

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

QUESTIONS ON NOTICE

PRIMARY SCHOOLS FOR THE 21ST CENTURY PROGRAM

Outcome:

DEEWR Question No. 4

Senator Mason asked on 22 June 2010, EEWR Proof Hansard page 47-48.

Question

The committee would be delighted to have copies—because I cannot find them—of the bilateral agreement on the Nation Building and Jobs Plan and the funding agreement. Can we have copies of those?

Answer

Attachment A provides an example of the Bilateral Agreement on the Nation Building and Jobs Plan executed with the state and territory education departments and Attachment B, an example of the Funding Agreement with the Block Grant Authorities.

Bilateral Agreement on the Nation Building and Jobs Plan
with State and Territory Education Departments

BILATERAL AGREEMENT ON THE NATION BUILDING AND JOBS PLAN




An agreement between

the **Commonwealth of Australia** as represented by
the Department of Education, Employment and
Workplace Relations
(the **Commonwealth**)

and

 as represented by the 

Through this Agreement the Commonwealth will fund  to deliver timely economic stimulus through building prosperity for the future and supporting jobs in its jurisdiction.

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Bilateral Agreement on the Nation Building and Jobs Plan

INTERGOVERNMENTAL AGREEMENT

Parties Commonwealth of Australia as represented by the Department of Education, Employment and Workplace Relations of 16-18 Mort Street, Braddon in the Australian Capital Territory

[REDACTED] as represented by the [REDACTED]

of [REDACTED]
[REDACTED]

PART 1- PRELIMINARIES

This Agreement is established pursuant to the National Partnership Agreement on the Nation Building and Jobs Plan: Building Prosperity for the Future and Supporting Jobs Now. In entering into this Agreement, the parties recognise that they have a mutual interest in implementing the National Partnership Agreement and need to work together to:

1. provide economic stimulus through the rapid construction and refurbishment of school infrastructure and;
2. build learning environments to help children, families and communities participate in activities that will support achievement, develop learning potential and bring communities together.

The Commonwealth provides funding to the States and Territories to help them achieve the objectives of the Building the Education Revolution Program.

You are committed to achieving the aim of the Program through achieving the Outcomes and Outputs.

The Commonwealth agrees to support this commitment by providing Funding to You, subject to the terms and conditions of this Agreement.

It is Agreed

PART 2 - FORMALITIES

2.1 Term of the Agreement

This Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on the Completion Date.

2.2 Delegations

1. The Minister for Education is authorised under the National Partnership Agreement to approve this Agreement.
2. The [REDACTED] Minister with responsibility for Education is authorised under the National Partnership Agreement to enter into this Agreement to achieve the Outcomes and Outputs related to the BER Program on behalf of [REDACTED].

2.3 Guidelines

1. The Guidelines form part of this Agreement.
2. The Commonwealth may amend the Guidelines during the term of the agreement.
3. The Commonwealth will provide You with an opportunity to make any representations to the Commonwealth about the proposed amendments to the Guidelines.
4. The Commonwealth will publish any updates of the Guidelines as they are made from time to time.

2.4 Interpretation

1. Unless otherwise specified, in this Agreement:
 - (a) [REDACTED] means [REDACTED];
 - (b) 'ABN' has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;
 - (c) 'Agreement' means this document, including any schedule or annexure to it;
 - (d) 'Agreement Period' means:
 - (i) the period between the Date of this Agreement and the Completion Date; or
 - (ii) if this Agreement is terminated before the completion date, the period ending on the day on which the Agreement terminates;
 - (e) 'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office;
 - (f) 'Australian Accounting Standards' refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

- (g) 'Australian Auditing Standards' refers to the standards prepared by the Australian Auditing and Assurance Standards Board (on behalf of CPA Australia and the Institute of Chartered Accountants in Australia) and generally accepted audit practices to the extent they are not inconsistent with those standards;
- (h) 'Author' means a person who is an author of any Program Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights);
- (i) 'BER Program' means the Building the Education Revolution Program as described in the National Partnership Agreement and the Guidelines;
- (j) 'BER Program Element' means the three elements of the BER Program as described in Clause D2 of Schedule D of the National Partnership Agreement;
- (k) 'Block Grant Authority' has the meaning given in section 4 of the Schools Assistance Act 2008;
- (l) 'Building the Education Revolution National Co-ordinator' means the senior Commonwealth official in the Department of Education, Employment and Workplace Relations nominated as the National Co-ordinator;
- (m) 'COAG' means Council of Australian Governments;
- (n) 'Commonwealth' means the Commonwealth of Australia;
- (o) 'Completion Date' means 31 December 2012;
- (p) 'Date of this Agreement' means the date written on the signature page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last party to do so;
- (q) 'Department' means the Commonwealth Department of Education, Employment and Workplace Relations or such other Commonwealth Department or Agency which may have responsibility for the administration of the BER Program from time to time.
- (r) 'Design Templates' means standard configurations and templates for building designs of libraries, multipurpose halls or classrooms or other school infrastructure.
- (s) 'Electronic Communication' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*;
- (t) 'Funding' or 'Funds' means the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in item A of Schedule 2, including interest earned on that amount;
- (u) 'GST' has the same meaning as it has in section 195-1 of the *GST Act*;
- (v) 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999*;
- (w) 'Guidelines' refers to the guidelines for the BER Program, as may be amended by the Commonwealth from time to time;
- (x) 'Intellectual Property Rights' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service

marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

- (y) 'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis;
- (z) 'Material' includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;
- (aa) 'National Partnership Agreement' means the National Partnership Agreement on the Nation Building and Jobs Plan dated 5 February 2009 between the Commonwealth of Australia and the States and Territories, being the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, which expires on 31 December 2012;
- (bb) 'Outcomes' means the COAG agreed outcomes contained in the National Partnership Agreement;
- (cc) 'Output' means the COAG agreed outputs contained in the National Partnership Agreement;
- (dd) 'Performance Benchmark' means the expected level of ██████ achievement against the agreed Outputs and Performance Indicators referred to in Item B of Schedule 1 and set out in the Guidelines;
- (ee) 'Performance Indicator' means the COAG agreed performance indicators contained in the National Partnership Agreement;
- (ff) 'Primary School' means a school that is delivering a level of primary education as determined by the Minister under the *Schools Assistance Act 2008*.
- (gg) 'Program' means the BER Program;
- (hh) 'Program Delegate' means the person for the time being performing the duties of the office of the Commonwealth specified in Item B of Schedule 2 or any other person specified by the Secretary and notified in writing to You;
- (ii) 'Program Material' means any Material produced by, or for, You in carrying out Your obligations under this Agreement;
- (jj) 'Records' includes documents, information and data stored by any means and all copies and extracts of the same;
- (kk) 'Report' means Program Material that is provided to the Commonwealth for reporting purposes on matters, including the use of the Funding, whether or not Outcomes, Outputs and Performance Benchmarks have been achieved, progress reports and evaluations of the achievement of the Outcomes, Outputs and Performance Benchmarks or obligations under this Agreement, as stipulated in the Guidelines
- (ll) 'Schools' means government schools receiving funding under the BER Program.
- (mm) 'Secretary' means a person for the time being performing the duties of the office of Secretary to the Department of Education, Employment and Workplace Relations

and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this Agreement;

- (nn) 'Specified Acts' means any of the following acts or omissions:
- (i) using, reproducing, adapting or exploiting all or any part of the Program Material or Design Templates, with or without attribution of authorship;
 - (ii) supplementing the Program Material or Design Templates with any other Material;
 - (iii) using the Program Material or Design Templates in a different context to that originally envisaged; or
 - (iv) but does not include false attribution of authorship;
- (oo) 'You' and 'Your' means [REDACTED] and includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors;
- (pp) 'Your Delegate' means the person for the time being representing You in relation to the achieving the Deliverables and Performance Benchmarks specified in item F of Schedule 1 or any other person specified by You and notified in writing to the Program Delegate.

2. In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include the other gender;
- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision; and
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- (i) the schedules (and annexures and documents incorporated by reference, if any) form part of this Agreement.
- (j) to the extent that there is an inconsistency between a provision in any of the documents specified in subclause (ii) below and another provision in any of them or between a provision in any of those documents and a provision in any other document referred to in any of them:
 - (i) a specific provision takes precedence over a general provision; and

- (ii) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
 - (1) the [REDACTED];
 - (2) the National Partnership Agreement;
 - (3) this Agreement;
 - (4) the Guidelines; and
- (k) the documents comprising this Agreement must be read in the following order of precedence:
 - (i) the clauses in the body of this Agreement; then
 - (ii) the paragraphs in the body of the schedules.

