

29 July 2014

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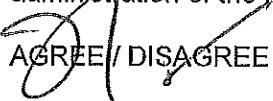
Education Report: Appointment under clause 34.1(a) of the Partnership Schools | Kura Hourua Agreement

1. This report seeks your agreement to appoint Katrina Casey, Deputy Secretary, Sector Enablement and Support, to undertake the administration of the Partnership Schools | Kura Hourua Agreements on your behalf.

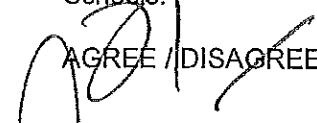
Recommendations

We recommend that you

- a. **note** under clause 34.1(a) of the Partnership Schools Agreement you may appoint any person to undertake the administration of the Agreement on your behalf and to do all things under the Agreement that are expressed or implied as able to be done by you
- b. **note** that the Minister of Education will continue to have overall oversight and control of the Partnership School Agreements
- c. **agree** to appoint the Deputy Secretary, Sector Enablement and Support, under clause 34.1(a) of the Partnership Schools Agreement, to undertake the administration of the Partnership Schools Agreements on your behalf


AGREE / DISAGREE

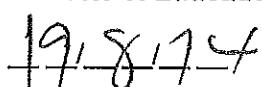
sign the attached Memorandum of Appointments for the first five Partnership Schools.


AGREE / DISAGREE

Peter Hughes
Secretary for Education


Hon Hekia Parata

Minister of Education


19/8/14

Education Report: Appointment under clause 34.1(a) of the Partnership Schools | Kura Hourua Agreement

Purpose of report

1. This report seeks your agreement to appoint Katrina Casey, Deputy Secretary, Sector Enablement and Support, to undertake the administration of the Partnership Schools | Kura Hourua Agreements on your behalf.

Background

2. The Education Act 1989 (the Act) gives the Minister of Education a number of power and duties to administer Partnership Schools (Appendix 1). We do not recommend delegating any of these functions at this stage.
3. The Partnership Schools Agreement is the main mechanism for regulating the relationship between the Crown and the Sponsor. Under section 158D, the Minister of Education may, in the name and on behalf of the Crown, enter into a contract with a Sponsor for the operation, by that Sponsor, of a Partnership School.
4. The first five Partnership Schools opened at the beginning of 2014 and a second round of Partnership Schools are expected to open at the start of 2015 [METIS 865557 refers].

Minister's right to appoint a person to administer the Agreements

5. Section 34.1(a) of the Partnership Schools Agreement allows the Minister of Education to appoint a person to administer the Agreement. The Agreement specifically states:
 - a. *The Minister may appoint any person to undertake the administration of this Agreement on the Minister's behalf and to do all things under this Agreement that are expressed or implied as able to be done by the Minister (including exercising any discretion or forming any views that the Minister is able to exercise or form under this Agreement). It is expected that the Ministry will assist the Minister in the administration this Agreement.*
 - b. *In accordance with section 28 of the State Sector Act 1988, the Minister may also delegate to the Secretary the ability to enter into any variation to this Agreement on the Minister's behalf and to execute any written agreement required to be executed to enter into such variation. The Minister's ability to delegate may include the ability of the Secretary to sub-delegate pursuant to section 41 of the State Sector Act 1988.*
 - c. *Any change to the person holding office as the Minister will not affect any appointment previously made, unless such appointment is subsequently revoked.*

6. As we move into the operational management and monitoring of the first Partnership Schools, we propose that you, as the Minister of Education, appoint a person to undertake the administration of the Agreement on your behalf under clause 34.1(a) to do all the things under the Agreement that are expressed or implied as able to be done by you (including exercising any discretion or forming any views that the Minister is able to exercise or form under the Agreement).
7. Delegation of powers could be desirable in order to place the decision-making about what could be considered operational matters with a nominated person. Without this appointment the Minister of Education would continue to be required to approve all operative documents and operational matters set out in the Agreement.
8. We do not recommend invoking clause 34.1(b) at this time. We suggest that the Minister of Education continue to be responsible for any variations to the Agreements while the schools are still in their infancy.

Powers and Duties to be delegated

9. Appendix 2 provides a complete list of all the powers and duties assigned to you within the Partnership Schools Agreement and recommends which powers you should retain and those to be delegated to a nominated person.
10. We recommend that only the identified powers and duties be delegated rather than the complete administration of the Agreement as suggested in clause 34.1(a). The intention is to delegate the power and duties currently assigned to the Minister that are operational matters.
11. The Minister of Education will continue to have overall oversight and control of the Agreements and be responsible for significant decisions such as termination of an Agreement. The appointment of a person under clause 34.1(a) will not abrogate the power from the Minister; she may still exercise her powers under the Agreement.

