agreement"** means this agreement between SAIS BGA and the Approved Authority including the Schedules and Annexures.

**"Alteration"** includes, but is not limited to, any change to the:

- (a) number or type of facilities, equipment or services described in the Details;
- (b) location or site of the Approved Project;
- (c) timing of the Approved Project;
- (d) intended use of the Approved Project;
- (e) functional areas of the Approved Project;
- (f) square metres of the Approved Project;
- (g) design or materials to be used in the Approved Project;
- (h) cost of the Approved Project;
- (i) delivery method of the Approved Project;
- (j) Plans and Drawings or Cost Breakdown.

**"Application"** means an application for Funds under clause 3.2 and includes stages of that application

**"Approved Authority"** has the same meaning as in the Act.

**"Approved Project"** means a capital project for which a capital grant has been approved by the Minister under the Act, and as described in Schedule Two.

**"Assigned Right"** means where SAIS BGA assigns a right to the Australian Government.

**"Australian Government"** means the Government of Australia.

**"Block Grant Authority"** has the same meaning as in the Act.

**"Capital Grants Program"** means the Australian Government Capital Grants Program for Non-Government Schools.

**"Capital Expenditure"** has the same meaning as in the Act.

**"Commencement Date"** means the date this agreement is signed by the SAIS BGA or such other date as agreed between the parties.

**"Commitment Date"** means the last day of the Grant year.

**"Completion Date"** means the date at which the Approved Project is completed by or on behalf of the School.

**"Cost Breakdown"** means the cost breakdown for the Approved Project.

**"Department"** means the Australian Government Department of Education, Skills and Employment or such other Australian Government Department or Agency that is responsible from time to time for the administration of the Capital Grants Program and other Government Programs.

**"Designated Use Period"** means the period of time for which the Department considers the Grant is relevant in providing for the purpose of the project.

**"Details"** means the details for the Approved Project contained in the Application subject to any Alteration under clause 13.

**"Equipment"** means any equipment proposed to be acquired with Funds provided under the Capital Grants Program and other Government Programs.

**"Facility"** means any building proposed to be constructed, refurbished, or extended with Funds provided under the Capital Grants Program and other Government Programs.

**"Final Cost"** means the total cost of the Approved Project from commencement to completion.

**"Final Payment"** means the payment of the Retention amount of the Grant.

**"Funds"** means moneys made available by the Australian Government under the Capital Grants Program and other Government Programs for payment to schools which have agreed to be represented by SAIS BGA.

**"Government Programs"** means other capital programs administered by SAIS BGA as introduced by the Australian Government from time to time.

**"Grant"** means the amount set out in Schedule Two or such lesser amount as may be required to complete the Approved Project.

**"Independent Consultant"** means a consultant approved by SAIS BGA who:

- (a) is a South Australian Registered Building Practitioner or registered architect;
- (b) has appropriate skills, experience and qualifications to oversee the Approved Project;
- (c) is not an employee or officer of the Approved Authority or the School;

- (d) is not an employee or officer of any contractors or other persons engaged by the Approved Authority or the School to carry out work on or in connection with the Approved Project; and
- (e) has insurance of a level and type approved by SAIS BGA

**"Minister"** means:

- (a) the Australian Government Minister for Education and Training; or
- (b) such other Australian Government Minister as may be responsible for the administration of the Act; or
- (c) the duly authorised delegate of the Minister.

**"Operating Manual"** means the Capital Grants Program for Non-Government Schools manual, or other Program's manual, as issued by the Department from time to time.

**"Plans and Drawings"** means the plans and/or drawings for the Approved Project.

**"Project"** means a project which is or is to be the subject of an Application.

**"Project Cost"** means the estimated cost of the Approved Project, being the amount set out in Schedule Two.

**"Purpose"** means the purpose of the Approved Project specified in the Details.

**"Recurrent Funding"** means grants for recurrent expenditure as described in the Act.

**"Registered Building Practitioner"** means a registered building practitioner under the Builders Licensing Act (SA) 1986.

**"Retention"** means the amount of a Grant not paid to a School until certain accountability requirements have been met by the School

**"School"** means the school or one of the schools or campus or one of the campuses identified in Schedule One and of the address in Schedule One.

**"School Contribution"** means the minimum contribution to be made by the Approved Authority or the School to the Project Cost, being the amount in Schedule Two.

**"SAIS BGA Guidelines"** means guidelines issued by SAIS BGA or published on the SAIS BGA website from time to time in relation to the Capital Grants Program and other Government Programs.