PART 3 – IMPLEMENTATION AND DELIVERY OF THE PROGRAM

3.1 The Program

1. You must carry out your role under the Program:
 - (a) at the times and in the manner specified in Item A of Schedule 1;
 - (b) in accordance with this Agreement and the Guidelines; and
 - (c) before the Completion Date of this Agreement
2. The Funding must be expended by You only for the purpose of the Program.
3. You may use the administrative expenditure amount set out at Item A of Schedule 2 to cover administrative costs associated with:
 - (a) running the application and assessment process; and
 - (b) administration associated with the Program (including reporting to the Commonwealth).
4. In performing their obligations under this Agreement the parties must:
 - (a) act diligently, effectively and to a high professional standard; and
 - (b) not act in a way that may bring the Program into disrepute.
5. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
6. You are fully responsible for all ongoing recurrent costs and maintenance of any new and refurbished infrastructure that is built or refurbished under the Program.
7. You must maintain Your current and planned level of investment for capital infrastructure in schools over the next four years, spending it concurrently with BER funding on school infrastructure.

8. You must ensure that, for projects funded under this agreement, Your schools use their best endeavours to give priority in contracting and tendering arrangements to businesses that have a demonstrated commitment to adding or retaining trainees and apprentices.
9. You must ensure that Your Primary Schools make their libraries and multipurpose halls, available for community access on terms as set out in the guidelines.
10. You must ensure that projects funded under this agreement comply with any Disability Standards relevant to construction of premises made under the *Disability Discrimination Act 1992* from time to time.
11. You are fully responsible for the performance of Your obligations under this Agreement, even if You subcontract some or all of Your obligations.

3.2 Liaison and Monitoring

1. You must:
 - (a) liaise with and provide information to the Program Delegate, or a person nominated by the Program Delegate, as reasonably required by the Program Delegate; and
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Program Delegate.

3.3 Acknowledgment and Publicity

1. You must acknowledge the financial and other support You have received from the Commonwealth in accordance with the Guidelines.
2. You must accept and adhere to required branding and recognition of all projects funded under this Agreement, as determined by the Commonwealth.
3. You must ensure that Your Schools adhere to required branding and recognition of all projects funded under this Agreement, as determined by the Commonwealth.
4. The Commonwealth reserves the right to publicise and report on the Funding provided to You including the amount given to You and the description of the Funding.

PART 4- REPORTING AND PERFORMANCE BENCHMARKS

4.1 Reporting

1. You must:
 - (a) provide Reports to the Commonwealth at the times and in the manner stated in Item D of Schedule 1 of Your progress in achieving the Outcomes, Outputs and Performance Benchmarks;
 - (b) be audited annually by the [REDACTED] Auditor-General or their authorised representative in relation to the Funding and provide the Commonwealth with a copy of the report of such audit; and
 - (c) at the times stated in item D of Schedule 1 deliver to the Commonwealth a:
 - (i) detailed statement of income and expenditure for the Funding for the previous financial year, which must include a definitive statement as to

whether the financial accounts are true and fair, which must include a statement identifying each school you have made funding payments to in the relevant previous financial year, including the amount of funding paid by you to each school, and the balance of the Funds held by You; and

- (ii) statement that the Funding was expended for the purpose of achieving the Deliverables and Performance Benchmarks and in accordance with this Agreement.

- 2. The statements referred to in subclauses 1(c)(i) and 1(c)(ii) must be certified by:
 - (a) Your chief executive officer; and
 - (b) the senior executive officer employed by You who has primary responsibility for managing Your audit functions.

PART 5– FINANCIAL ARRANGEMENTS

5.1 Funding

- 1. Subject to sufficient funds being available for the Program, and compliance by You with this Agreement the Commonwealth will provide You with the Funding in the manner specified in Item A of Schedule 2.
- 2. The Schedules may be updated by Us at any time during the term of this Agreement including to add BER Program Elements.
- 3. Without limiting the Commonwealth's rights, the Commonwealth may withhold or suspend any payment in whole or in part if:
 - (a) You have not performed Your obligations under this Agreement; or
 - (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with the Commonwealth.
- 4. If the Commonwealth exercises its rights under subclause 5.1 3, You must continue to perform Your obligations under this Agreement, unless the Commonwealth agrees otherwise in writing.

5.2 Payment schedule

- 1. The Commonwealth will make payments to You in accordance with the schedule specified in Item A of Schedule 2.

5.3 Management of Funding

- 1. You must identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 2. You must keep financial Records relating to this Agreement to enable:
 - (a) all income and expenditure relating to this Agreement to be identified in Your accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and

- (c) the audit of those Records in accordance with Australian Auditing Standards.

5.4 Repayment of Funding

1. If:
 - (a) at any time, an overpayment or mistaken payment occurs, including where an invoice is found to have been incorrectly rendered after payment; or
 - (b) at the Completion Date (or if this Agreement is terminated earlier, the date of termination) some or all of the Funding has not been:
 - (i) spent in accordance with this Agreement; or
 - (ii) acquitted to the Commonwealth's satisfaction,

then this amount must be repaid to the Commonwealth within 20 business days of a written notice from the Commonwealth, or dealt with as directed in writing by the Commonwealth.
2. An overpayment or mistaken payment may be recovered from You, including by offsetting that overpayment or mistaken payment against any amount subsequently due to You under this Agreement or any other arrangement between You and the Commonwealth generally.
3. If an overpayment or mistaken payment is not repaid to the Commonwealth, Interest is payable on the amount after the expiry of the 20 business days notice referred to in subclause 1, until the amount is paid in full.
4. Any amount owed to the Commonwealth under subclause 1 and any Interest owed under subclause 3, is recoverable by the Commonwealth as a debt due to the Commonwealth by You without further proof of the debt by the Commonwealth.

5.5 Payments to Block Grant Authorities

1. You must:
 - (a) pay to a Block Grant Authority any amount of Funding paid to You for that body in accordance with subclause 4, this Agreement and the Guidelines; and
 - (b) when making the payment in subclause 1(a), describe the amount to be paid to the Block Grant Authority as a payment made out of money paid to You by the Commonwealth.
2. The Commonwealth will, as soon as practicable before the payment date, advise You of the expected date of any payment to You of an amount of the Funding for the Block Grant Authority.
3. When making a payment of the Funding, the Commonwealth will advise You that the relevant Block Grant Authority has entered into an appropriate agreement with the Commonwealth.
4. You must pay to a Block Grant Authority each amount of the Funding paid to You for that body within 7 Working Days of the date You receive the payment.

5. You must provide information about when a payment was made to a Block Grant Authority when requested to do so by the Commonwealth.
6. If You do not fulfil a condition contained in subclause 1 within the time stated in subclause 4 or such further period as the Commonwealth allows:
 - (a) you must, if the Commonwealth so determines, pay to the Commonwealth the amount (being not more than the amount payable to the relevant Block Grant Authority for the BER Program) determined by the Commonwealth; and
 - (b) the Commonwealth may delay making any further payments of Funding to You.

PART 6- INFORMATION HANDLING AND INTELLECTUAL PROPERTY

6.1 Program Material

1. Subject to this clause 6.1, You own the Program Material and the Intellectual Property Rights in Program Material immediately on their creation.
2. You must grant to the Commonwealth (or arrange for the grant to the Commonwealth of) a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Reports for any purpose.
3. You must grant to the Commonwealth, any State or Territory or Block Grant Authority a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Design Templates for the purpose of the Program.
4. If you are an Author (either the sole or a joint Author) of any Design Template, You consent to the performance of the Specified Acts by the Commonwealth, a State or Territory or Block Grant Authority or any person licensed by the Commonwealth, a State or Territory or Block Grant Authority to use, reproduce, adapt and exploit that Design Template.
5. You agree:
 - (a) if requested by the Commonwealth, to obtain from each Author (other than You) of any Design Template a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by the Commonwealth or any person licensed by the Commonwealth to use, reproduce, adapt and exploit that Design Template.
 - (b) upon request, to provide the executed original of each consent to the Commonwealth.
6. You must comply with any request that the Commonwealth makes of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 6.1.
7. You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Program Material and the Design Templates in accordance with this clause 6.1
8. If requested by the Commonwealth, You must provide the Commonwealth with a copy of the Program Material in the form requested by the Commonwealth.

