Ref: FOI2020/00010

Dear [Redacted]

APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 1982 (FOI ACT)

I refer to your application made under the FOI Act to the Department for Innovation and Skills (the Agency) received on 13 June 2020 requesting access to:

"Any correspondence between Mighty Kingdom and the Department between the 1st of January 2018 and the 28th of February 2018."

A search for documents held by the Department was undertaken and a total of 16 documents were discovered to be within the scope of your request.

A document schedule is attached for your information which details the specific exemption Clauses applied to each document. In summary;

- One document has been determined to be released in full.
- Access to one document has been refused as this document has been released to you under a previous FOI (FOI2020/00008)
- Two documents have been exempted in full pursuant to Clause 9(1) – Internal Working documents, as they are drafts of the Grant Agreement prepared for the purposes of consultation and negotiation with the company in finalising the conditions of the Grant Agreement. In weighing up the public interest test on these documents, as the final Agreement will be released, with the exception of the Schedule, it has been determined that the release of the draft agreements would not be in the public interest and would by the nature of them being draft reveal the negotiations between the Department and the Grantee.
- One document has been determined exempt in full pursuant to Clause 10 of the FOI Act. This document contains the instructions provided by the Department to the Crown Solicitor's office for the preparation of the Grant.
- One document is a grant progress report authored by Mighty Kingdom to address activity and progress against milestones and grant conditions. The report, which is clearly marked as a confidential document, contains information on the investment and activities by Mighty Kingdom into ongoing development of the product, resource allocation to support these activities and progress against key

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milestones. Should this information be released it would give competitors an insight into the approach of Mighty Kingdom to market and develop the product as well as the value of the product to the business significantly reducing the commercial value of the information to Mighty Kingdom and unreasonably exposing the operational model of the business in relation to these types of products. This document has been determined exempt in full pursuant to Clause 7 – Business Affairs and Clause 13 – Confidential Material.

- The signed grant agreement has been determined exempt in part pursuant to Clause 7(1) of the FOI Act. The Schedule, which contains a number of special conditions on the company in accepting the grant, which are not a standard inclusion in government grant agreements, and if released indicate the expectations of the company in relation to business growth as a result of the grant and the associated product.
- The remaining documents have all been determined as exempt in part pursuant to one or all of Clauses, 6(1), 7(1)c and 10. They are email conversations between the Department and Mighty Kingdom in negotiating the special conditions of the Grant Agreement and information on the product the agreement pertains to. Personal information such as mobile phone number and email of the Mighty Kingdom correspondent has been redacted, as have the business affairs contained within the body of the emails and information considered to be subject to legal professional privilege.

If you are not satisfied with this determination you have a legal right of Internal review and appeal in accordance with section 29 of the FOI Act. Your review rights can be found by visiting the State Records website at https://archives.sa.gov.au

While the legislative timeframe in which to process your application has passed, I have made this determination in accordance with Section 19(2a) of the FOI Act.

No fees or charges are applicable for the processing of this application.

Yours sincerely

[Redacted]

ACCREDITED FREEDOM OF INFORMATION OFFICER
19/ 08 /2020
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<thead>
<tr>
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<th>Description</th>
<th>Release Status</th>
<th>Total Pages</th>
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Any questions at all, would love to talk as soon as possible.

Cheers,

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Thanks, Lou -

And re the questions in the schedule - all jobs are and will be based in SA.

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General Manager
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1300 114 966

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Hi, Lou - happy to go ahead with this. Please send me the execution copy at your convenience.

-Dan

On Mon, Feb 26, 2018 at 8:07 AM, Jansen, Lou (DSD) wrote:

If you are happy with it I will organise an execution copy which I will forward to you for execution

Thanks, Lou.

Cheers,

-Dan

On Fri., 23 Feb. 2018, 4:13 pm Jansen, Lou (DSD), wrote:

Hi Dan,

Attached is an amended agreement.

The agreement now includes specific obligations in relation to employment which are included in the special conditions.
Hi, Lou.

Any update?

-Dan

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Leave it with me.

Ah, Apologies - missed that.

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Hi Dan,

Attached is a letter confirming a proposed grant to Mighty Kingdom for the completion, marketing and regular content updates of the Kitty Keeper game.