Recommended appointment

12. The oversight and contract management of the Partnership Schools currently sits with Katrina Casey, the Deputy Secretary Sector Enablement and Support Group, Ministry of Education.
13. We recommend you appoint the Deputy Secretary, Sector Enablement and Support, to undertake the administration of the Partnership Schools | Kura Hourua contract on your behalf. The appointment does not need to name a specific person but can simply identify a position within the Ministry.
14. If you approve the appointment, the Ministry will review the effectiveness of the appointment on a regular basis. The Ministry will provide you with an update in 12 months on how the appointment is working.
15. The Minister of Education can revoke these powers at any time. The appointment continues until it is revoked by the Minister by notice in writing to the appointee.

Invoking clause 34.1

16. To make an appointment under clause 34.1(a) requires a memorandum signed by the Minister of Education.
17. A variation to the Partnership School Agreements is not required as the appointment is already provided for in the Agreements.
18. The power in clause 34.1(a) does not require the agreement of the Partnership Schools sponsors.
19. If you approve the appointment of the Deputy Secretary, Sector Enablement and Support, to undertake the administration of the Partnership Schools | Kura Hourua Agreements on your behalf, please sign the attached Memorandum of Appointments covering the five existing Partnership Schools at Appendix 3.

Opportunities and Risks

20. The delegation of these more operational powers to the Ministry would allow the Minister's focus to stay on the more strategic and future focussed issues rather than on the day-to-day operations of the Partnership Schools.
21. In making decision under the appointment, there will be a practice of 'no surprises' for the Minister.

22. The key risks in appointing someone to undertake the administration of the Partnership Schools/Kura Hourua Agreements on your behalf are:

Risk	Probability	Mitigation
Sponsors could see the appointment of a person other than the Minister as diminishing the importance of the Partnership Schools.	Low. This appointment does not require a variation to the partnership school contract as the appointment is provided for in the contract already. The power in clause 34.1(a) does not require the agreement of the sponsors.	The Partnership Schools Agreement will still continue to be between the Crown and the Sponsor. The Minister is simply appointing a person to administer the Agreements on her behalf.
Possible blurring of roles between the Minister of Education and the appointment person.	Medium. This is possible given the number of powers set out in the Agreement.	Rather than providing a blanket statement that the appointed person will administer the Agreements, the actual powers to be delegated are set out in Appendix 2 and within the Memorandum of Appointment (Appendix 3) which will be provided to the Sponsors once approved.
Changes within the Ministry of Education or within the Deputy Secretary position may see differing views on who should be the appointed person.	Low. It is likely that the oversight of the Partnership Schools work will continue to sit within the operational arm of the Ministry – Sector Enablement and Support.	The Minister can revoke these powers at any time. The appointment continues until it is revoked by the Minister by notice in writing to the appointee.
Following review, the Minister or the Ministry may identify negative impacts from the appointment.	Low. As the delegated powers are operational matters, it is unlikely to have negative impacts.	A process of continuous improvement can address any identified issues. The Minister can revoke the appointment at any time.

Second Round of Partnership Schools

23. It is anticipated that Agreements for the second round of Partnership Schools will be awarded by the end of August 2014. We would seek your approval to appoint a person to undertake the administration of those Agreements in October 2014. This would allow time for any announcements to be made in relation to the second application round and for the election to take place.

Communication

24. If you agree to the appointment of a person, namely the Deputy Secretary Sector Enablement and Support Group, Ministry of Education, the Ministry will then write to each of the five sponsors to advise them of the appointment.

Appendix 1

Minister of Education's powers under Part 12A of the Education Act 1989

Section	Power/Duty	Proposed Delegation	Rationale
158B	The power by notice in the Gazette approve a body to be a sponsor of a Partnership School Kura Hourua.	Nil	This is consistent with section 146 of the Education Act where the Minister has the power to establish a state school.
158C(1)	The power to appoint an advisory group, consisting of 1 or more members, for the purpose of advice in relation to (a) the approval of sponsors under section 158B; and the educational performance of partnership schools kura hourua.	Nil	This is required to go through Cabinet Committee and therefore any delegation is inappropriate.
158D(1)	The power from time to time, in the name and on behalf of the Crown, enter into a contract with a sponsor for the operation, by that sponsor, of a partnership school kura hourua.	Nil	This is a more administrative function and the Ministry have conducted the contract negotiations on the Minister's behalf. However, as Partnership Schools remains high profile, and involve substantial ongoing funding, it is proposed not to delegate this power further.