6.2 Disclosure of Information

1. The parties agree not to make publicly available information provided by You under this Agreement in a way that identifies a student or that contravenes Commonwealth or State legislation or is identified by either party as confidential.
2. The obligations on the parties under clause 6.2 will not be breached if information:
 - (a) is disclosed by the Commonwealth to the responsible Minister;
 - (b) is disclosed by You to the responsible [REDACTED] Minister;
 - (c) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is disclosed by You, in response to a request by a House or a Committee of the Parliament of [REDACTED];
 - (e) is authorised or required by law to be disclosed; or
 - (f) is in the public domain otherwise than due to a breach of this clause 6.2.

6.3 Records

1. You must make full and accurate Records of the conduct of this Agreement, including the achievement of the Outcomes and Outputs and progress against the Performance Benchmarks, the receipt and use of Funding (in accordance with Australian Accounting Standards), compliance with your obligations in relation to compliance with the *National Code of Practice for the Construction Industry* and the *Australian Government Implementation Guidelines (revised September 2005, reissued June 2006)* and the creation of Intellectual Property Rights in Program Material.
2. Records must be retained by You for 7 years after the end of the Agreement Period.

6.4 Access to Premises and Records

1. You must allow the Auditor General, the Program Delegate or a member of an Investigations Branch of the Department, a person occupying a position in the Office of the Australian Building and Construction Commissioner and any person authorised in writing by the Secretary, with such help as the person requires:
 - (a) to have full and free access, at all reasonable times after giving reasonable notice to You, to Your accounts, Records and documents relating to information that You are required under this agreement to give to the Minister, including the Records referred to in clause 6.3; and
 - (b) to take extracts from, or make copies of, the Material referred to in subclause 6.4 1(a).

PART 7- GOVERNANCE ARRANGEMENTS

7.1 Dispute resolution

1. Either party may give notice to the other party of a dispute under this Agreement.

2. Your Delegate and the Program Delegate will attempt to resolve any dispute in the first instance.
3. If a dispute cannot be resolved between Your Delegate and the Program Delegate, it may be escalated to the Commonwealth Minister for Education, Employment and Workplace Relations and [REDACTED] for consideration.
4. If a dispute cannot be resolved by the Ministers, then the relevant dispute resolution clauses of the National Partnership Agreement apply.

7.2 Termination and Reduction

1. If either party terminates their participation in the National Partnership Agreement, this Agreement will automatically terminate from the effective date of the termination of their participation in the National Partnership Agreement.
2. The Commonwealth may, at any time by written notice to You, terminate this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope the Commonwealth will only be liable for:
 - (a) payments under the payment provisions of this Agreement that were due before the effective date of termination or the date of the notice of reduction of scope given pursuant to subclause 3; and
 - (b) subject to subclauses 5 and 6, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement.
3. The Commonwealth may immediately terminate this Agreement by giving written notice to You of the termination if You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and You do not rectify the failure or breach within 10 business days of receiving a notice in writing from the Commonwealth to do so.
4. Upon receipt of a notice of termination or reduction in scope You must:
 - (a) stop work as specified in the notice;
 - (b) provide the Commonwealth with a report in accordance with any reasonable request by the Commonwealth;
 - (c) take all available steps to minimise loss resulting from that termination and to protect Program Material; and
 - (d) continue work on any part of the Program not affected by the notice.
5. If there is a reduction in scope of the obligations under this Agreement, the Commonwealth's liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.
6. The Commonwealth will not be liable to pay compensation for termination or reduction in scope under this clause 7.2 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

7.3 Insurance

1. You must, for as long as any obligations remain in connection with this Agreement, maintain appropriate workers compensation and public liability insurance. The Commonwealth acknowledges that You may self insure.
2. When requested, You must provide the Commonwealth, within 10 business days of the request, with evidence satisfactory to the Commonwealth that You have complied with Your obligation to insure.

7.4 Indemnity

1. You agree to indemnify the Commonwealth against any:
 - (a) loss or liability incurred by the Commonwealth;
 - (b) loss of or damage to the Commonwealth's property; or
 - (c) loss or expense incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (d) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - (e) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
 - (f) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
 - (g) the use by the Commonwealth of the Program Material or Design Templates, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Program Material or Design Templates.
2. Your liability to indemnify the Commonwealth under this clause 7.4 will be reduced proportionately to the extent that any fault on the Commonwealth's part contributed to the relevant loss, damage, expense, or liability.
3. The Commonwealth's right to be indemnified under this clause 7.4 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
4. In this clause 7.4, "fault" means any negligent or unlawful act or omission or wilful misconduct.

7.5 Negation of Employment, Partnership and Agency

1. You will not, by virtue of this Agreement, be or for any purpose be deemed to be the Commonwealth's employees, partners or agents.

2. You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being the Commonwealth's employees, partners or agents.

7.6 Entire Agreement, Variation and Severance

1. This Agreement records the entire agreement between the parties in relation to its subject matter.
2. Except for action the Commonwealth is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.
3. If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

7.7 Waiver

1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
3. A waiver is not effective unless it is in writing.
4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

7.8 Assignment and Novation

1. You must not assign Your rights under this Agreement without prior written approval from the Commonwealth.
2. You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.

7.9 Compliance With Laws and Commonwealth Policies

1. You must, in carrying out Your obligations under this Agreement, comply with:
 - (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - (b) any Commonwealth policies notified by the Commonwealth or the Commonwealth to You in writing,

including those listed in item E of Schedule 1.

7.10 Applicable Law and Jurisdiction

1. The laws of the Australian Capital Territory apply to the interpretation of this Agreement.
2. The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

7.11 Notices

1. A party giving notice under this Agreement must do so in writing or by Electronic Communication:
 - (a) if given by You, marked for the attention of the Program Delegate specified in item B of Schedule 2; or
 - (b) if given by the Commonwealth, marked for the attention of the person specified in item F of Schedule 1; andhand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the schedule.
2. A notice given under clause 1 is taken to be received:
 - (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 business days after the date of posting; or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 if a notice was being given under a law of the Commonwealth.

7.12 Survival of Clauses

1. These clauses survive the expiration or earlier termination of this Agreement: 5.3, 5.4, 6.1, 6.3 and 7.4.
2. Clauses 3.3 and 6.4 apply during this Agreement and for 7 years from the end of this Agreement.

Schedule 1 - Your Obligations

A Program (clause 3.1)

You must carry out Your role under the Program in accordance with the Guidelines.

B Performance Benchmarks (clause 3.1)

You will achieve the Performance Benchmarks as agreed with the Commonwealth and/or as specified in the Guidelines.

C Invoice Requirements (clause 5.1)

Invoices forwarded by You must be correctly addressed and include the:

- (a) title of this Agreement;
- (b) Your name and ABN;
- (c) name of Program Delegate;
- (d) Agreement number or date of execution;
- (e) fees and expenses to be invoiced (including a description of the Deliverables that the invoice relates to); and
- (f) bank account details for payment of the invoice by electronic funds transfer.

Where the invoice relates to a taxable supply made under this Agreement the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

D Reporting (clause 4.1)

Your Delegate must provide the Program Delegate the Reports identified in clause 4.1.1(c) of this Agreement within 30 days of the end of each relevant financial year.

You must provide any other reports as required by the Guidelines from time to time.

E Compliance with Laws and Policies (clause 7.9)

Compliance with Laws

You acknowledge that:

- (a) You must carry out your obligations under this Agreement in compliance with any laws specified in the Guidelines;
- (b) You may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and You must comply with those obligations;
- (c) when dealing with Your employees, You must comply with the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws;

- (d) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (e) giving false or misleading information is a serious offence under the *Criminal Code*;
- (f) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
- (g) in respect of data, including personal information, held in connection with this Agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Agreement is an offence under Part 10.7 of the *Criminal Code* which may attract a substantial penalty, including imprisonment;
- (h) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (i) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*; and

Note: more information about the *Charter of United Nations Act* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations* is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html

- (j) You may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.