I have just left a message on your mobile telephone to call me.

I understand that the Minister is keen to issue a media release and you may be contacted for comment.

Please confirm acceptance of the offer of the grant.

I would appreciate you calling me on either [redacted] or [redacted]

Much appreciated.

Regards

Lou Jansen
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Industry, Innovation, Science and Small Business
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Still working on it.

Lou

Hi, Lou,

Just checking in to see if any draft deeds are on the way, or if you need to talk anything through.

Cheers,

-Dan

On Wed, Jan 31, 2018 at 12:24 PM, Dan Thorsland wrote:

Hi, Gents,

Let me know if you need any quotes or other details from us related to this grant.

Look out for us if you make it.

Cheers,

-Dan

On Tue, Jan 30, 2018 at 12:25 PM, Dan Thorsland wrote:

Hi, Lou,

Delighted to accept the grant! Please pass on my deepest thanks to everyone in the ministers office.

This project reflects the strength of local industry to create world-class original products that will delight millions. I look forward to showing the project to you and the Minister.

Regards,

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Lou

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Subject: Re: Grant Instructions Mighty Kingdom

Thanks, Lou - I'll look at it right away and send suggestions (with track changes on).

Happy to fill out the blanks and discuss. Appreciate that our industry is unusual for this kind of report, and the (likely) huge workload on your desk.

Chat soon,

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Regards

Lou Jansen

Principal Commercial and Financial Advisor

Industry, Innovation, Science and Small Business
Department of State Development

www.statdevalopment.sa.gov.au

Twitter.com/StateDevSA

GPO Box 320
Adelaide, South Australia 5001

Level 3, 11 Waymouth Street
Adelaide SA 5000

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Hi Dan,

Attached is an amended agreement.

The agreement now includes specific obligations in relation to employment which are included in the special conditions.

Lou

Hi, Lou.

Any update?

-Dan

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Leave it with me.

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Any more details you need from me on this?

Cheers,

-D

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Regards

Lou Jansen

From: Dan Thorsland
Sent: Thursday, 15 February 2018 10:36 PM
To: Jansen, Lou (DSD)
Subject: Re: Grant Instructions Mighty Kingdom

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Cheers,

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If you are happy with it I will organise an execution copy which I will forward to you for execution.

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After the FTE’s at 31 December 2017, and the projections going forward.
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Principal Commercial and Financial Advisor
Dan Thorsland
General Manager

1300 114 966
GRANT AGREEMENT

BETWEEN

MINISTER FOR MANUFACTURING AND INNOVATION (A.B.N. 83 524 915 929)

(Minister)

-AND-

MIGHTY KINGDOM PTY LTD (A.B.N. 57 149 485 155) (Company)

GoVernment
do South Australia

CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

Released under FOI
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SCHEDULE

ANNEXURE 1 - ACQUITTAL FORM
AGREEMENT dated 1\textsuperscript{st} day of \textsc{March} 2018

PARTIES:

MINISTER FOR MANUFACTURING AND INNOVATION (A.B.N. 83 524 915 929) of Level 10, 1 King William Street, Adelaide, South Australia 5000 ("Minister").

AND

MIGHTY KINGDOM PTY LTD (A.B.N. 57 149 485 165) of Level 2, 44 Pirie Street, Adelaide, South Australia 5000 ("Company")

BACKGROUND
A. The Minister has agreed to provide the Grant to the Company for the Purpose on the terms and conditions as set out in this Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

In this Agreement unless the contrary intention is apparent:

1.1 "Business Day" means any day which is not a Saturday, Sunday or a public holiday in Adelaide under the \textit{Holidays Act, 1910};

1.2 "Company Representative" means the person named in the Schedule;

1.3 "FTE" means a full time equivalent:

1.3.1 who works in South Australia;

1.3.2 who is either:

(a) taken to be an employee of the Company under the Payroll Tax Act 2009 (SA); or

(b) employed by the Company, or engaged by the Company through an employment agency contract for the purposes of working on the Purpose;

1.4 who under an applicable industrial award or agreement is taken to work on a full-time basis, or if no such award or agreement exists, is required by the Company to work at least thirty-seven (37) hours a week; and