## 1.2 Interpretation

- (a) This Agreement is governed by and is to be construed in accordance with the laws of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and waives any right to object to proceedings being brought in those courts.
- (b) In this Agreement, a reference to:
  - i) a person includes the successors of that person;
  - ii) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - iii) a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Agreement all of which are deemed part of this Agreement; and
  - iv) writing includes all modes of representing or reproducing words in a legible, permanent and visible form.

- (c) In this Agreement:
  - i) A reference to any legislation shall be construed as including a reference to that legislation as amended from time to time, and any regulations made under the legislation as amended from time to time.
  - ii) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
  - iii) the singular includes the plural and vice versa; and
  - iv) a gender includes the other genders.
- (d) If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (e) If it is not possible to read down a provision as required by clause 1.2(d), that provision may be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.
- (f) This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

## **2 TERM**

This Agreement commences on the Commencement Date and continues until terminated under clause 21.2 or 22, or until replaced by agreement between SAIS BGA and the Approved Authority.

## **3 OBLIGATIONS OF SAIS BGA**

SAIS BGA will:

- 3.1 inform the Approved Authority and/or the School in writing or publish on the SAIS BGA website of:
  - (a) the closing dates it has set for the stages of Applications for Funds at least 21 days before those dates; and
  - (b) the elements of the Capital Grants Program and/or other Government Programs, their associated conditions and the procedures that the Approved Authority must follow in the preparation and submission of any Application to SAIS BGA.
- 3.2 receive from the Approved Authority any Application submitted to it before the dates referred to in clause 3.1 (a) and in accordance with the procedures referred to in clause 3.1 (b).
- 3.3 assess any Application in accordance with SAIS BGA Guidelines, the Operating Manual and the Act.
- 3.4 not disclose and will use solely for the purpose of assessing any Application any information obtained:
  - (a) from the Approved Authority under clause 4.4, except for the purpose of providing that information to the Department in support of the Application; and
  - (b) from the Australian Government under clause 4.7.
- 3.5 inform the Approved Authority or the School in writing whether the Application has been accepted or not accepted by SAIS BGA and where an Application is not accepted, provide the Approved Authority or the School with the reasons for that decision.
- 3.6 where an Application is approved by the Minister, pay the relevant Funds to the Approved Authority or the School on receipt of the same subject to clause 8.

#### 4 OBLIGATIONS OF APPROVED AUTHORITY

The Approved Authority:

- 4.1 will be exclusively represented by SAIS BGA for the purposes of the Capital Grants Program and other Government Programs.
- 4.2 will comply with the administrative processes and procedures of SAIS BGA, including variations to those processes and procedures as may be required from time to time, as set out in the SAIS BGA Guidelines, the Operating Manual and the elements of the Capital Grants Program and other Government Programs, and their associated conditions and the procedures for Applications referred to in clause 3.1(b).
- 4.3 will remain a member of the SAIS BGA for a minimum period of three (3) years, and provide the SAIS BGA and the Department with at least twelve months' notice of its intention to withdraw from the SAIS BGA or join another BGA.
- 4.4 when an Application has been submitted, will provide SAIS BGA with, and authorises SAIS BGA to use, information requested by SAIS BGA in relation to that Application, including, but not limited to:
  - (a) audited financial statements and budgets of the Approved Authority and/or the school;
  - (b) enrolment data of the School;
  - (c) information in relation to the socio-economic characteristics of the School's community.
  - (d) provide such further information as the SAIS BGA may reasonably require from time to time to enable the SAIS BGA to comply with its obligations to the Australian Government, and to provide this information at the times and in the form specified by the SAIS BGA from time to time
- 4.5 will comply with all reasonable requirements of SAIS BGA in relation to the assessment of the Application at least equivalent to that required by the Operating Manual.
- 4.6 authorises SAIS BGA to provide to the Australian Government any information provided by the Approved Authority whether under clause 4.4 or otherwise.
- 4.7 authorises SAIS BGA to obtain from the Australian Government on a confidential basis:
  - (a) any application for Funds, including, but not limited to, any application under the Act, lodged by the Approved Authority within three (3) years preceding the commencement of this Agreement;
  - (b) any questionnaire and any school census data provided by the Approved Authority to the Australian Government;
  - (c) in relation to any Application, any other data and documents held by the Australian Government which may be relevant to the processing by SAIS BGA of the Application.
- 4.8 will allow officers of SAIS BGA and the Australian Government to enter the Approved Authority's and the School's premises at any reasonable hour to inspect the Facility and all documentation associated with or related to an Application.
- 4.9 will pay all costs incurred by the Approved Authority or the School in relation to an Application, including but not limited to the costs of preparation of the Application and will not make any claim against SAIS BGA or the Australian Government in relation to such costs.
- 4.10 agrees to develop and implement an appropriate Facilities (Asset) Management Plan for the School
- 4.11 will pay any fees charged by SAIS BGA to the Approved Authority in relation to an Application.
- 4.12 will not accept any tenders nor enter into any contracts or other commitments in relation to a Project until SAIS BGA or the Australian Government informs the Approved Authority or the School in writing that the Application has been approved by the Australian Government and SAIS BGA has approved the tender process.