Compliance with Policies

You must:

- (a) carry out your obligations under this Agreement in compliance with any policies specified in the Guidelines;
- (b) comply with the *National Code of Practice for the Construction Industry* and the *Australian Government Implementation Guidelines (revised September 2005, reissued June 2006)* where:
 - (i) the value of the Funding for the particular Project is at least \$5 million and represents at least 50% of the total project value; or
 - (ii) the Funding for the particular Project is \$10 million or more,

and You must not appoint a subcontractor, consultant or material supplier in relation to a project funded under this agreement where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.

- (c) contract only with builders who are accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act at the time the contract for building work is entered into and ensure that such building contracts contain a requirement that the builder remains accredited under the scheme while carrying out the building work on the BER funded project for any BER Projects which:
- (i) involve building work as defined in section 5 of the Building and Construction Industry Improvement Act 2005 (BCII Act), and
 - (ii) the value of the Commonwealth Government contribution to the BER Project is:
 - at least \$5 million and represents at least 50 per cent of the total construction project value; or
 - \$10 million or more, irrespective of the proportion of Commonwealth Government funding.
- (d) when using Commonwealth premises or facilities (including information systems), comply with the Commonwealth's directions and procedures relating to occupational health and safety, environmental management and security (which you acknowledge may change during the term of this Agreement); and
- (e) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.

F Notices and Your Delegate (clause 7.11)

Your Delegate and the person who can accept notices for You is:

Name: [REDACTED]
Office Address: [REDACTED]
Postal Address: [REDACTED]
Fax: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

Schedule 2- the Commonwealth's Obligations

A Funding (clause 5.1)

The total Funding for the Agreement is \$ (exclusive of GST) payable by the following instalments:

Amount	Payable on:
\$	signing of this agreement
\$	
\$	
\$	
\$	
\$	
\$	
\$	
\$	

The Commonwealth will not provide any additional Funds to You to meet any GST liabilities You incur as a result of subcontracting any part of the performance of Your obligations under this Agreement.

The date for payment is within 30 days of the date specified in the Table and after acceptance by the Commonwealth of:

- (a) any Report required by the Guidelines; and
- (b) if requested by the Commonwealth, a correctly rendered tax invoice; delivered by You to the Commonwealth in accordance with this Agreement.

B Program Delegate (clauses 3.2 and 7.11)

The Program Delegate and the person who can accept notices for the Commonwealth is:

Name: [REDACTED]
Office Address: Department of Employment, Education and Workplace Relations
16 Mort Street
Canberra City ACT 2600
Postal Address: Department of Employment, Education and Workplace Relations
GPO Box 9880
Canberra ACT 2601
Fax: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

The Parties have confirmed their commitment to this Agreement as follows:

*Signed for and on behalf of the Commonwealth of
Australia by*

The Honourable Julia Gillard MP
Minister for Education, Employment and Workplace
Relations

2009

Signed for and on behalf of [REDACTED] by

[REDACTED]

2009

Attachment B

Funding Agreement for the Building the Education Revolution (BER) Program
with Block Grant Authorities

Funding Agreement

Between the

Commonwealth of Australia

as represented by the

**Department of Education, Employment and
Workplace Relations**

And



supporting

*Building the Education Revolution: The National Partnership
Agreement on the Nation Building and Jobs Plan*

FOR THE PROVISION OF FUNDING FOR NON-GOVERNMENT SCHOOLS
IN CONNECTION WITH THE BUILDING THE EDUCATION REVOLUTION
PROGRAM

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THIS AGREEMENT is made on the day of

BETWEEN

The **COMMONWEALTH OF AUSTRALIA** ("the Commonwealth", "Us", "We" or "Our") represented by the Department of Education, Employment and Workplace Relations ABN 63 578 775 294 (the "Department") 16-18 Mort Street, Canberra ACT 2601.

AND

[REDACTED]
[REDACTED] the Block Grant Authority for a group of Non-Government Schools
ABN [REDACTED] ("You" or "Your")
[REDACTED]
[REDACTED]

PURPOSE:

- A. Under *Building the Education Revolution: the National Partnership Agreement on the Nation Building and Jobs Plan* (the BER NP), the Commonwealth, States and Territories of Australia have committed to taking steps to address the implications of the global economic recession for Australia by providing new facilities and refurbishments in schools to meet the needs of 21st century students and teachers.
- B. This agreement is established to support the BER NP and in entering into this agreement, the parties recognise that they have a mutual interest in the implementation of the BER NP and need to work together to:
 - i. provide economic stimulus through the rapid construction and refurbishment of school infrastructure and;
 - ii. build learning environments to help children, families and communities participate in activities that will support achievement, develop learning potential and bring communities together.
- C. The Commonwealth provides funding under this agreement to You, though the States and Territories, to support the achievement of the objectives of the Building the Education Revolution Program (BER Program). The three elements of the BER Program (BER Elements) are:
 - i. Primary Schools for the 21st Century – all Australian primary schools, K-12 schools (primary school component) and special schools will be eligible to apply for funding to build new iconic facilities such as libraries, multipurpose halls and classrooms or to refurbish existing facilities.
 - ii. Science and Language Centres for 21st Century Secondary Schools – all secondary schools are eligible to apply for funding, on a

competitive basis, for the construction of new science laboratories or language learning centres.

- iii. the National School Pride program – all schools in Australia, government and non-government, will be eligible to apply for funding for minor capital works and maintenance projects.

D. This agreement is made between Us and You, as the relevant authority of the Non-Government Schools in the State to whom We wish to provide funding.

E. You agree to accept the Funding on the terms and conditions set out in this agreement, and the Guidelines.

NOW IT IS AGREED as follows:

1. Agreement Period

- 1.1. This agreement will come into effect on **[Insert date]** and will end on 31 December 2012.

2. Conditions of Funding

- 2.1. The Funding is subject to the conditions set out in this agreement and the Guidelines.
- 2.2. You must comply with any additional conditions in respect of Funding set out in the Schedule.

3. Funding

- 3.1. Subject to sufficient funds being available for the Program, and subject to Your compliance with this agreement and the Guidelines, We will provide You with the Funding for the BER Elements listed in the Schedules, for the periods and at the times set out in the Schedules.
- 3.2. Without limiting our rights, We may withhold or suspend any payment of Funding in whole or in part until You have performed Your obligations under this agreement, or the Guidelines.
- 3.3. You will receive the Funding in accordance with arrangements set down in this agreement and the Guidelines. We will pay the Funding to the State who will pay the Funding to You.
- 3.4. The Schedules may be updated by Us at any time during the term of this agreement including to add BER Program Elements.
- 3.5. If We exercise our rights under subclause 3.2, You must continue to perform Your obligations under this agreement unless We agree otherwise in writing.

4. Use of Funding

- 4.1. Subject to this agreement, You must ensure that the Funding is spent only for the purposes of the BER Program Elements set out in this agreement and the Guidelines.
- 4.2. You must use the Funding on the terms and conditions of this agreement and the Guidelines. You must ensure that the Funding is not used for any other purpose other than as set out in clause 4.1.
- 4.3. You may only alter or amend the details of the approved Projects in accordance with the Guidelines or with our written agreement.
- 4.4. You must not allocate any Funding for administrative expenditure by a BGA Participant, unless otherwise indicated in the Guidelines.
- 4.5. Unless otherwise agreed in writing with Us, the maximum amount of the Funding You may use for the purposes of paying administrative expenses incurred by You is specified in the Schedule.
- 4.6. You must identify the amount of Funding spent for the purposes of paying administrative expenses incurred by You as a separate item in the certificate required under clause 9 of this agreement.
- 4.7. Funding paid by Us to You under this agreement is provided for the purposes set out in this agreement. Without limiting clause 4.1, Funding under this agreement must not be used for project components for which a School is entitled to receive funding from other Commonwealth or State or Territory sources.
- 4.8. Any interest earned by You on the Funding must be applied as if the interest were part of the Funding under this agreement provided that no part of the interest earned on the Funding may be used for your administrative expenditure.

5. Management of the Funding

- 5.1. You must identify income and expenditure relating to Funding for each project separately within your accounting Records so that at all times the Funding for each project is identifiable and ascertainable.
- 5.2. Without limiting clause 4.1, You must not use the Funding:
 - a. as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
 - b. for the preparation of, or in the course of, any litigation.