1.5 whose employment or engagement by the Company is not in any way connected with any other agreement (whether prior to or after the date of this Agreement) between the State and the Company under which the South
Australian Government or Commonwealth Government provides to the Company any form of funding or financial support;

1.6 For the purpose of this definition:

1.6.1 where any persons are employed or engaged by the Company (who satisfy the requirements of clauses 1.3.1, and 1.3.2(a) or 1.3.2(b)) and who each work less than thirty-seven (37) hours a week, the number of FTEs represented by these persons shall be determined by aggregating the total number of weekly hours worked by these persons (except any hours worked in relation to overtime) and by dividing this figure by the number thirty-seven (37); and

1.6.2 a consultant or a person engaged by or through a consultant will not constitute an FTE;

1.7 “Grant” means the amount specified in the Schedule;

1.8 “Grant Period” means the period specified in clause 4;

1.9 “Intellectual Property Rights” means any patent, copyright, trademark, tradename, design, trade secret, know how, semi-conductor, circuit layout or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Agreement and the right to registration and renewal of those rights;

1.10 Key Performance Indicators means the key performance indicators in the Schedule;

1.11 “Minister’s Representative” means the person named in the Schedule;

1.12 “Project” means the project more specifically described in the project description which forms Annexure 1 to this Agreement;

1.13 “Purpose” means the Purpose specified in the Schedule;

1.14 the clause headings are for convenient reference only and do not form part of this Agreement;

1.15 a reference to a clause number is a reference to all its subclauses;

1.16 a reference to a clause, subclause, Schedule or Annexure is a reference to a clause, subclause, schedule or annexure of this Agreement;

1.17 a word in the singular includes the plural and a word in the plural includes the singular;

1.18 a word importing a gender includes any other gender;

1.19 a reference to a person includes a partnership and a body corporate;

1.20 a reference to legislation includes legislation repealing, replacing or amending that legislation;

1.21 a reference to dollars is a reference to Australian dollars;

1.22 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

1.23 a reference to a Party includes that Party’s successors and permitted assigns;

1.24 a reference to a document or agreement includes that document or agreement as novated, altered, supplemented or replaced; and
1.25 no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for the drafting of this document.

2. GRANT AND MANNER OF PAYMENT

2.1 Subject to the conditions of this Agreement, the Minister will pay an amount of money specified in the Schedule (Grant) to the Company.

2.2 The Grant is payable according to the achievement of milestones in the manner set out in the Schedule.

3. APPLICATION OF GRANT

The Company must only use the Grant for the purpose as set out in the Schedule (Purpose).

4. GRANT PERIOD AND UNEXPENDED MONEYS

4.1 For the purposes of this Agreement, the Grant Period is the period commencing on the date of execution of this Agreement by both parties and, subject to early termination, will until the expiry date.

4.2 At the end of the Grant Period the Company must provide a report on the level of any unexpended Grant and the Company must repay any part of the Grant which is unexpended at the end of the Grant Period to the Minister, unless the Minister gives written approval for the Company to retain the money.

5. GST

5.1 The parties acknowledge that compliance with obligations or the grant of rights under this Agreement by the Company will be a Taxable Supply as defined in the GST Law and the Company will be liable to pay GST on the Taxable Supply.

5.2 In addition to the Grant the Minister will pay an amount calculated by multiplying the Grant by the rate at which GST is levied at the time of this Agreement (GST payment).

5.3 If the Grant is payable in instalments, the GST payment will be payable in proportionate instalments.

5.4 The Minister is not liable to pay the GST payment or any instalment of the GST payment unless the Company has delivered to the Minister a valid Tax Invoice under GST Law, referable to the Grant (or instalment of the Grant) and associated GST payment.

5.5 For the purpose of this clause, GST Law has the meaning attributed to it in the A New Tax System (Goods and Services Tax) Act 1999.

6. ADMINISTRATION OF AGREEMENT

6.1 The Parties appoint the persons named in the Schedule as their respective Representatives. Subject to this Agreement, each Representative has authority to:

6.1.1 exercise all of the powers and functions of his or her Party under this Agreement other than the power to amend this Agreement; and
6.1.2 bind his or her Party in relation to any matter arising out of or in connection with this Agreement.