Appendix 2

Minister of Education powers under clause 34.1(a) of the Partnership Schools | Kura Hourua contract

Clause	Title	Power	Retain / Delegate
Introduction	Approve Contract	The Sponsor will be approved by the Minister under section 158B of the Act to operate a Partnership School/Kura Hourua.	Retain
2.1(c)	Operative documents	The Minister may request reasonable changes to any draft Operative Document prior to approval which the Sponsor must include in the plan or other document and resubmit to the Minister for approval within ten (10) Business Days of receiving comments from the Minister.	Delegate
4(b)	Extending Agreement	The Minister in his or her sole and absolute discretion shall have the right to extend this Agreement for up to two further terms of six (6) years each (but extending only by one (1) term at a time) by giving the Sponsor six (6) months' notice in writing prior to the end of the then current term of the Agreement.	Retain
5	Education circulars	The Minister may at any time give notice to the Sponsor that an Education Circular (or part thereof), that is not already specifically described as applying to the Sponsor elsewhere in this Agreement, shall apply to the Sponsor.	Delegate
7.1(c)	Maximum Roll review	Either party may initiate a review of the Maximum Roll at the second quarter review. If the Minister agrees to adjust the Maximum Roll this must be effected in writing by way of a variation to the Agreement by no later than September in each Year	Delegate
7.2(d)	Enrolment process	The Sponsor is permitted to run its enrolment process as it sees fit unless the Minister, at any time, in the Minister's sole discretion and for any reason, requires that the Sponsor follow an enrolment process that is notified to the Sponsor by the Minister in writing.	Retain
7.3	International Students	<p>a) The Minister may impose an upper limit on the number of International Student places that the Sponsor may set aside in respect of its Maximum Roll. If the Minister has imposed an upper limit on International Students for 2014 this will be set out in Schedule 1. Otherwise, if no number is recorded in Schedule 1 no such cap shall apply.</p> <p>b) The upper limit on International Students for each subsequent Year (if any) will be agreed by the Minister and the Sponsor in writing by way of a variation to this Agreement if and when required, but in any event by no later than 1 September in a Year preceding the Year in which the upper limit is to take effect. If agreement cannot be reached the upper limit on International Students shall remain at its then current set or agreed level.</p>	Retain
7.5(b)	Safe and Physical	The Sponsor must, by no later than 1 December 2013, prepare and provide to the Minister the School's policies for ensuring a safe physical and emotional environment for Students. This document	Delegate

Clause	Title	Power	Retain / Delegate
7.7	Career Guidance	The Sponsor must provide career education and guidance to Students in Class Levels 7 to 13 having regard to the Ministry's publication "Career Education and Guidance in New Zealand Schools" and Careers New Zealand's publication "Career Education Benchmarks", or any substitute publication notified by the Minister to the Sponsor from time to time.	Delegate
8.3(b)	Suspension, Expulsion and Exclusion	The Sponsor is required to comply with any requirements specified under paragraph (a) of this clause 8.3 in relation to standing down, suspending, expelling or exclusion of Students, or specified in any Education Circular or other relevant Ministry guidelines relating to standing down, suspending, expelling or exclusion of Students that the Minister determines and informs the Sponsor shall apply to the School as a Partnership School/Kura Hourua.	Delegate
10.1(c)	LEOtC	The Sponsor is responsible for every Student who is attending a Learning Experience outside the Classroom and must comply with any Ministry guidelines or Education Circular that relates to a Learning Experience outside the Classroom that the Minister may determine and inform the Sponsor shall apply to the Sponsor as a Partnership School/Kura Hourua.	Delegate
10.6	Whānau Engagement Policy	<p>a) The Sponsor must, by no later than 1 November 2013 prepare and provide to the Minister, a policy setting out how it will engage with parents, family, whānau, iwi and communities of the Students.</p> <p>b) This document will constitute an Operative Document once approved by the Minister in accordance with clause 2.1(c).</p>	Delegate
11.2	Uniform and Stationery	<p>The Minister reserves the right to set an upper limit on expenditure for fees, uniform and stationery if, in the Minister's opinion, these are imposing an undue burden on parents or caregivers of Students.</p> <p>The Minister will consult with the Sponsor before setting any upper limit.</p>	Retain
13.5(c)	Police Vetting	If the Sponsor employs or continues to employ a person in breach of clause 13.5(b) or if the Sponsor has employed a person or continues to employ a person without having undertaken a Police vet as required under the Act, the Minister may direct the Sponsor by notice in writing not to allow such person to have contact with any Student or to be present on the Premises.	Retain
14.1(e) and (f)	Property	<p>The Sponsor must notify the Minister and obtain the Minister's approval before using premises other than the Premises described in Schedule 5 for the regular delivery of Courses to Students. The Sponsor may only seek the Minister's approval to use alternative premises under this paragraph (e) if either of the following circumstances apply:</p> <ul style="list-style-type: none"> a) the new premises are in addition to the Premises described in Schedule 5; or b) the new premises are to replace the Premises described in Schedule 5. 	Delegate