- 5.3. We are not responsible for the provision of additional money to meet any expenditure by You in excess of the Funding.
- 5.4. If the Funding paid to You by the State exceeds the total amount that was properly authorised to be paid to the State for You and for the Schools:
- a. You must, if We require, pay to Us an amount (the Required Amount) equal to the excess; and
 - b. in the event that You do not pay the Required Amount to Us, We may make a further determination reducing any other amount or amounts of Funding payable to the State for You and for the Schools under any agreement by an amount or amounts not more than the Required Amount.
- 5.5. We will assess the financial viability of BGA Participants. If we notify you that we have assessed a BGA Participant's financial viability as 'high risk', You must not approve, or make any further BER payments to, that BGA Participant for any BER project without our express written authorisation.
- 5.6. If, at any time during the term of this agreement, any of the Funding has not been acquitted in accordance with this agreement, then the amount that has not been acquitted must be refunded by You to Us within 20 Working Days of a written notice from Us, or dealt with as directed by Us.

6. Guidelines

- 6.1. The Guidelines form part of this agreement.
- 6.2. We may amend the Guidelines during the term of the agreement.
- 6.3. We will provide You with an opportunity to make any representations to Us about the proposed amendments to the Guidelines.
- 6.4. We will publish any updates of the Guidelines as they are made from time to time.

7. Accounts and Records

- 7.1. You must keep full and accurate financial Records relating to the use of the Funding so as to enable:
- a. all income and expenditure of the Funding to be identified in Your accounts;
 - b. the preparation of financial statements in accordance with Australian Accounting Standards;
 - c. the audit of those Records and documents in accordance with Australian Auditing Standards and generally accepted audit practices; and
 - d. recovery by You of Our residual equity upon sale or disposal of assets funded wholly or in part under the Program.

- 7.2. You must ensure that payments in respect of transactions for the use of the Funding are correctly made and properly authorised by You.
- 7.3. You must keep accounts and Records that allow the expenditure of the Funding:
- a. to be identified separately for each approved Project in relation to each School; and
 - b. to be identified separately from expenditure on other institutions or undertakings which You conduct or to which You are related.
- 7.4. You must allow the Auditor General, the BER National Co-ordinator, a member of the Legal, Investigations and Procurement Group in the Department, any person in the Office of the Australian Building and Construction Commission (ABCC) and any other person authorised in writing by the Minister for that purpose, with such help as the person requires, to do either or both of the following:
- a. to have full and free access, at all reasonable times after giving reasonable notice to You, to Your accounts, Records and documents relating to information that You are required under this agreement to give to the Us;
 - b. to take extracts from, or make copies of, the Material referred to in clause 7.4.a.

8. Evaluation

- 8.1. You must ensure that You and the BGA Participants participate in evaluating the outcomes of the Program, as We may require.
- 8.2. Without limiting clause 8.1 or any other clause in this agreement, You must provide, and ensure that each BGA Participant provides, all such:
- a. assistance;
 - b. information; and
 - c. access to premises and personnel

as We may reasonably require when conducting an evaluation of the outcomes of the Program.

9. Funding Acquittal and Reporting Requirements

- 9.1. You must give to the National BER Co-ordinator, on or before 30 days after the end of each financial year during the period of this agreement or such other day as allowed by Us, a certificate by a Qualified Accountant stating whether an amount equal to the amount of the Funding paid to you in that financial year has been spent (or committed to be spent) for during that financial year and for the purposes for which it was granted. This report must identify how much of the funding has been paid by You to each BGA Participant in the financial year.
- 9.2. If not all of the Funding has been spent (or committed to be spent) by You in accordance with this agreement and for the Period in respect of which that Funding paid to you as specified in the Schedules, You must, if We so require, pay to Us the amount stated in the determination within a period required by Us.
- 9.3. The amount stated in the requirement referred to in clause 9.2 must not be more than:
- a. the unspent or uncommitted amount of the Funding; or
 - b. the sum of the unspent or uncommitted amounts of the Funding.
- 9.4. You must ensure that a report (or reports), of a kind (or kinds) required by Us is given to Us in relation to each of the following:
- a. your involvement in the BER including the management of Funding you receive under this agreement;
 - b. the conduct and funding of any projects funded under this agreement;
 - c. the financial operations (including the financial viability and funding sources) of a School;
- no later than a day or days (if any) required by Us.
- 9.5. You must provide us, on or before 11 May 2009, with information about the planned capital expenditure (other than for projects to be funded under the BER) for each BGA Participant for 2009-2012. The information must identify the source of the details of the capital expenditure which may include extracts from Your and/or a BGA Participants' annual report, information published on a BGA Participants' website or other documents (such as development reports or facilities master plans) containing information about the strategic direction/plan for the relevant BGA Participant for the 2009-2012 years.

10. Failure to Meet Conditions of the Agreement

- 10.1. If You do not comply with a requirement set out in this agreement (in this clause 10.1 "the Relevant Requirement") within the period required by or under this agreement or guidelines or within such further period as We allow, any or all of the following consequences apply:
- a. You must, if We require, pay to Us such amount as We specify (not being more than the total of the Funding paid by the State to You);

- b. We may require that any other amount or amounts of Funding paid to the State for You and the Schools are to be reduced by an amount or amounts totalling:
 - (i) Any amount We require You to pay to Us under 10.1.a; or
 - (ii) in any other case the total amount of the Funding paid by the State to You;
- c. We may delay the making of any further payment (or a part of a further payment) to the State for You or for a School until You comply with the Relevant Requirement.

11. Agreement with BGA Participants

- 11.1. You must, before giving any BGA Participant all or part of the Funding:
 - a. ensure the BGA Participant meets the eligibility requirements for the Funding set out in the Guidelines.; and
 - b. enter into a legally binding written agreement ("BGA (BER) Participant Agreement") with the BGA Participant which meets the requirements set out in the Guidelines and clauses 11.2, 11.3 and 12.3 of this agreement; and
- 11.2. The BGA (BER) Participant Agreements You enter into with the BGA Participant must require the BGA Participant to:
 - a. Comply with the Guidelines; and
 - b. Comply with the *National Code of Practice for the Construction Industry* and the *Australian Government Implementation Guidelines (revised September 2005, reissued June 2006)*, where:
 - (i) the value of the Funding for the particular Project is at least \$5 million and represents at least 50% of the total project value; or
 - (ii) the Funding for the particular Project is \$10 million or more; and
 - c. contract only with builders who are accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act at the time the contract for building work is entered into and ensure that such building contracts contain a requirement that the builder remains accredited under the scheme while carrying out the building work on the BER funded project for any BER Projects which:
 - (i) involve building work as defined in section 5 of the Building and Construction Industry Improvement Act 2005 (BCII Act), and

(ii) the value of the Australian Government contribution to the BER Project is:

- at least \$5 million and represents at least 50 per cent of the total construction project value; or
- \$10 million or more, irrespective of the proportion of Australian Government funding,

11.3. Subject to clause 11.2, You must ensure that in all of the BGA (BER) Participant Agreements You enter into with BGA Participants, the BGA Participants are required to include as terms and conditions in all contracts, requests for tender, arrangements, agreements or any other legally binding documents that the BGA Participant enters into with subcontractors, consultants and suppliers:

- a. the requirements of the *National Code of Practice for the Construction Industry*;
- b. the *Australian Government Implementation Guidelines*; and
- c. that any builders working on a BER Project to which clause 11.2(c) applies must be accredited under the Scheme established by the BCII Act and remain so accredited while carrying out work on the BER Project.

11.4. For the purposes of clauses 11.2 and 11.3:

- a. the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines refer to documents of those names available at <http://www.workplace.gov.au>; and
- b. the Australian Government Building and Construction OHS Accreditation Scheme refers to the scheme as described at <http://www.fsc.gov.au/ofsc/Theaccreditationscheme/>

11.5. You must ensure that You, and the BGA (BER) Participant Agreements require the BGA Participants to, maintain adequate records of compliance with the requirements of this agreement and You must ensure that the BGA Participants give access to their premises and records on the same terms as You are required to give access to Your premises and records under clause 7 of this agreement.

11.6. You must not, and ensure that the BGA (BER) Participant Agreements contain a requirement that a BGA Participant does not, appoint a subcontractor, consultant or material supplier in relation a project to which clause 11.2.b applies where the appointment would breach a sanction imposed by the Commonwealth Minister for Employment and Workplace Relations.

11.7. You must ensure that the BGA (BER) Participant Agreements contain provisions to enable You to terminate the relevant BGA (BER) Participant

Agreement on the same terms as We may terminate this agreement with You under clauses 25.1, 25.2(a)-(e), 25.4 .