6.2 A notice served on a Representative is taken to be notice to that Representative’s Party.

6.3 A Party may change its Representative by giving five (5) Business Days’ notice of that change to the other Party.

7. OBLIGATIONS OF THE COMPANY

The Company must:

7.1 use the Grant only for the Purpose;

7.2 maintain accounting records of the Grant in accordance with generally accepted accounting principles;

7.3 ensure that any activity carried out by the Company in connection with the Company’s use of the Grant complies with the laws from time to time in force in South Australia;

7.4 comply with its constitution;

7.5 comply with the reporting requirements in the Schedule;

7.6 comply with the Special Condition;

7.7 prepare financial statements in accordance with Australian Accounting Standards at the end of the Grant Period and submit the financial statements, signed by the Company’s Chief Executive or delegate, to the Minister no later than one calendar month after the expiry of the Grant Period;

7.8 where requested by the Minister, provide management accounts, annual reports, financial statements and any other information or documents relevant to the Company’s operations in relation to the Project;

7.9 permit any officer authorised by the Minister:

7.9.1 to enter the Company’s premises and to have access to all accounting records, equipment, documents and information in possession of the Company which directly relate to the Purpose; and

7.9.2 to interview employees of the Company on matters pertaining to the operations of the Company which directly relate to the Purpose.

7.10 achieve the key project milestones and provide the reports and data as set out in Item 5 of the Schedule.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Company warrants that that all Intellectual Property Rights in the game Kitty Keeper (Game) are held by the Company.

8.2 The Minister in granting the funds under this Agreement seeks no rights in respect to such Intellectual Property.

8.3 The Company must indemnify the Minister and keep the Minister indemnified, against all costs, expenses and liabilities arising out of or in connection with any claim that the Game infringes the Intellectual Property Rights of any third party.
8.4 The obligations in this clause shall survive the termination or expiry of this Agreement.

9. DISPUTE RESOLUTION

9.1 Where a party is of the view that a dispute exists in connection with this Agreement it may serve a written notice on the other party detailing the nature of the alleged dispute.

9.2 Where notice has been served in accordance with this clause, the most senior officer of each party must meet (including by way of telephone conference) at the earliest mutually convenient time and use reasonable endeavours to attempt to reach a satisfactory resolution to the dispute.

9.3 Where the parties reach a satisfactory resolution, the resolution will be recorded in writing and the parties will be bound on execution of the appropriate documentation prepared for this purpose.

9.4 If the most senior officers of each party are unable to reach agreement on a resolution to the dispute in accordance with this clause, the parties may take such other action available to them under this Agreement or at law.

9.5 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.

9.6 Nothing in the clause 9 prevents a party seeking urgent injunctive relief.

10. TERMINATION

10.1 If the Company fails to comply with this Agreement other than a breach of the Special Condition which is dealt with separately in the Schedule and has not rectified such failure within 14 days of receiving notice from the Minister requiring rectification, the Minister may:

10.1.1 require the Company to repay either the whole or a portion of the Grant (whether expended or not);

10.1.2 withdraw all future Grant from the Company;

10.1.3 pursue any legal rights or remedies which may be available to the Minister; and

10.2 terminate this Agreement. The Minister may review any decision made pursuant to this clause if the Company is able to satisfy the Minister that the Company has complied with the conditions of this Agreement.

10.3 Nothing in this Agreement is to be taken to limit the Minister’s discretion to determine whether and how any program or project of the Minister is to be conducted, except if and to the extent that the Minister gives an express undertaking in that regard.

11. INSURANCE

The Company must comply with the insurance obligations specified in the Schedule (if any).
12. **AUDIT**

12.1 The Minister may direct the Company to arrange for the financial accounts relating to the Grant to be audited at the Company’s expense.

12.2 The Minister may specify the minimum qualifications to be held by a person appointed to conduct the audit.

13. **ASSIGNMENT**

The Company must not assign, novate or encumber any of its rights or obligations under this Agreement without the written consent of the Minister.

14. **PUBLICITY**

The Company is permitted to publicly advertise and promote the Kitty Keeper game.

The Company must work cooperatively with State Government to develop a co-branded media release at a time agreed with the Minister’s representative.