Clause	Title	Power	Retain / Delegate
		The Minister may reasonably withhold his or her approval under paragraph (e) of this clause 14.1 if the Minister does not consider that the new premises are suitable for a school of the description specified in the Gazette Notice and for the number of Students at the School.	
16.1(a), (o), (t)	Minimum Requirements	The Minimum Requirements which must be complied with by the Sponsor at all times during the term of this Agreement include, but are not limited to, the following: (a) no serious incident occurs in relation to the School that compromises the health and safety of a Student that the Minister reasonably considers could have been prevented by the Sponsor; (o) the Sponsor reports to the Minister in accordance with clause 18.2 of this Agreement; (t) the Sponsor provides all of the required reports to the Minister by the dates or within the timeframes set out in clause 18.2.	Delegate part (a)
16.3(a)	Declarations of Minimum Requirements	The Minister may, from time to time, require the Sponsor to provide a declaration that it has met all of the Minimum Requirements. The Sponsor agrees to provide such a declaration as and when required by the Minister. The declaration may be required as part of a Quarterly Report or Annual Report.	Delegate
17.2(a), (c), (d), (f)	Performance Management	(a) The Minister will, in discussion with the Sponsor and otherwise in accordance with this clause updated and supplementary tables in the form set out in clauses 2.1 to 2.4 of Schedule 6 (and relevant Annexes) prior to the start of the next School Year. (c) The Minister may, in discussion with the Sponsor and otherwise in accordance with this clause already set out in clauses 2.1 to 2.4 of Schedule 6 (and Relevant Annexes) (as replaced from time to time under paragraph (b) of this clause 17.2) as the measurement of additional Performance Standards becomes possible. This can, if the Minister reasonably considers necessary, include Performance Standards under entirely new performance categories (other than those set out in clause 17.1). Any additional Performance Standard will only be set after the Minister has reviewed a full School Year's worth of baseline data collected and reported on by the Sponsor. (d) In setting Performance Standards for future Years and new Performance Standards: (i) the Minister will, if applicable, take into account the School's individual circumstances and the characteristics of the Students enrolled; (ii) the Minister will take into account whether the Performance Standard is in line with the Government's objectives in relation to the establishment of the Partnership School/Kura Hourua; (iii) the Minister will take into account whether the Performance Standards would be in line	Retain

Clause	Title	Power	Retain / Delegate
		<p>with the Objectives; and</p> <p>(iv) the Minister will, in discussion with the Sponsor, develop a process to be followed to set Performance Standards for future Years and new Performance Standards.</p> <p>(f) If the Minister does not set new Performance Standards for a future Year by the start of the next School Year, the Performance Standards that apply in relation to the previous Year will continue to apply for the intermediary period until such time as the Minister does set new Performance Standards for that Year.</p>	
18.1(b)(i)	Student Management System	Use a student management system that is approved by the Minister for use by the Sponsor which the Minister notifies the Sponsor of in writing; and	Delegate
18.2	Reporting to the Minister	<p>(a) The Sponsor must complete any report templates provided by the Minister for assessing the Sponsor's performance against the Minimum Requirements, Objectives and Performance Standards. The report templates provided by the Minister will seek the provision of information from the Sponsor that the Minister reasonably requires to assess the Sponsor's performance against the Minimum Requirements, Objectives and Performance Standards under this Agreement. Report templates for reporting the Sponsor's performance against the Minimum Requirements, Objectives and Performance Standards may be included within the reporting templates that are required to be completed for Quarterly Reports and Annual Reports.</p> <p>(b) In addition, the Sponsor will complete and submit the following reports to the Minister:</p> <ul style="list-style-type: none"> (i) Quarterly Reports, to be submitted to the Minister by 30 April, 31 July and 31 October of each School Year in relation to the previous three (3) months of that School Year; and (ii) Annual Reports, to be submitted to the Minister by 31 January of each year in respect of the previous School Year. <p>(c) A report submitted under paragraphs (a) or (b) of this clause 18.2 will only be accepted once approved by the Minister. The Minister may, if he or she is not satisfied with the level of detail contained in the report, require the Sponsor to amend the report and resubmit it to the Minister within any timeframe specified by the Minister.</p> <p>(e) The Sponsor must report to the Minister as soon as the Sponsor has defaulted on any of its debt obligations or as soon as the Sponsor can reasonably anticipate that it may soon default on any of its debt obligations.</p>	<p>Delegate part (a)</p>
18.5	Audited financial statements	The audited annual financial statements must be prepared in accordance with the New Zealand equivalents to International Financial Reporting Standards (NZ IFRS). For this purpose, the Minister may also require (by giving notice in writing) the Sponsor to use templates or guidelines prepared by	Delegate