- 11.8. You must ensure that the BGA (BER) Participant Agreements require the BGA Participant to provide to You and Us in respect of the BGA Participant, the same information that You are required to provide to Us about You under clause 26.1 of this agreement.
- 11.9. You must ensure that the BGA (BER) Participant Agreements provide that the BGA Participant is fully responsible for all ongoing recurrent costs and maintenance of any new and refurbished infrastructure that is built or refurbished with Funding provided to the BGA Participant under the Program.
- 11.10. You must ensure that BGA (BER) Participant Agreements require BGA Participants to maintain their planned capital expenditure for all financial years from 2009 – 2012 in addition to any capital expenditure funded under the BER Program.
- 11.11. You must ensure that for projects funded under this agreement, BGA (BER) Participants Agreements require BGA Participants use their best endeavours to give priority in contracting and tendering arrangements to businesses that have a demonstrated commitment to adding or retaining trainees and apprentices.
- 11.12. You must ensure that BGA (BER) Participant Agreements require BGA Participants which are Primary Schools to make their libraries and multipurpose halls available for community access on terms as set out in the guidelines.
- 11.13. You must ensure that the BGA (BER) Participant Agreements require that BER projects funded under this agreement comply with any Disability Standards relevant to construction of premises made under the *Disability Discrimination Act 1992* from time to time.
- 11.14. You must ensure that BGA (BER) Participant Agreements require the BGAs to maintain appropriate insurance for the projects funded under this agreement.
- 11.15. You must take all reasonable steps to ensure that the BGA Participants comply with their obligations under the BGA (BER) Participant Agreement.
- 11.16. You must ensure that the provisions of each BGA (BER) Participant Agreement enable you to comply with Your obligations under this agreement.

12. Commonwealth right to recovery and Your agreement to assign

- 12.1. You acknowledge and agree that, pursuant to the Guidelines, where Funding of over \$75 000 is provided for a School for the construction or purchase of Facilities, We have a right to repayment of the Calculated Portion of the

Funding where at any time during the Designated Use Period:

- a. the Facilities cease to be used principally for the Approved Purpose; or
- b. the Facilities are sold or otherwise disposed of.

12.2. For the purposes of clause 12.1, the "Calculated Portion of the Funding" means the portion of the Funding repayable to Us calculated in accordance with the Guidelines.

12.3. You must ensure that BGA (BER) Participant Agreement includes:

- a. a provision that requires the relevant BGA Participant to repay to You or to Us the Calculated Portion of the Funding in the circumstances set out in clause 12.1;
- b. a provision requiring the BGA Participant to repay to You or to Us as much of the Funding to that BGA Participant as We determine must be repaid, if the BGA Participant has failed to comply with a condition on which the Funding was made; and
- c. the "Agreement to Assignment to Commonwealth" clause set out in Annexure B to this agreement.

12.4. You agree to, within 10 Working Days of receiving a request in writing from Us to do so, unconditionally and absolutely assign to Us:

- a. Your right under a BGA (BER) Participant Agreement for You to be repaid the Calculated Portion of the Funding in the circumstances set out in clause 12.1;
- b. Your right under a BGA (BER) Participant Agreement to be repaid as much of the Funding as We determine must be repaid if the BGA Participant School has failed to comply with a condition on which the Funding was made; or
- c. both the rights specified above in paragraphs 12.4a and 12.4b;

by duly completing, executing and returning to Us the Pro-forma Deed of Assignment in respect of the rights to be assigned, with any amendments to the Pro-forma Deed of Assignment that We may, at our discretion, require.

- 12.5. You agree that, where You assign any of Your rights under a BGA (BER) Participant Agreement to Us pursuant to clause 12.4 of this agreement (the Assigned Rights), We may exercise the Assigned Rights and enforce the Assigned Rights directly against the relevant BGA Participant, in Our name, as Your assignee.
- 12.6. Without limiting clause 12.5, You acknowledge and agree that We may institute legal proceedings directly against the BGA Participant in order to enforce the Assigned Rights.
- 12.7. Except as provided by this clause you must not assign Your rights or obligations under this agreement unless You have received Our written approval to do so.

13. Disclosure of Information

- 13.1. You must, unless required otherwise by law, maintain the confidentiality of any information supplied to You in confidence by Us, a BGA Participant or a prospective BGA Participant. Nothing in this clause shall prevent You providing to Us any relevant information supplied to You by a BGA Participant or prospective BGA Participant seeking approval of funding for a project or required for accountability purposes.

13A Disclosure of Personal Information

- 13.1A You agree:
- a. to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this agreement, as if You were an agency as defined in the Privacy Act; and
 - b. to deal with Personal Information received, created or held by You for the purposes of this agreement only to fulfil Your obligations under this agreement and in accordance with any conditions or restrictions specified in the Guidelines.
- 13.2A An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this agreement:
- a. is authorised by this clause 13A for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but
 - b. is subject to the other obligations in this agreement including this clause 13A.

In this clause 13A, "received" includes "collected".

14. Your Undertakings

- 14.1. In all cases, You are to interpret the requirements of the Guidelines and otherwise to act so as to optimise the achievement of Our objectives for the

Program and the probity, efficiency and quality of its administration of funding, taking account of any additional written material provided by Us.

15. Our Undertakings

15.1.

Consistent with the Guidelines, We will:

- a. promptly consider all recommendations for funding submitted by You and advise You of the Minister's decision; and
- b. take all reasonable steps to ensure the prompt payment through the State to You of the Funding which the Minister has approved to be paid.

16. Acknowledgment and Publicity

- 16.1. You must ensure that BGA Participants acknowledge the financial and other support they have received from Us, in accordance with the Guidelines.
- 16.2. You must ensure that BGA Participants accept and adhere to branding of the projects funded under this agreement as determined by the Commonwealth.
- 16.3. We reserve the right to publicise and report on the Funding provided to You, including the amount given to You and the description of the Funding.

17. Liaison and Monitoring

- 17.1. You must:
- a. liaise with and provide information to Us as reasonably required by Us; and
 - b. comply with all reasonable requests, directions, or monitoring requirements received from Us.

18. Repayments

- 18.1. Any amount owed to Us under this agreement, will, without prejudice to any other rights available to Us under this agreement or at law or in equity, be recoverable by Us as a debt due to us by You without further proof of the debt by Us being necessary.

19. Indemnity

- 19.1. You agree to indemnify Us against any:
- a. loss or liability incurred by Us;
 - b. loss of or damage to Our property; or
 - c. loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us;
- arising from:
- d. any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - e. any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this agreement;
 - f. any use or disclosure by You, Your officers, employees, agents or subcontractors of information held or controlled in connection with this agreement.

- 19.2. Your liability to indemnify Us under this clause 19 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 19.3. Our right to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 19.4. In this clause 19, "fault" means any negligent or unlawful act or omission or wilful misconduct.

20. Taxes, Duties and Government Charges

- 20.1. Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this agreement must be borne by You.
- 20.2. Unless otherwise indicated, all consideration for any supply under this agreement is exclusive of any GST imposed on the supply. We will calculate the amount of GST due on payments and issue a RCTI at the same time as payments are made to You.
- 20.3. You are registered in accordance with the GST Act and You must notify Us in writing of any change to Your ABN or GST registration status immediately you are notified of any change.
- 20.4. We are registered in accordance with the GST Act and will notify You of any change in Our ABN or GST registration status immediately We are notified of any change.
- 20.5. Each party agrees to notify the other if it ceases to satisfy any of the requirements of Goods and Services Tax Ruling 2000/10 dated 10 May 2000 that came into effect on 1 July 2000.
- 20.6. In consideration of Your undertaking not to issue Tax Invoices an RCTI will be issued in respect of the Taxable Supplies.
- 20.7. The RCTI will be issued within 20 Working Days of determining the value of the Taxable Supplies to which the RCTI relates. Adjustment notes relating to Taxable Supplies, for which a RCTI has been issued, will be issued within 20 Working Days of the adjustment date.
- 20.8. In consideration of an undertaking to issue RCTIs under clause 20.6 You will not issue any Tax Invoices in respect of the Taxable Supplies, unless:
- a. we cease to comply with the requirements of Goods and Services Tax Ruling 2000/10; or
 - b. You are notified that an RCTI will not be issued in respect of the Taxable Supplies.
- 20.9. If a payment to satisfy a claim or a right to claim under or in connection with this agreement (for example, a claim for damages for breach of the agreement)

gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).