- 4.13 acknowledges that, where it or the School accepts any tender or enters into any contract or other commitment in relation to a Project prior to being notified in writing of the approval of the Application and prior to approval of the tender process, SAIS BGA and the Australian Government will be entitled to reject the Application.
- 4.14 acknowledges that the Australian Government will advise relevant Federal Members of Parliament of Approved Projects and that the Minister and those parliamentarians may issue media releases in relation to the Approved Projects.
- 4.15 Agrees that, if it or the School uses the Funds it receives from the SAIS BGA in a manner that is inconsistent with the Act and its Regulation, or the Operating Manual, the SAIS BGA may take whatever action it deems necessary, including the bringing of proceedings against it or the School in order to recover damages caused to the SAIS BGA by the misuse of Funds.

## **5 REVIEW OF DECISION**

Where SAIS BGA does not approve an Application, the Approved Authority may request that SAIS BGA's decision be reviewed as provided for in the SAIS BGA Guidelines.

## **6 PROCEDURE UPON APPROVAL OF APPLICATION FOR GRANT**

Where a Project is approved by the Minister and an offer of a Grant has been made to the Approved Authority, the parties agree that:

- 6.1 SAIS BGA will prepare a document in the form of Schedule Two hereto, which outlines the specific terms of the Grant and submit it to the Approved Authority.
- 6.2 The Approved Authority will sign it and return it to SAIS BGA for countersigning.
- 6.3 Upon signing by both parties, the offer shall be deemed to be made and accepted.
- 6.4 By signing the parties agree that they will be bound by the terms of this Agreement, in respect of the Application and the Grant.
- 6.5 If an Approved Authority applies for and accepts more than one Grant during the term of this Agreement, the provisions of this clause shall be applicable to each such Grant.

## **7 COST OF PROJECT**

Where a Project is approved by the Minister, and an offer of funds has been accepted by the Approved Authority, the Approved Authority agrees that:

- 7.1 it will only spend the Grant on the Approved Project.
- 7.2 it or the School will contribute at a minimum the School Contribution towards the Project Cost.
- 7.3 the contribution to be made by SAIS BGA to the Approved Project is the difference between the Project Cost and the School Contribution, being the amount of the Grant.
- 7.4 SAIS BGA is not obligated to pay the full amount of the Grant where the Final Cost is less than the Project Cost. In such cases, the Grant will be reduced by an amount equal to the difference between the Project Cost and the Final Cost.
- 7.5 SAIS BGA may pay an amount greater than the amount of the Grant to the Approved Authority, subject to Australian Government approval.

## **8 PAYMENT OF GRANT**

- 8.1 SAIS BGA will pay the Grant to the Approved Authority or the School in such instalments and at such frequency as determined by SAIS BGA in its absolute discretion, having regard to the School Contribution and to the cash flow requirements for the Approved Project.

- 8.2 SAIS BGA may require the School to make payment of the School Component (or a portion of it) in relation to the Approved Project prior to payment of the Grant (or any Grant instalment).
- 8.3 In the case of an Approved Project for the purchase of land or buildings, SAIS BGA is not obliged to pay the Grant (or any Grant instalment) to the School unless evidence of the following is provided to SAIS BGA's satisfaction:
- (a) a copy of the relevant contract of sale, signed by the vendor, together with details of any additional costs incurred;
  - (b) evidence that the relevant local government authority has approved the use of the land or buildings or both for purposes of the Approved Project; and
  - (c) evidence that the School intends to, and will continue to receive Commonwealth Recurrent Grants at the site of the Approved Project.
- 8.4 The Approved Authority agrees to meet the full cost of any necessary short-term finance associated with the Approved Project.
- 8.5 SAIS BGA will make the Final Payment to the Approved Authority or School following:
- (a) the provision by the Approved Authority to SAIS BGA of the requirements under clause 16.1; and
  - (b) where required by SAIS BGA, inspection and approval of the Approved Project by an officer of SAIS BGA.
- 8.6 The Approved Authority or School will expend each Grant payment made by SAIS BGA under clause 8.1, including any interest earned on the Grant payment, as soon as possible and, in any event, not later than six (6) months after the receipt of each such payment.
- 8.7 The Approved Authority or School will receipt all Grant instalments into an account with a financial institution such as a bank, building society or credit union operating in Australia and the Approved Authority or School will identify the receipt and expenditure of those monies separately within its accounting records.
- 8.8 The Approved Authority and/or the School shall keep financial documents and records relating to the Approved Project to enable the proper recording of all income and expenditure in relation to the Approved Project, the preparation of financial statements in accordance with Australian Accounting Standards and the audit of those records and documents in accordance with Australian Auditing Standards and practices.
- 8.9 SAIS BGA must suspend all payments to the Approved Authority immediately upon receiving written advice from the Department that it appears reasonably likely, in the Department's opinion, that the Approved Authority is in breach of any of its requirements under the Act or the Regulation. This suspension must remain in place until the Department notifies SAIS BGA that payments may recommence.
- 8.10 The Approved Authority and the School shall accept that if SAIS BGA has not complied with any requirement of the Australian Government in its operation as a BGA, SAIS BGA may delay a payment to the School until such a time as SAIS BGA complies with that requirement.