Clause	Title	Power	Retain / Delegate
19.3	Audit rights	the Ministry for the purpose of preparing its annual financial statements. It is expected that the Sponsor may be required to use the model annual report prepared as a template by the Ministry for the fictional school known as 'Kiwi Park School'.	Retain
19.5	Advisory Group	<p>The Sponsor agrees that the Minister (or the Minister's delegate) may at any time, but not more frequently than once in any six (6) month period (except where pursuant to an intervention under clause 24.5), and upon giving reasonable notice to the Sponsor, enter on to the Premises in order to conduct an inspection and to audit the Premises and/or the Sponsor's operation of the School (including talking to any Student, teacher or other contractor or employee at the Premises).</p> <p>The Sponsor acknowledges that in accordance with section 158C(1)(b) of the Act, the Minister is required to appoint an Advisory Group for the purpose of advising the Minister in relation to the educational performance of Partnership School/Kura Hourua. The Sponsor further acknowledges that the Minister may define terms of reference for the Advisory Group which the Advisory Group must comply with.</p> <p>The Sponsor agrees to provide all reasonable assistance to the Advisory Group to enable the Advisory Group to undertake its role advising the Minister in respect of the educational performance of the School.</p> <p>The Sponsor acknowledges that the Minister intends to create an operating document which describes how the Advisory Group will undertake their statutory role and that this will be provided to the Sponsor in or around 30 November 2013.</p>	Retain
20.1	Good Faith Obligation	<p>The parties acknowledge that measurement of the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System (where there is not a specific numerical Performance Standard) involves a degree of qualitative assessment where there is scope for differing views on the degree of performance or non-performance, but where ultimately the Minister must be satisfied that the relevant measures are being satisfactorily met and that the overall Objectives for which the School was established are being successfully achieved.</p> <p>The parties further acknowledge that the qualitative and other elements of the Objectives and Performance Standards in the Performance Management System may be such that a School could appear to be achieving the requisite level of performance by manipulating factors within its control that are not readily evident to the Minister or Ministry officials in order to give that appearance, when the reality is different.</p> <p>Accordingly the parties acknowledge and agree that good faith is required both from the Sponsor in performing and reporting, and from the Minister in assessing performance, against the Objectives and Performance Standards in the Performance Management System. The Minister may take any action</p>	Retain

Clause	Title	Power	Retain / Delegate
		that he or she may consider reasonable in the circumstances if the Minister considers that the Sponsor:	
		a) is not acting in good faith in this regard; or b) may believe or maintain it is acting in good faith but, viewed objectively with regard to the Student educational and other outcomes sought under this Agreement, could reasonably be viewed by the Minister as not acting in the spirit of the Agreement.	
20.2	Measuring Performance (entire clause)	The Sponsor acknowledges that the Minister may assess the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System on a quarterly basis or, if an alternative reporting frequency is set out in relation to any Performance Standard in the 'Measurement Frequency' column in clause 2 of Schedule 6, the alternative measurement frequency that is specified in respect of that Performance Standard.	Retain
20.3(a), (b)	Guidance against measuring performance on performance standards	Without derogating in any way from the Performance Standards set out in Schedule 6, the Minister or the Ministry may, at any time, issue guidance to the Sponsor to supplement the Performance Standards in order to explain in more detail how the Performance Standards should be interpreted and measured. If applicable in relation of the Class Levels taught at the School, in respect of the Performance Standard that measures the improvement in Student achievement for Students in Class Levels 9 and 10, the parties will work together to agree on an assessment instrument for measuring improvement in Student achievement for Students in those Class Levels prior to the School opening. Failing agreement between the parties within a reasonable period of time prior to the School opening, the Minister will decide on an appropriate assessment instrument and will notify the Sponsor of the assessment instrument that must be used by the Sponsor.	Retain
22	Ability to intervene	In addition to assessing the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System, if the Minister has any reason to believe that the Sponsor, the chief executive of the School, a principal, a teacher or any other person employed by the Sponsor is failing to discharge their duties under the Act or is otherwise not acting in accordance with the Act (or any other applicable laws) or this Agreement such that the Minister has reasonable grounds to believe that there is a risk to the operation of the School or to the welfare or educational performance of the Students, the Minister (or the Secretary where applicable) may use any of the range of possible interventions set out in clauses 24 and 25.1 that the Minister reasonably considers to be appropriate in the circumstances.	Retain
23	Escalation of	If the Minister is not satisfied that the Sponsor's performance against the Performance Management	Retain