- 20.10. You may not claim from Us an amount for which You can claim an input tax credit.

21. Intellectual Property

- 21.1. In relation to any reports provided by You to Us under this agreement, unless stipulated to the contrary in a Schedule to this agreement:
- a. You own the Intellectual Property Rights in the reports; and
 - b. You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, copy, reproduce, communicate, adapt and exploit the Intellectual Property Rights in the reports for any Commonwealth purpose.
- 21.2. If a third party has Intellectual Property Rights in existing Material incorporated or supplied with reports, You must arrange for the grant to Us of a licence in the same terms as set out in clause 21.1.
- 21.3. You must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 21.
- 21.4. You warrant that You:
- a. are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the reports in accordance with this clause 21; and
 - b. have obtained valid written consents from all authors (including any authorised subcontractors under this agreement) involved in creating the reports so that Our use of the reports in any way will not infringe any author's moral rights under the *Copyright Act 1968*.

22. Entire Agreement and Variation

- 22.1. Acts and things consistent with the provisions of this agreement which have been done by or on behalf of a party in anticipation of its coming into force shall be regarded as having been done under this agreement and in accordance with its provisions.
- 22.2. Subject to clause 22.1 this agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this agreement.
- 22.3. Except as provided in clause 22.4, no agreement or understanding varying or extending this agreement is legally binding upon either party unless in writing and signed by both parties.
- 22.4. Variations to the Schedules and Guidelines are not subject to the requirements of this clause.

23. Reserved

24. Dispute Resolution

- 24.1. Subject to clause 24.2, the parties agree not to commence any legal proceedings in respect of any dispute arising under this agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 24 has been used.
- 24.2. The parties agree that any dispute arising during the course of this agreement is dealt with as follows:
- a. the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
 - b. the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - c. the parties have 10 Working Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
 - d. if:
 - i. there is no resolution of the dispute;
 - ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - iii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Working Days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 Working Days,

then, either party may commence legal proceedings.

- 24.3. This clause 24 does not apply if:
- a. either party commences legal proceedings for urgent interlocutory relief;
 - b. action is taken by Us under clauses 3.2, 5, 7.4, 8, 9 or 16; or
 - c. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

- 24.4. Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this agreement.

25. Termination

- 25.1. If You:
- a. are being wound up; or
 - b. have a receiver appointed in respect of its property; or
 - c. have Your affairs under the control of a manager;

We may, by written notice, terminate this agreement in whole or in part and, without prejudice to any of its other rights, recover from You any loss or damages that may have been incurred by the Commonwealth as a result of the occurrence of any of the circumstances referred to in paragraphs (a), (b) or (c).

25.2. We may immediately terminate this agreement by giving written notice to You of the termination if:

- a. You fail to fulfil, or are in breach of any of Your obligations under this agreement and You do not rectify the omission or breach within 30 Working Days of receiving a notice in writing from Us to do so;
- b. You are unable to pay all Your debts when they become due;
- c. if You are an incorporated body:
 - i. You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - ii. proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - iii. You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration;
 - iv. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- d. any variation or removal of a provision, or addition of a new provision, in Your Constitution relating to Your non-profit objects or purposes, Your non-profit operation, or the non-profit distribution of Your property Your winding up or dissolution, where that variation, removal or addition has the effect of You being able to be conducted for profit;
- e. You alter Your Constitution in a way which affects Your ability to comply with this agreement; or
- f. You cease to represent at least 15 percent of Non-Government Schools enrolments in Your relevant state or territory.

- 25.3. Notwithstanding any other termination rights We hold under this agreement, either party may terminate this agreement by giving not less than 12 month's notice to the other party of the intention to terminate this agreement.
- 25.4. Upon termination of this agreement, all Funding paid to You under this agreement and held by You at the date of termination must be returned to Us within 7 days.

26. Changes in Circumstances to be Notified to Us

- 26.1. You must notify Us in writing within 7 days of You becoming aware of any of the following circumstances occurring or within such further time as the We require:
- a. You become the subject to any of the forms of external control under the Corporations Act or any equivalent law of a State or Territory;
 - b. a receiver being appointed in respect of Your property;
 - c. Your affairs are under the control of a manager;
 - d. You start to be conducted for profit;
 - e. any variation or removal of a provision, or addition of a new provision, in Your Constitution relating to Your non-profit objects or purposes, Your non-profit operation, or the non-profit distribution of Your property Your winding up or dissolution, where that variation, removal or addition has the effect of You being able to be conducted for profit;
 - f. where Funding to You is being paid by direct debit to a financial institution – any change to the account name, branch code number or account number at that institution;
 - g. where Funding to You is being paid by cheque – any change to the postal address for the cheque.

27. Incorporation

- 27.1. You warrant that Your Constitution is not inconsistent with this agreement.
- 27.2. You must notify Us if You intend to amend Your Constitution in a way which affects Your ability to comply with this agreement.
- 27.3. If You alter Your Constitution in a way which affects Your ability to comply with this agreement, We may terminate this agreement under clause 25.

28. Compliance with Laws and Our Policies

- 28.1. You must, in carrying out Your obligations under this agreement, comply with:
- a. all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - b. any of Our policies notified by Us to You in writing.

29. Notices

- 29.1. A party giving notice under this agreement must do so in writing or by electronic mail or facsimile transmission:
- a. directed to the recipient's address, as varied by any notice; and
 - b. hand delivered or sent by pre-paid post or transmitted electronically to that address.

- 29.2. Our address details are:

The Project Delegate

Building the Education Revolution Program

Department of Education, Employment and Workplace Relations

GPO Box 9880

16-18 Mort Street

Canberra ACT 2601

- 29.3. Your address details are:

[REDACTED]

[REDACTED]

- 29.4. A notice given in accordance with subclause 29.1 is taken to be received:
- a. if hand delivered, on delivery;
 - b. if sent by pre-paid post, 5 Working Days after the date of posting unless it has been received earlier;
 - c. if transmitted electronically, upon actual receipt by the addressee.

30. Survival of Clauses

- 30.1. These clauses survive the expiration or earlier termination of this agreement: 4 [Use Of Funding], 5 [Management Of The Funding], 7 [Accounts And Records], 9 [Funding Acquittal and Reporting Requirements], 10 [Failure to Meet Conditions of the Agreement], 11 [Agreement with BGA Participants], 16 [Acknowledgement and Publicity], 18 [Repayments], 19 [Indemnity] and 21 [Intellectual Property].
- 30.2. Records required under clause 7 must be retained by You for 20 years after the end of the last Program Year.

31. Warranty

- 31.1. You warrant that the person executing this agreement has the authority to bind You to the terms and conditions of this agreement.

32. Waiver

- 32.1. A waiver by Us in respect of any breach of a condition or provision of this agreement is not to be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or the breach of any other provision.
- 32.2. A failure by Us to enforce at any time any of the provisions of this agreement is in no way to be interpreted as a waiver of such provision.

33. Applicable Law

- 33.1. This agreement is to be construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties submit to the jurisdiction of the courts of that Territory.
- 33.2. You must ensure that in performing Your obligations under this agreement and expending the Funding You comply with the laws from time to time in force in the State in which You are located.

34. Interpretation

- 34.1. In this agreement the following definitions apply unless the contrary intention appears:

“**ABN**” has the meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

“**Act**” means and includes any Regulations.

“**Assigned Rights**” has the meaning given in clause 12.4 of this agreement;

“**Auditor-General**” means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office and any employee of the Commonwealth to whom the powers of the Auditor-General have been delegated;

“**Australian Accounting Standards**” refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*.

“**Australian Auditing Standards**” refers to the standards made by the Australian Auditing and Assurance Standards Board (on behalf of CPA Australia and the Institute of Chartered Accountants in Australia).

“**BER Project**” means any project conducted by or on behalf of a BGA Participant using Funding provided under this agreement, which is intended to further the objectives of the BER Program.

“**BER Program**” means the Building the Education Revolution Program as described in the BER NP.

“**BER Program Elements**” means the three BER Program Elements referred to in the BER NP.

'BER NP' means the National Partnership Agreement on the Nation Building and Jobs Plan dated 5 February 2009 between the Commonwealth of Australia and the States and Territories, being the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australia Capital Territory and the Northern Territory of Australia, which expires on 31 December 2012.

"BGA Participant" means a body legally responsible for the operation of, and entitled to contract on behalf of, a School.