## **9 CANCELLATION OF GRANT**

SAIS BGA may, in its absolute discretion, cancel or defer the payment of the Grant to the School if the Approved Authority or the School has not by the Commitment Date:

- 9.1 where the Approved Project is for construction or refurbishment works, executed a building contract with a Registered Builder for the construction of those works.
- 9.2 where the Approved Project is for the purchase of furniture or equipment, provided SAIS BGA with evidence satisfactory to SAIS BGA that the furniture or equipment has been received or ordered by the Approved Authority or the School.

- 9.3 where the Approved Project involves the purchase of a building or land:
- (a) signed and exchanged a contract for the purchase of that building or land; and
  - (b) provided evidence satisfactory to SAIS BGA that the relevant local government authority has approved the building or land for use as a school.
- 9.4 where the Approved Project is a master plan, provided SAIS BGA with evidence satisfactory to SAIS BGA that progress, which is satisfactory to SAIS BGA, has been made with the Approved Project.

## **10 TENDERING REQUIREMENTS**

When tendering for any works involved in the Approved Project, the Approved Authority will:

- 10.1 where the Approved Project is for construction or refurbishment works, ensure that tendering procedures that encapsulate the principle of 'public invitation' and that are based on sound building industry practice in accordance with the Australian Standard Code of Tendering AS4120 or any Australian Standard which replaces the Standard are used and documented.
- 10.2 ensure that any tender documentation specifies all tender assessment criteria which will include the tenderers' physical, financial and technical capacity to carry out the work required by a completion date that must be reasonable.
- 10.3 if requested by SAIS BGA, submit the proposed tendering procedures and tender documentation to SAIS BGA for approval prior to calling for tenders.
- 10.4 consult and cooperate with SAIS BGA from time to time as reasonably required by SAIS BGA in relation to the tendering procedures and tender documentation referred to in clause 10.3.
- 10.5 take all reasonable steps to ensure that, to the greatest extent practicable, there is effective competition for the award of contracts for all key elements or components of the Approved Project.
- 10.6 ensure the Independent Consultant assesses all tender submissions for eligibility, quality and value for money, and documents the assessment methodology, criteria and outcome for each tender submission.
- 10.7 where the Approved Project is to be undertaken specifically for an Indigenous Australian community, ensure that at least one member of that community is involved in the evaluation of tenders, except where a conflict of interest would arise.
- 10.8 ensure that employment opportunities for Indigenous Australians are maximized where the Approved Project is to be undertaken specifically for an Indigenous Australian community, or where the Approved Project is to be located in an area likely to provide employment or training opportunities for Indigenous Australians.

## **11 IMPLEMENTATION OF APPROVED PROJECT**

The Approved Authority will ensure that:

- 11.1 where the Approved Project is for construction or refurbishment works, prior to commencement of works, it or the School obtains all planning and building permits necessary for the conduct of the Approved Project.
- 11.2 it or the School engages an Independent Consultant to supervise and oversee the works involved in the Approved Project in accordance with SAIS BGA Guidelines.
- 11.3 it or the School enters into written contracts for the engagement of all contractors or consultants who are to carry out substantial parts of the Approved Project, which:
- (a) clearly state the responsibilities of the parties to the contracts;
  - (b) where the Approved Project is for construction or refurbishment works, are based on standard building industry contracts;