Clause	Title	Power	Retain / Delegate
	intervention	System is improving to the Minister's satisfaction or the Minister has reasonable grounds to believe that there continues to be a risk to the operation of the School or to the welfare or educational performance of the Students, despite the use of one of the interventions, the Minister may utilise an alternative intervention if the Minister considers that to be appropriate in the circumstances.	
24.2(a) and (b)	Performance Notice	The Minister may issue the Sponsor with a Performance Notice in writing which specifies the Sponsor's performance failure(s) and the actions the Minister expects of the Sponsor to address the performance failure(s).	Delegate
		This notice may or may not (at the Minister's discretion) include a direction given by the Minister to comply with particular terms of the Agreement or Act.	
24.3	Remedial plan	<p>a) The Minister may, by giving notice in writing, require the Sponsor to prepare a Remedial Plan. A Remedial Plan may be required in relation to any aspect of the Sponsor's performance or in relation to the Sponsor's performance generally. The Minister will set out in the notice described in paragraph (a) above what the Remedial Plan must contain and when a draft Remedial Plan must be prepared and submitted to the Minister for approval by the Minister.</p> <p>c) When the Minister receives a draft Remedial Plan, the Minister may either approve it or require the Sponsor to make amendments and resubmit the draft Remedial Plan to the Minister for approval.</p> <p>d) The Sponsor must comply with any Remedial Plan approved by the Minister until such time as the Minister may determine in writing that the Remedial Plan is no longer required.</p> <p>e) Failure by the Sponsor to prepare a draft Remedial Plan by the due date or to make satisfactory amendments to a draft Remedial Plan, or to satisfactorily implement a Remedial Plan that the Minister has approved under this clause Error! Reference source not found., shall entitle the Minister to invoke any other intervention that the Minister considers is appropriate.</p>	Retain
24.4	Increased reporting	The Minister may require the Sponsor to report more frequently than the timeframes set out in clause 18.2 of this Agreement, and at such frequency as the Minister determines is appropriate, by giving notice in writing to the Sponsor.	Retain
24.5	Specialist audit	The Minister may exercise the Minister's right to audit under clause 19.3 of this Agreement, at such frequency as the Minister determines is appropriate, by giving notice in writing to the Sponsor.	Retain
24.6	ERO investigation through	If agreed by ERO, the Minister may organise for an early or special review of the School to be undertaken by ERO, either in relation to a particular area of the Sponsor's or the School's performance or in relation to multiple areas of the Sponsor's or the School's performance	Retain

Clause	Title	Power	Retain / Delegate
25.1	Minister's right to terminate	<p>a) The Minister may terminate this Agreement immediately upon the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (i) where the Minister considers that termination is warranted by the Sponsor's level of non-performance against the Objectives or Performance Standards in the Performance Management System or in accordance with the Minister's general ability to intervene as set out in clause 22; (ii) the Sponsor has breached any term in the Agreement or is repeatedly breaching a term or terms in the Agreement (including any Minimum Requirements) or is failing in the Minister's opinion to take action in response to the Minister's use of another Intervention, to such an extent that the Minister (acting reasonably) considers that termination is warranted in the circumstances; (iii) the Sponsor has breached or is breaching its statutory duties in relation to the School under the Act or any other enactment; (iv) the Minister has reasonable grounds to believe that serious criminal activity (as defined in section 2 of the Act) is occurring at the School; (v) the Sponsor becomes bankrupt or insolvent; (vi) the Sponsor has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of external administration; (vii) the Sponsor ceases to continue in business or to operate the School; (viii) failure of the Sponsor to comply with clause 34.4 (Sub-contracting) or 34.5 (Assignment); the Sponsor provides information to the Minister that is misleading or deliberately inaccurate in any material respect; (ix) the Sponsor has a conflict of interest that adversely impacts on the operation of the School, the Minister, the Minister or the Crown more broadly which cannot be managed or eliminated to the Minister's satisfaction; (x) any shareholder, trustee, member, director or other owner or board member (or equivalent) of the Sponsor is an Unsuitable Person; or (xi) the ownership or control of the Sponsor changes from that represented to the Minister prior to this Agreement being entered into, without the prior consent of the Minister to such change of ownership or control having been sought and given. 	Retain
25.2	Minister's Responsibility	<p>a) If the Minister wishes to terminate the Agreement due to the occurrence of one of the events listed in paragraph a) of this clause 25.2, the Minister must follow the following process:</p>	Retain