"BGA (BER) Participant Agreement" has the meaning given in clause 11.1.a of this agreement;

"Block Grant Authority" has the meaning given in section 4 of the Schools Assistance Act 2008;

"Building the Education Revolution (BER) National Co-ordinator" means the senior Commonwealth official in the Department of Education, Employment and Workplace Relations nominated as the National Co-ordinator.

"Calculated Portion of the Funding" has the meaning given in clause 12.2 of this Agreement;

"Capital Expenditure" means expenditure on capital items under one of the three elements of the BER;

"Constitution" means (depending on the context):

- a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- b. in relation to any other kind of body corporate:
 - i. the body's charter, rules or memorandum; or
 - ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

"Department" means the Commonwealth Department of Education, Employment and Workplace Relations or such other Australian Government agency or department as may have responsibility for the administration of the BER program;

"Facilities" means building or equipment constructed, refurbished, extended or provided by means of Capital Expenditure;

"Funding" means the amount or amounts of the financial assistance set out in the Schedule payable to You in accordance with the Guidelines;

"GST" has the meaning given in section 195-1 of the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999*;

"Guidelines" means the Building the Education Revolution Guidelines as amended from time to time

“Information Privacy Principle” has the meaning given in the Privacy Act;

“Intellectual Property Rights” includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“Material” includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

“Minister” means the Commonwealth Minister responsible for the Department or an employee of the Department to whom the powers of the Minister have been delegated;

“Non-Government School” has the meaning given in section 4 of the Schools Assistance Act 2008;

“Personal Information” has the same meaning as it has in section 6 of the Privacy Act;

“Primary School” means a school that is delivering a level of primary education as determined by the Minister under the *Schools Assistance Act 2008*

“Privacy Act” means the *Privacy Act 1988*;

“Pro-Forma Deed of Assignment” means a deed of assignment substantially in the form at Annexure A to this agreement;

“Program” means the Building the Education Revolution program;

“Project” means a project to be undertaken by a BGA Participant in respect of Capital Expenditure, using Funding, in accordance with the Guidelines, which is to be set out in a BGA (BER) Participant Agreement;

“Project Delegate” means the project delegate for the BER program identified in the Schedule to this agreement.

“Qualified Accountant” has the meaning set out in section 23(2) of the Schools Assistance Act;

“Recipient Created Tax Invoice” or **“RCTI”** has the meaning given in section 195-1 of the GST Act;

“Registered for GST” means registered under the GST Act;

“Records” includes documents, information and data stored by any means and all copies and extracts of the same;

“School” means a Non-Government School for which You are the Block Grant Authority;

“Secretary” means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this agreement;

"State" means the Government of the State or Territory in which the Funding is to be applied.

"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;

"State Minister" means the Minister of the State or Territory who is responsible, or primarily responsible, for the administration of matters relating to school education in the State or Territory; and

"Working Day" means in relation to taking any action in a place, any day other than a Saturday, Sunday, or public holiday in that place.

34.2. In this agreement, unless the contrary intention appears:

- a. terms used have the same meaning as in the Act;
- b. words in the singular include the plural and vice versa;
- c. words importing a gender include any other gender;
- d. the reference to a person includes a partnership, and a body whether corporate or otherwise;
- e. clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- f. all references to clauses are clauses in this agreement;
- g. all references are to GST exclusive amounts;
- h. all references to dollars are to Australian dollars and this agreement uses Australian currency;
- i. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- j. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

34.3. The Schedule (and annexures and any documents incorporated by reference, including the Guidelines and the Administrative Arrangements) form part of this agreement. If any part of this agreement conflicts with any other part, that part higher in the following list is to take precedence:

- a. the terms and conditions contained in the clauses of the agreement;
- b. the Schedule;
- c. the Guidelines;
- d. the annexures; and

e. other documents incorporated by reference.

- 34.4. Any information or reports, however described, required to be provided under this agreement must be in writing.
- 34.5. Any information or reports, however described, required to be provided to the Department under the Act or this agreement may be provided electronically provided they meet any information technology requirements as notified by Us to You from time to time.
- 34.8. For the avoidance of doubt, no right or obligation in this Agreement is to be read or understood as limiting Your right to enter into public debate regarding the policies of the Australian Government, its agencies, employees, servants or agents.

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

SIGNED for and on behalf of the)
Commonwealth of Australia by:)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of [REDACTED])
[REDACTED])
[REDACTED])

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

ANNEXURE A

Pro-forma Deed of Assignment

Deed of Assignment of Contractual Rights made at _____ on _____

Parties The Block Grant Authority named in the Schedule (BGA)

The COMMONWEALTH OF AUSTRALIA as represented by the Department of Employment, Education and Workplace Relations ABN 63578775294 (Commonwealth, We, Us and Our)

Recitals

- A. The BGA, and the BGA Participant School named in the Schedule, are parties to the agreement described in the Schedule (the **Original Agreement**) under which the BGA Participant School has been provided by the BGA with Funding under BER program.
- B. The BGA has agreed to assign to the Commonwealth the rights under the Original Agreement specified in the Schedule (**Specified Rights**) so as to allow the Commonwealth to directly exercise and enforce those Specified Rights against the BGA Participant School.

This deed provides

1. **Assignment**

1.1 **Assignment**

The BGA hereby assigns to Us absolutely and unconditionally, as at and from the date of this Deed and We accept such assignment from the BGA, the Specified Rights.

1.2 **Agreement that We may enforce assigned rights**

- (a) The BGA agrees that We may exercise the Specified Rights and enforce the Specified Rights directly against the relevant BGA Participant School, in Our name, as the BGA's assignee.
- (b) Without limiting subclause (a), the BGA acknowledges and agrees that We may institute legal proceedings directly against the BGA Participant School in order to enforce the Specified Rights.

2. **BGA to take all actions to ensure validity of assignment**

Without limiting any other clause of this Deed, the BGA agrees to, at its own cost, do such further acts and execute and deliver all such documents as may be necessary to effect a valid assignment to Us of the Specified Rights and to allow Us to exercise and enforce the Specified Rights.

3. **Notification to BGA Participant Schools**

- (a) Without limiting clause 2, the BGA agrees to, within 5 Business Days of the Date of this Deed, notify the BGA Participant School in writing of the assignment of the Specified Rights (**Notice of Assignment**).
-

- (b) The BGA must provide Us with a copy of the Notice of Assignment within 5 Business Days of providing that Notice of Assignment to the BGA Participant School.

4. Definitions and Interpretation

4.1 Definitions

In this Deed:

BGA means the Block Grant Authority named at Item A of the table in the Schedule, which is party to this Deed;

BGA Participant School means the non-government school named at Item B of the table in the Schedule;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business generally in the ACT;

Date of this Deed means the date of execution of this Deed;

Deed means this document;

Notice of Assignment has the meaning set out in clause 3(a);

Original Agreement means the agreement between the BGA and the BGA Participant School details of which are specified at Item C of the table in the Schedule;

Schedule means the schedule to this Deed; and

Specified Rights means those rights under the Original Agreement to be assigned to the Commonwealth pursuant to this Deed, as specified in Item D of the table in the Schedule.

4.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, a government authority, an association or a joint venture and a trust;

- (c) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;

- (d) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this charge and a reference to this charge includes all schedules to it;

- (e) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and

- (f) "includes" in any form is not a word of limitation
-

Schedule to Deed of Assignment

Item A	BGA	[Insert legal name of BGA]
Item B	BGA Participant School	[Insert legal name of BGA Participant School]
Item C	Original Agreement	[Insert details of agreement between BGA and BGA Participant School eg "<i>Agreement dated 12 August 2007 for construction of school facilities at X</i>"]
Item D	Specified Rights to be assigned to Commonwealth	[Insert details of relevant rights to be assigned in accordance with the Guidelines]

ANNEXURE B

Pro-forma clause to be included in Participant Agreements between BGAs and Schools

1. Agreement to Assignment to Commonwealth

- a. The BGA Participant 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 Funding from the BGA Participant in the circumstances set out in this Agreement) to the Commonwealth.
 - b. The BGA Participant 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 BGA Participant, in the Commonwealth's name, as the BGA's assignee.
 - c. Without limiting paragraph (b), the BGA Participant acknowledges and agrees that the Commonwealth may institute legal proceedings directly against the BGA Participant School in order to enforce the Assigned Right.
-