

# **Agreement**

**relating to**

Partnership Schools / Kura Hourua

**The Minister of Education, acting in the name and on behalf  
of the Crown**

Minister

**and**

**City Senior School Limited**

Sponsor

## Contents

Introduction.....	6
Part 1: Design of Agreement and Introductory Matters.....	7
1. Design of Agreement.....	7
1.1 Overview of Parts and Schedules .....	7
1.2 Contracting for outcomes .....	8
1.3 Application of guidelines, standards and tools, instructions or templates .....	8
1.4 Effect of this clause 1 of Part 1 and the Introduction .....	9
2. Scope, Status and Construction of Agreement.....	9
2.1 Scope.....	9
2.2 Status and Construction (including where sections in the Act are cross-referenced).....	9
3. Appointment of Sponsor and School Establishment.....	11
4. Term of Agreement .....	12
5. Education Circulars .....	13
Part 2: Key Requirements of a Partnership School/Kura Hourua .....	14
6. Special features of Sponsor's Partnership School/Kura Hourua .....	14
7. Enrolment of Students at School and in Courses .....	14
7.1 Maximum Roll and Minimum Roll .....	14
7.2 Acceptance of Students.....	14
7.3 International Students.....	15
7.4 Students with Special Education Needs (Learning Support) .....	15
7.7 Career guidance .....	16
7.8 Reporting to Parents.....	16
7.9 Tuition outside school .....	17
7.10 Child protection policy .....	17
8. Student attendance and absences from School .....	17
8.1 School hours and terms.....	17
8.2 Students' attendance at school .....	17
8.3 Standing down, suspending, expelling and exclusion .....	18
9. Curriculum and Qualifications .....	18
9.1 Curriculum .....	18
9.2 Qualifications offered .....	19
10. School Rules, Off-site Activities, Student transportation and interaction with Parents and communities .....	19
10.1 Off-site visits and courses.....	19
10.2 Transport .....	20
10.3 School Rules.....	20
10.4 Extra-curricular Activities .....	20
10.5 Engagement with a Parent making a complaint .....	21
10.6 Engagement with Parents, family, whānau, iwi and communities .....	21

11.	Fees and donations.....	21
11.1	Tuition fees .....	21
11.2	Payments for uniform and stationery .....	22
11.3	Donations.....	22
12.	Governance of the School .....	22
12.1	Chief executive .....	22
12.2	Responsibility for teaching and learning .....	22
13.	Teachers and other Sponsor employees and contractors .....	23
13.1	Qualifications of teachers .....	23
13.2	Number of Teaching Positions and other staff .....	23
13.3	Number or percentage of people holding a Practising Certificate or Limited Authority to Teach .....	23
13.4	Percentage of Curriculum time to be taught by people holding a Practising Certificate or Limited Authority to Teach .....	23
13.5	Police and other vetting .....	23
13.6	Teacher salaries and wages.....	24
14.	Property.....	24
14.1	Buildings .....	24
14.2	Equipment.....	25
14.3	Hostel facilities .....	25
15.	Objectives .....	26
16.	Minimum Requirements .....	26
16.1	Minimum Requirements.....	26
16.2	Compliance with Minimum Requirements a factor in relation to using interventions .....	27
16.3	Evidence as to compliance with Minimum Requirements .....	27
17.	Performance Management System .....	28
17.1	Performance Standards and Performance Indicators .....	28
17.2	Setting of Performance Standards and Performance Indicators .....	28
18.	Records and reporting .....	30
18.1	Records .....	30
18.2	Reporting to the Minister.....	30
18.3	Reporting to Ministry.....	32
18.4	Annual reporting to the public .....	33
18.5	Audited accounts .....	33
18.6	Information required by the Secretary .....	33
18.7	Reporting generally.....	33
19.	Review and audit rights.....	34
19.1	Inspections.....	34
19.2	ERO review.....	34
19.3	Minister's audit rights .....	34
19.4	Evaluation by external research group .....	35
20.	Measuring performance and good faith obligations.....	35