Clause	Title	Power	Retain / Delegate
	if decision to terminate is made	<ul style="list-style-type: none"> (i) the Minister will provide the Sponsor with a written notice setting out the reason for the proposed termination and the date from which termination will take effect; (ii) the Sponsor shall have ten (10) Business Days to advise the Minister in writing as to any reasons why the Sponsor does not consider that the Agreement should be terminated; (iii) if the Minister is not satisfied with the reasons provided by the Sponsor under sub-clause (ii) above, the Minister shall issue a written notice to the Sponsor terminating the Agreement and confirming the date from which the Agreement shall be terminated; (iv) the date of termination must be, at a minimum, twenty (20) School Days from the date of the notice under sub-clause (iii). If no date is provided in a notice given under sub-clause (iii), the default is twenty (20) School Days from the date of that notice. 	
25.3	Termination for convenience	The Sponsor may terminate this Agreement for convenience by giving the Minister a minimum of six (6) months' written notice of this but in any event such termination can only take effect from the end of a School Year.	Retain
25.4	Force Majeure	<p>a) Either party may immediately terminate this Agreement if that party is unable to fulfil its obligations under this Agreement for a period of 20 Business Days or more due to the occurrence of a Force Majeure Event by giving the other party written notice.</p> <p>Neither party will be liable to the other in respect of any costs that the other incurs as a result of termination under paragraph (a) of this clause 25.4 and the Minister will not be required to make any further payments under this Agreement from the date of the notice provided under paragraph (a) of this clause 25.4.</p>	Retain
25.5	Mutual Agreement	The parties may, by mutual agreement signed by both parties in writing, terminate this Agreement upon such terms as the parties may agree in writing.	Retain
29	Invoice	The Sponsor will invoice the Minister in accordance with the provisions in Schedule 7.	Delegate
34.1	Misc. Terms	<p>a) The Minister may appoint any person to undertake the administration of this Agreement on the Minister's behalf and to do all things under this Agreement that are expressed or implied as able to be done by the Minister (including exercising any discretion or forming any views that the Minister is able to exercise or form under this Agreement). It is expected that the Ministry will assist the Minister in the administration this Agreement.</p> <p>In accordance with section 28 of the State Sector Act 1988, the Minister may also delegate to the Secretary the ability to enter into any variation to this Agreement on the Minister's behalf and to execute any written agreement required to be executed to enter into such variation.</p> <p>The Minister's ability to delegate may include the ability of the Secretary to sub-delegate</p>	Retain

Clause	Title	Power	Retain / Delegate
		pursuant to section 41 of the State Sector Act 1998. Any change to the person holding office as the Minister will not affect any appointment previously made, unless such appointment is subsequently revoked.	
34.4	Sub-Contracting	<p>a) The Sponsor must not sub-contract any obligations under this Agreement without the written consent of the Minister. If written consent is provided by the Minister, the Sponsor will remain fully responsible for the performance of all obligations under this Agreement (and responsible and liable for any non-performance) and will be responsible for all acts, defaults and neglects of any sub-contractor.</p> <p>b) For the purpose of this Agreement, the Minister has, as at the date of this Agreement, given consent to the persons listed in Schedule 9 being sub-contractors to the Sponsor in respect of the tasks described in Schedule 9 next to the relevant sub-contractor.</p>	Retain
34.5	Assignment	<p>a) The Sponsor may not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Minister.</p> <p>b) The Minister may assign or transfer any of the Minister's rights or obligations under this Agreement.</p>	Retain
34.12	Variations	No amendment to this Agreement will be effective unless it is in writing and signed by both parties.	Retain
Schedule 7 1.2(b)	Guaranteed Minimum Roll	The Guaranteed Minimum Roll for each subsequent Year will be agreed by the Minister and the Sponsor in writing by way of a variation to this Agreement, by the end of the then current Year. If agreement cannot be reached between the parties, the Minister shall make the final decision. The process for reviewing and discussing the Guaranteed Minimum Roll for the following School Year may be initiated by the Minister or the Sponsor following the submission of the third Quarterly Report in the then current Year.	Delegate
Schedule 7 1.3	Establishment Payment	The Sponsor will receive a one-off Establishment Payment from the Minister in recognition of the costs that the Sponsor will need to incur to ensure the School is operational for the 2014 Year. The Establishment Payment includes a component for set-up and property funding. The Establishment Payment will be paid by the Minister to the Sponsor after the Agreement is executed by both parties and within 20 Business Days of the Minister's receipt of a valid tax invoice for the total sum of the payment amount set out in each Sponsor's contract.	Delegate
Schedule 7 1.4	Quarterly Operations Payments	From the 2014 Year, the Sponsor will receive Quarterly Operational Payments from the Minister which will be calculated by the Ministry and will be comprised of sums relating to the various payment types set out in Schedule 7, Clause 1.4	Delegate
Schedule 7	At risk	<p>a) 99% of each Quarterly Operational Payment will be payable during the term of this</p>	Retain