- (c) comply with the requirements contained in The Building Code 2013 and in the Australian Government Building and Construction OHS Accreditation Scheme;
  - (d) are to proceed with the Approved Project by the Commitment Date.
- 11.4 SAIS BGA is informed of any provision under any contract or sub contract entered, or proposed to be entered, which requires the Approved Authority or the School to make an incentive payment to any person involved in the development and construction of the Approved Project and which is designed to reward completion of the project at a cost under budget or ahead of time.
- 11.5 where required by the Builders Licensing Act (SA) 1986, all contractors or consultants are Registered Building Practitioners.
- 11.6 the contract engaging the Independent Consultant:
- (a) is in writing;
  - (b) clearly states the responsibilities of the parties to the contract; and
  - (c) includes the condition that the Independent Consultant will ensure compliance with the terms and conditions of the contracts referred to in clause 11.3.
- 11.7 all claims for payment under the contracts referred to in clause 11.3 are certified for payment by the Independent Consultant.
- 11.8 any time specified for the completion of the Approved Project is reasonable.
- 11.9 the Approved Project is completed to a satisfactory standard and within a reasonable time in accordance with the Details, the contractual requirements and all applicable legislation, building codes, ordinances and by-laws.
- 11.10 the Approved Project complies with any Disability Standards relevant to construction of premises made under the Disability Act 1992 (Cth) from time to time.
- 11.11 where the Approved Project is for construction or refurbishment works, it obtains a certificate of occupancy and/or a certificate of final inspection from a person authorised under the Builders Licensing Act (SA) 1986 to issue such a certificate on completion of the Approved Project.
- 11.12 it or the School keeps records of events, changes to situations or other details which may affect the School or Approved Authority's performance of its obligations.
- 11.13 it or the School implements an effective asset management plan for the Approved Project on its completion.

## **12 PARENTS AND FRIENDS**

The Approved Authority will ensure that:

- 12.1 any parents or friends of the School who are to provide materials or work or services in relation to the Approved Project have the necessary skills and capacity to properly provide those materials or work or services.
- 12.2 where an Approved Project is, or is proposed to be, partly undertaken by parents and friends at rates less than ordinary commercial rates, those cost savings are removed from the Project Cost and the Final Cost.
- 12.3 where clause 12.1 applies, the Independent Consultant supervises the provision of materials and the carrying out of the work or services.

### **13 ALTERATION OF DETAILS**

13.1 Without the prior written approval of SAIS BGA, the Approved Authority will not and will ensure that the School does not:

- (a) make any Alteration to the Details; or
- (b) dismiss or replace any contractor or consultant who is to carry out substantial parts of the Approved Project, including the Independent Consultant; or
- (c) change the scope of the Approved Project, for example (but not limited to) the number, type or area of the proposed facilities

without the prior written approval of SAIS BGA.

13.2 Clause 13.1 applies to all material Alterations to the Details, including, but not limited to, material alterations which do not result in any change to the amount of the Project Cost.

13.3 The Approved Authority acknowledges that, in certain circumstances, SAIS BGA must seek Australian Government approval to Alterations of Approved Projects and that the seeking of this approval may result in delay in SAIS BGA providing its written approval under clause 13.1.

### **14 REPORTING OBLIGATIONS**

The Approved Authority or School will:

14.1 from the start of the Approved Project, provide SAIS BGA with monthly reports and information in relation to the Approved Project in a format specified by the SAIS BGA, or as reasonably requested by SAIS BGA from time to time.

14.2 provide any information or evidence required by SAIS BGA in relation to the progress of the Approved Project and the Approved Authority's compliance with its obligations under this Agreement.

14.3 if there is a material change to the proposed start or finish dates of the Approved Project advise SAIS BGA no later than 48 hours after the change is identified.

14.4 identify any perceived or actual conflict of interest to SAIS BGA at the stage when it first occurs. The Approved Authority, with the possible assistance of SAIS BGA, must then ensure that the conflict is resolved with written advice to SAIS BGA on the nature of the conflict and how it has been resolved.

### **15 INSPECTION OF APPROVED PROJECT**

The Approved Authority will allow and will ensure that the School allows officers of SAIS BGA and of the Australian Government to enter the School's premises at any reasonable hour to:

15.1 inspect the Approved Project and all documentation associated with or related to the Approved Project, including any documentation prepared or held by the consultants, including, but not limited to, the Independent Consultant, architect, project manager, construction manager, engineer, quantity surveyor or major contractors such as a Registered Building Practitioner, engaged by the Approved Authority or the School for the Approved Project.