20.1	Good faith obligation (in relation to measuring performance) .....	35
20.2	Measuring performance against the Performance Indicators and Performance Standards .....	36
20.3	Guidance on measuring performance against the Performance Indicators and Performance Standards .....	37
21.	Consequences of failing to meet Performance Standards or where there has been a breach or is likely to be a breach of this Agreement or the Act .....	39
22.	General ability to intervene .....	40
23.	Escalation of interventions .....	40
24.	Interventions .....	40
24.1	Utilisation of interventions .....	40
24.2	Performance Notice .....	40
24.3	Remedial Plan .....	41
24.4	Increased reporting.....	41
24.5	Specialist audit.....	41
24.6	ERO investigation through early or special review .....	42
24.7	Appointment of specialist adviser .....	42
25.	Termination .....	42
25.1	Minister's right to terminate.....	42
25.2	Minister's termination for convenience .....	45
25.3	Sponsor's termination for convenience .....	46
25.4	Force majeure.....	47
25.5	Mutual agreement.....	47
26.	Secretary's step-in rights .....	47
27.	Sponsor co-operation.....	49
Part 6: Payment.....		50
28.	Payment .....	50
29.	Invoicing .....	50
30.	Representations, warranties and undertakings .....	52
31.	Confidentiality and intellectual property .....	52
31.1	Confidentiality .....	52
31.2	Intellectual property .....	52
32.	Indemnities and liability .....	53
32.1	Sponsor indemnity .....	53
32.2	No liability .....	53
33.	Insurance .....	53
34.	Miscellaneous Terms .....	54
34.1	Minister's right to appoint person to administer this Agreement.....	54
34.2	Public statements .....	54
34.3	Conflicts of Interest .....	54
34.4	Relationship between the parties .....	54
34.5	Sponsor contract manager .....	54
34.6	Sub-contracting.....	55

34.7	Assignment .....	55
34.8	Notices .....	55
34.9	Dispute resolution .....	56
34.10	Counterparts .....	56
34.11	Severability .....	56
34.12	Waiver .....	57
34.13	Entire agreement .....	57
34.14	Variations .....	57
34.15	Survival .....	57
34.16	Governing law and jurisdiction .....	57
35.	Definitions and Interpretation .....	58
35.1	Definitions .....	58
35.2	Interpretation .....	63
Schedule 1:	Student Enrolment, School hours and term and special features .....	65
Annex A:	Draft Gazette Notice .....	67
Schedule 2:	Curriculum & Qualifications .....	68
Schedule 3:	Additional Student Services Offered .....	73
Schedule 4:	Governance and Teachers .....	74
Schedule 5:	Property .....	75
Schedule 6:	Performance Management System .....	76
Annex A:	Performance Standards for Student Achievement .....	80
Annex B:	Performance Standards for Student achievement .....	82
Annex C:	Performance Standards for Student engagement .....	83
Annex D:	STEM Focus .....	85
Schedule 7:	Payment .....	86
Schedule 8:	Independent Review Process Framework .....	92
Schedule 9:	Miscellaneous .....	95
Schedule 10:	Establishment Completion Declaration .....	96

This **Agreement** is made on

2017

**between** (1) **The Minister of Education, acting in the name and on behalf of the Crown (Minister)**

**and** (2) **City Senior School Limited (6246370) (Sponsor)**

## **Introduction**

- A. Section 158D of the Education Act 1989 (the **Act**) enables the Minister, in the name and on behalf of the Crown, to enter into a contract with a sponsor for the operation, by that sponsor, of a Partnership School/Kura Hourua in accordance with the requirements set out in the Act.
- B. Following an application process, it is intended that the Sponsor will be approved by the Minister under section 158B of the Act to operate a Partnership School/Kura Hourua (as will be evidenced by notification in the *Gazette*) and, once the Gazette Notice has been published and this Agreement has been executed by both parties and any pre-conditions to its commencement have been satisfied or waived by the Minister, will be a 'sponsor' as that term is defined in the Act.
- C. This Agreement records the terms and conditions upon which the Sponsor will establish, operate and manage a Partnership School/Kura Hourua and the payments that the Minister will make to the Sponsor in consideration for the Sponsor's establishment, operation and management of the Partnership School/Kura Hourua in accordance with this Agreement.
- D. The Crown and the Sponsor (as regards its individual circumstances and own special character) wish to ensure that all young New Zealanders can participate successfully in life and contribute to a modern economy. In particular they wish to see all Māori, Pasifika, learners from low socio-economic backgrounds, and learners with special education needs get the qualifications and skills they need to succeed. This Agreement helps enable the achievement of these outcomes.
- E. Without derogating from or overriding any express obligations or entitlements set out in this Agreement, the parties agree that the following relationship principles will guide the parties in their dealings with each other under this Agreement:
  - (a) the interests of the Students will be front of mind for both parties;
  - (b) both parties will act in an open and transparent manner with each other;
  - (c) both parties will act in good faith;
  - (d) both parties will foster a long-term and co-operative relationship to enable both parties to achieve their mutual objectives efficiently and effectively;
  - (e) both parties agree to co-operate with each other and to raise and discuss matters with one another where appropriate; and
  - (f) both parties agree to discuss the resolution of any issues or problems that may arise in relation to the interpretation or application of this Agreement.