15. **CONSENT**

If the Company requires the Minister’s consent under this Agreement, the Minister’s representative may, in their absolute discretion, give or withhold its consent (subject to any provision in this Agreement to the contrary) and if giving consent, the Minister’s representative may impose any condition on that consent that it considers appropriate. The Minister Representative’s consent will not be effective unless it is in writing and signed.

16. **ENTIRE AGREEMENT**

16.1 This Agreement incorporates any schedules and annexures.

16.2 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject manner.

17. **PROPER LAW**

The laws in force in South Australia apply to this Agreement.

18. **JURISDICTION OF COURTS**

18.1 The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Agreement.

18.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

19. **COMPLIANCE WITH LAWS**

The Company must comply with the laws in force in South Australia in the course of performing its obligations under this Agreement.
20. NOTICES

20.1 A "notice" means a notice in writing or a consent, approval or other communication required to be in writing under this Agreement.

20.2 Addresses for notices are set out in the Schedule.

20.3 A notice must be signed by or on behalf of the sender addressed to the recipient and:

20.3.1 delivered to the recipient’s address; or

20.3.2 sent by pre-paid mail to the recipient’s address.

20.4 A notice given to a person in accordance with this clause is treated as having been given and received:

20.4.1 on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day;

20.4.2 if sent by pre-paid mail, on the third business day after posting.

20.5 A party may from time to time notify its change of address or facsimile number by written notice to the other party.

21. WAIVER

21.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the party waiving its right.

21.2 A waiver by either party in respect of a breach of a provision of this Agreement by the other party is not a waiver in respect of any other breach of that or any other provision.

21.3 The failure of either party to enforce any of the provisions of this Agreement at any time must not be interpreted as a waiver of that provision.

22. MODIFICATION

Any modification of this Agreement must be in writing and signed by each party.

23. SEVERANCE

23.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

23.2 If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void, that part may be severed.

23.3 Severance of a part of this Agreement will not affect any other part of it.

24. READING DOWN

Where a word, phrase, sentence, paragraph, clause or other provision of this Agreement would otherwise be unenforceable, illegal or void, the effect of that provision will, so far as possible, be limited and read down so that it is not unenforceable, illegal or void.
25. **AUDITOR-GENERAL**

25.1 Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

25.2 Without limiting the previous sub-clause, the Company acknowledges the Auditor-General's obligations and powers under sections 32 and 34 of the *Public Finance and Audit Act 1987* (SA).

26. **PUBLIC DISCLOSURE**

26.1 The Minister may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form to the public or to a particular person as a result of a specific request.

26.2 Nothing in this clause derogates from:

26.2.1 the Company's obligations under any provision of this Agreement; or


**EXECUTED AS AN AGREEMENT**

**SIGNED** on behalf of the **MINISTER FOR MANUFACTURING AND INNOVATION**

by a duly authorised representative in the presence of


---

**Signature - Witness**

**Signature - Authorised Representative**

**Print Name & Job Title**

Print Name: 

Date: 1 March 2018
EXECUTED deed by

MIGHTY KINGDOM PTY LTD by its sole Director

who is also the sole Company Secretary

Signed: [Redacted]

[Print Name: Philip James]
ANNEXURE 1
ACQUITTAL FORM
TO: The Department Of State Development
ATT: TBA

Grant Acquittal Form

FROM:

Recipient Body Name

Contact Person for enquiries:

Address:


Contact Email:

Contact Phone:

PURPOSE OF GRANT:

GRANT INCOME AND EXPENDITURE STATEMENT

Grant Amount (a): $ ____________________________ Grant Expenditure (b): $ ____________________________

Funds Remaining (a-b): $ ____________________________

We certify that:
1. The Grant was used for the purpose for which the Grant was provided.
2. Final report is / has been submitted as required.
3. Copies of all invoices and financial statements related to the Grant amount are attached / have been submitted as required by the Agreement.
4. All other obligations have been met and completed within the terms and conditions of the Grant.

Finance Manager / Accountant: ____________________________

Authorised Officer / Managing Director: ____________________________

__________________________
Signature
Name: ____________________________

__________________________
Signature
Name: ____________________________

Date: / / Date: / /