15.2 take copies of the material referred to in clause 15.1

### **16 COMPLETION OF APPROVED PROJECT**

16.1 Within three (3) months of the Completion Date of the Approved Project, the Approved Authority or the School will provide to SAIS BGA a certificate executed by the Independent Consultant in the format provided by SAIS BGA. On receipt of a satisfactory certificate SAIS BGA will make the Final Payment.

16.2 Within two (2) months of receipt of the Final Payment the Approved Authority will provide a certificate in a format provided by SAIS BGA, and executed by an independent accountant as defined by SAIS BGA, certifying Grant receipts and expenditure on the Approved Project and other information.

- 16.3 The Approved Authority or School must retain records required by clauses 8.8 and 15.1 for at least the greater of seven (7) years or the Designated Use Period

## **17 INSURANCE**

The Approved Authority will ensure that it or the School:

- 17.1 holds adequate insurance coverage over existing buildings and facilities, and provide evidence to SAIS BGA on request.
- 17.2 insures the Approved Project against all normal risks for an amount not less than its full reinstatement value for the Designated Use Period or such other longer period as advised in writing by SAIS BGA and will provide SAIS BGA with copies of the policy and certificates of currency, on request by SAIS BGA.

## **18 ACKNOWLEDGMENT OF AUSTRALIAN GOVERNMENT ASSISTANCE**

The Approved Authority acknowledges that the Australian Government reserves the right to publicise and report on the Grants provided to the School, including the amount given to the School and the description of the Approved Project, and will ensure that it and the School acknowledge the Grant in accordance with the Operating Manual requirements current at the completion of an Approved Project, including, but not limited to:

- 18.1 acknowledging Australian Government funding in all announcements and other publicity in relation to the Approved Project.
- 18.2 advising school communities directly about assistance from the Australian Government by such means as school newsletters.
- 18.3 arranging an official opening ceremony within six (6) months of the physical completion of the Approved Project where the Australian Government has contributed funding of \$100,000 or more, unless otherwise agreed by the Australian Government.
- 18.4 inviting the Minister or the Minister's representative to speak at the opening ceremony and, where the Australian Government has contributed more than fifty per cent of the total project cost, to officially open the Approved Project.
- 18.5 advising the Department of three (3) proposed dates that are Parliamentary non-sitting days for an official opening ceremony at least two (2) months prior to the first proposed date for the ceremony.
- 18.6 affixing a plaque to any new or refurbished building acknowledging Australian Government funding of the Approved Project. Where a facility is opened by an Australian Government representative, the name of the person opening the facility should be included on the plaque.

## **19 REPAYMENT OF GRANT**

- 19.1 The Approved Authority acknowledges that the Approved Project is to be used to provide school level educational services for the locations, levels of education and students described in the approved Purpose.
- 19.2 If any act or event occurs which may lead to the winding up of the School or the appointment of a receiver or receiver and manager to the School, the Approved Authority will immediately give notice to SAIS BGA of such an act or event.
- 19.3 The Approved Authority will give SAIS BGA not less than three (3) months' notice in writing of any intention on its part or on the part of the School to:
- (a) cease to use the Approved Project for the Purpose; or
  - (b) sell or otherwise dispose of the Approved Project.

- 19.4 The Approved Authority must repay the whole or any part of the grant as determined by SAIS BGA to SAIS BGA if:
- (a) the Approved Authority does not comply with a condition attached to the Grant, and any additional conditions required by SAIS BGA including but not limited to those issued to SAIS BGA by way of written directions of the Minister under section 30 of the Regulation;
  - (b) the Approved Authority is not, or is no longer, approved by the Department under the Act; or
  - (c) the School for which the Approved Authority is approved has not obtained, or has had revoked, registration as a school.
- 19.5 In the case of an Approved Project with a Grant greater than \$75,000, the Approved Authority acknowledges and agrees that the Australian Government through the SAIS BGA has the right to claim repayment of the Grant or any part of the Grant from the Approved Authority or the School or both where the School ceases to use the Facility for the Purpose or sells or otherwise disposes of the Facility within the Designated Use Period as defined in the Operating Manual.
- 19.6 The amount of the Grant to be repaid will be the full amount up to half way through the Designated Use Period, and then reduced by equal proportions of the total amount over the remaining period.
- 19.7 Where a significant part of the grant is for equipment that may have a shorter effective life, the Approved Authority may seek a modified repayment arrangement through SAIS BGA to the Department.
- 19.8 Where repayment of the Grant is required, the Approved Authority acknowledges and agrees that the amount will be payable within a period of thirty (30) days of the date of issue of an invoice by SAIS BGA, or some other period as may be determined by SAIS BGA, and that interest may be payable on the amount if not repaid within the period.
- 19.9 The Approved Authority and/or the School will identify the Grant as a contingent liability in its books of account during the application of any of the periods referred to in clause 19.4.