Clause	Title	Power	Retain / Delegate
1.4(i)	payment	<p>b) Agreement on the 20th Business Day of the month following receipt of an invoice from the Sponsor provided in accordance with clause 2 of this Schedule 7 (Invoicing); and</p> <p>the remaining 1% of each Quarterly Operational Payment will be retained by the Minister and, following the Minister's receipt and consideration of the Sponsor's Annual Report, will be paid to the Sponsor provided that the Minister is satisfied, in the Minister's sole discretion, that the Sponsor has met all of the Performance Standards for the relevant School Year to which the Annual Report relates by the end of the relevant School Year.</p>	
Schedule 7 1.5	Variable Operational Payments	<p>The Sponsor may be entitled to apply to the Minister to receive Variable Operational Payments. The eligibility criteria that apply to State schools in relation to these Variable Operational Payments will also apply to the School. The Minister will provide the Sponsor with an operational guide detailing the various Variable Operational Payments that the Sponsor may be able to apply for, which the Minister may update and re-issue from time to time.</p> <p>Variable Operational Payments will be paid by the Minister to the Sponsor either as part of the Quarterly Operational Payment or, depending on the type of payment, on an alternative basis, in either case as advised by the Minister.</p>	Retain
Schedule 7 2(b)	Invoicing	The Minister shall provide to the Sponsor an instalment notice setting out the amount payable for the next quarter taking into account any adjustments from the previous quarter(s).	Delegate

MEMORANDUM OF APPOINTMENT

Background

On 16 September 2013, the Minister of Education and the following Sponsors:

- Advance Training Group
- He Puna Marama Trust
- Ngā Parirau Mātauranga Charitable Trust
- The Rise UP Trust
- Villa Education Trust

entered into an Agreement relating to Partnership Schools | Kura Hourua ('the Agreement').

Under clause 34.1(a) of the Agreement, the Minister of Education may appoint any person to undertake the administration of the Agreement and to do any of the things under the Agreement that are expressed or implied as able to be done by the Minister.

Appointment

The Minister appoints the Deputy Secretary, Sector Enablement and Support, Ministry of Education ('the appointee') to undertake the administration of the Agreement and to carry out the following powers and duties specified in the Agreement:

Clause	Title
2.1(c)	Operative documents
5	Education circulars
7.1(c)	Maximum Roll review
7.5(b)	Safe and Physical Environment
7.7	Career Guidance
8.3(b)	Suspension, Expulsion and Exclusion
10.1(c)	Learning Education Outside the Classroom
10.6	Whanau Engagement Policy
14.1(e) and (f)	Property
16.1(a)	Minimum Requirements
16.3(a)	Declarations of Minimum Requirements
18.1(b)(i)	Student Management System
18.2(a)	Reporting to the Minister
18.5	Audited financial statements
24.2(a) and (b)	Performance Notice
29	Invoice
Schedule 7 1.2(b)	Guaranteed Minimum Roll
Schedule 7 1.3	Establishment Payment
Schedule 7 1.4	Quarterly Operations Payments
Schedule 7 2(b)	Invoicing

Term of appointment

The appointment continues until it is revoked by the Minister by notice in writing to the appointee.

DATED at 19th this day of August 2014

Hekia Parata

Hon Hekia Parata
Minister of Education

Wellington, N.Z