## **20 SPECIAL CONDITIONS**

- 20.1 Where the Approved Project is for construction or refurbishment of a facility located on land that is not owned by the Approved Authority or the School, the Approved Authority will:
- (a) ensure that a formal lease exists providing for a period of tenancy commensurate with the Designated Use Period, and;
  - (b) if requested by the SAIS BGA, obtain the execution of a Deed of Guarantee from the registered proprietor of the land on which the facility is to be constructed or refurbished.
- 20.2 The Approved Authority will comply and will ensure the School complies with any other special conditions including, but not limited to, those set out in Schedule Two, and those issued to the SAIS BGA by way of written directions of the Minister under section 30 of the Regulation the Act.

## **21 BREACH**

If the Approved Authority or the School breaches any of the provisions of this Agreement, the Act, the Operating Manual or the SAIS BGA Guidelines, SAIS BGA may, at its discretion and without prejudice to any other remedies it may have:

- 21.1 notify the Approved Authority that it requires the Approved Authority to rectify the breach within the period specified in the notice; and
- 21.2 where the Approved Authority does not rectify the breach within the period specified in the notice under clause 21.1 or SAIS BGA does not consider that the breach is capable of remedy, SAIS BGA may take any (or any combination) of the following actions:
- (a) terminate this Agreement on such notice as SAIS BGA considers appropriate; or
  - (b) suspend or delay the making of payments or refuse to make any further payments to the School under this Agreement; or

- (c) suspend or delay the making of payments, or reduce the amount to be paid, or refuse to make any further payments to the Approved Authority or the School under any other agreement under which the Approved Authority or the School was to be provided with funds under the Capital Grants Program or other Government Programs; or
- (d) impose a pecuniary penalty on the Approved Authority or the School of an amount determined by SAIS BGA but not greater than the total of the amounts received by the Approved Authority and/or the School under all agreements under which the Approved Authority and/or the School has been provided with funds under the Capital Grants Program or other Government Programs; or
- (e) inform the Approved Authority that it will not accept any Applications from the Approved Authority or the School under this Agreement for the period determined by SAIS BGA and notified to the Approved Authority in writing; or
- (f) require the Approved Authority to repay to SAIS BGA the whole or any part of the Grant within the period specified in the notice; or
- (g) take any other action which SAIS BGA considers appropriate in all the circumstances or is required of SAIS BGA by the Australian Government.

The Approved Authority acknowledges that SAIS BGA may notify the Australian Government of any breach and that a consequence of such notification may be the suspension of the Approved Authority's Recurrent Grant Funding.

## 22 TERMINATION

22.1 This Agreement will terminate immediately:

- (a) on cancellation of the registration of the School; or
- (b) if the Approved Authority commits an act of insolvency or enters into a scheme of arrangement or composition with creditors or a liquidator, receiver, administrator or controller of the Approved Authority or of any of its assets is appointed; or
- (c) the Minister's approval of SAIS BGA under the Act is withdrawn.

22.2 This Agreement may terminate immediately if the School's constitution is varied by amendment, removal, or addition of a provision that disqualifies the School from classification as a non-profit entity and allows it to be conducted for profit.

22.3 The provisions of clauses 17, 19, 21, and 25.10 will continue in full force and effect despite any termination of this Agreement.

22.4 Subject to clauses 4.3 and 22.5, either party may terminate this Agreement by providing 12 months' notice in writing to the other party at any time after the second anniversary of the most recent Commencement Date.

22.5 Where the Approved Authority or the School has accepted Funds from SAIS BGA for an Approved Project, the Approved Authority may only terminate this Agreement under clause 22.4 if:

- (a) all Approved Projects have been completed and acquitted, and the requirements of clauses 16 and 18 have been met; and
- (b) the Approved Authority, if wishing to transfer to another BGA, has the approval of the Australian Government to the transfer, and enters into an agreement by which this Agreement is novated to the other BGA, and the other BGA advises the Australian Government that it has agreed to accept the novation.

22.6 On termination of this Agreement, any part of a Grant paid to the Approved Authority or the School under this Agreement and held by Approved Authority or the School at the date of termination must be returned to SAIS BGA within seven (7) days.



## **23 ASSIGNMENT**

- 23.1 The Approved Authority must not sell, transfer, delegate, assign, licence, mortgage, charge or otherwise encumber any right or obligation under this Agreement to any person without the prior written consent of SAIS BGA which may be given by SAIS BGA on such terms and conditions as SAIS BGA considers appropriate.
- 23.2 The Approved Authority acknowledges and agrees that:
- (a) SAIS BGA may assign some or all of its rights under this Agreement, including the right to recover all or a portion of the Grant from the Approved Authority.
  - (b) where SAIS BGA assigns a right to the Australian Government (the 'Assigned Right'), the Australian Government may exercise the Assigned Right and enforce the Assigned Right directly against the Approved Authority, in the name of the Australian Government, as SAIS BGA's assignee.
  - (c) without limiting clause 23.2 (b), the Australian Government may institute legal proceedings directly against the Approved Authority in order to enforce the Assigned Right.

## **24 CHANGES IN CIRCUMSTANCES**

The Approved Authority or School must notify SAIS BGA in writing if the Approved Authority or School becomes aware of any of the following circumstances occurring:

- 24.1 immediately, if those circumstances are set out in clauses 19.2, 22.1(a) and 22.2
- 24.2 within seven (7) days where Grant instalments are being paid by direct debit to a financial institution - any change to the account name, branch code number or account number at that institution.

## **25 GENERAL**

### **25.1 Amendment**

This Agreement may only be varied or replaced by a document duly executed by the parties.

### **25.2 Entire Understanding**

This Agreement, the Operating Manual, the Act and the SAIS BGA Guidelines contain the entire understanding between the parties as to the subject matter contained in them. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **25.3 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

### **25.4 Legal Costs and Expenses**

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

### **25.5 Notices**

- (a) All notices to be given to or demands to be made upon any party to this Agreement must be in writing and may be delivered in person or sent by mail, email or facsimile to the current address of the party.
- (b) All notices are deemed served five (5) business days after the date of posting, or if delivered personally on the actual date of receipt, or if sent by email or facsimile in the normal course of transmission.

## 25.6 Warranties

The Approved Authority warrants that:

- (a) it meets the eligibility requirements for the Funding as set out in the Operating Manual; and
- (b) all the information it or the School provides to SAIS BGA as part of its Applications is true, accurate and complete; and
- (c) its constitution is not inconsistent with this Agreement; and
- (d) it will disclose everything to SAIS BGA which may be material to the recommendation by SAIS BGA to the Australian Government to approve the Application and provide the Grant; and
- (e) the person executing this Agreement has the authority to bind the Approved Authority to the terms and conditions of this Agreement.

## 25.7 Legal Advice

The Approved Authority acknowledges that:

- (a) it understands the terms and effect of this Agreement;
- (b) it has been given the opportunity to receive legal advice in relation to this Agreement; and
- (c) the provision of any false or misleading data or other information required to be given pursuant to the Agreement, the Operating Manual or the Act is a serious offence under section 137.1 of the Commonwealth Criminal Code.

## 25.8 No Merger

The provisions of this Agreement and the warranties, conditions, indemnities, covenants and undertakings contained in this Agreement which are of a continuing nature or which are not fully satisfied or discharged, will endure in favour of the other party and continue to subsist and remain in full force and effect for as long as may be necessary.

## 25.9 Waivers

Any right conferred by this Agreement on the parties is additional and without prejudice to all other rights and remedies available to them. No exercise or lack of exercise of a right constitutes a waiver by the parties of any other right or remedy. Failure or omission by a party at any time and from time to time to enforce or require the strict compliance with a provision of this Agreement does not affect or impair that provision in any way or the rights of the party to avail itself of such remedies as it may have in respect of any breach of that provision.

## 25.10 Repayments

Any amount owed by the Approved Authority or the School to SAIS BGA under this Agreement will, without prejudice to any other rights available to SAIS BGA under this Agreement or at law or in equity, be recoverable by SAIS BGA as a debt due to SAIS BGA by the Approved Authority or the School, without further proof of the debt by SAIS BGA being necessary.

**EXECUTED** as an agreement.

**SIGNED** for and on behalf of

**SA INDEPENDENT SCHOOLS BLOCK GRANT AUTHORITY INC**  
by an authorised officer and in the presence of:

.....  
Witness (Signature)

.....  
Authorised Officer (Signature)

.....  
Name of Witness (print)

.....  
Name of Authorised Officer (print)

.....  
**EXECUTIVE OFFICER**  
.....  
Position Held (print)

**SIGNED** for and on behalf of **Name of Approved Authority** and in the presence of:

.....  
Witness (Signature)

.....  
Authorised Officer (Signature)

.....  
Name of Witness (print)

.....  
Name of Authorised Officer (print)

.....  
Position Held (print)

SCHEDULE ONE

School(s) and Campus(es) covered by this Agreement:

**Name of School**

**Address**