- F. The parties acknowledge that the key values underpinning the Partnership School/Kura Hourua

model are:

- (a) seeking to create partnerships with other organisations (such as businesses, philanthropists, iwi, community organisations, faith-based groups, private schools and culture-based education organisations) to support the establishment and operation of the Partnership School/Kura Hourua;
- (b) accountability for meeting agreed targets including student academic achievement;
- (c) focus on educational performance;
- (d) flexibility to decide how Partnership Schools/Kura Hourua operate and use funding; and
- (e) high trust between the Minister/Ministry and sponsors, in order to achieve the agreed outcomes.

## It is agreed

### Part 1: Design of Agreement and Introductory Matters

#### 1. Design of Agreement

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##### 1.1 Overview of Parts and Schedules

This Agreement has been designed as a contract for outcomes (see clause 1.2 below) and is structured in the following way:

- (a) **Part 1:** Part 1 describes the structure and nature of the Agreement and the relationship between the Agreement and the Act. Part 1 also appoints the Sponsor and sets the term of the Agreement.
- (b) **Part 2:** Part 2 describes the key requirements that the School must satisfy and the Sponsor must comply with. Although many of the general requirements can be found in the Act, reference is made to the key topics which cover how the School is expected to run, cross-referencing specific provisions in the Act and the Act generally (where applicable), as well as setting additional limitations and expectations. More specific details relating to the matters referred to in Part 2 that are unique to the School are set out in Schedules to the Agreement. This Agreement should therefore be read alongside and closely with the Act. Nothing in this Agreement overrides or excludes the application of the Act in any way.
- (c) **Part 3:** Part 3 sets out the Performance Management System that applies under this Agreement. Part 3 specifies:
  - (i) the Objectives the Sponsor has for the School;
  - (ii) the Minimum Requirements that the Sponsor and/or the School (as the case may require) must meet;
  - (iii) the Performance Indicators that will be used to monitor aspects of the Sponsor's performance and the Performance Standards that the Sponsor will be assessed against;

- (iv) the Sponsor's reporting requirements, which will enable the Sponsor's achievement against the Performance Indicators and performance against the Performance Standards and compliance with the Minimum Requirements to be measured and assessed and which correlate with the requirements described in Part 2 of the Agreement.
- (d) **Part 4:** Part 4 sets out the regime for managing and responding to circumstances where the Sponsor is not meeting the Minimum Requirements, the required performance expectations or is not complying with any other obligation contained or referred to in this Agreement. In such circumstances the Minister will have a number of possible interventions available to use at his or her discretion. The Minister will be required to exercise judgement over which of the interventions is appropriate to use in the particular circumstances. In exercising his or her judgement, relevant considerations that the Minister may take into account will include the degree of non-compliance or under-performance, the Sponsor's record of previous failures under this Agreement (if any) and the Sponsor's performance in other areas of this Agreement. Part 4 also sets out how this Agreement can be terminated and the Secretary's step-in rights that apply under this Agreement or the Act, as applicable.
- (e) **Part 5:** Part 5 describes the process that will apply when the Agreement expires or is terminated (or is about to expire or be terminated) to ensure stability for the affected Students.
- (f) **Part 6:** Part 6 describes how payment will be made to the Sponsor under the Agreement. The specific details around the amounts to be paid will be set out in Schedule 7 to the Agreement.
- (g) **Part 7:** Part 7 sets out the general 'legal boiler plate' provisions that apply to this Agreement.
- (h) **Schedules:** The Schedules set out the detailed information specific to the Sponsor's School and operations referred to throughout Parts 1 to 7.

## 1.2 Contracting for outcomes

The outcomes to be achieved by the Sponsor (which are aligned with the outcomes that the Minister is seeking to achieve) are described and reflected in the Objectives and the Performance Standards. The Performance Standards detail the specific level of performance that is expected and that will demonstrate achievement of the outcomes and the Objectives (or progress towards them). The Performance Indicators demonstrate a range of other performance related matters, including whether or not the Sponsor is on track to achieve the Performance Standards relating to the same subject matter area or matter. The reporting, audit, performance measurement and intervention mechanisms are all elements of the regime designed to assess whether the outcomes contracted for are being achieved and, if they are not being achieved, to ensure that appropriate action is taken to address this.

## 1.3 Application of guidelines, standards and tools, instructions or templates

Where the Minister is considering whether to exercise the Minister's discretion to direct or require that a particular guideline, standard, tool, instruction or template should apply to the Sponsor (in situations where the Minister has this discretion as set out in this Agreement or under the Act):



- (a) where appropriate the Minister will consider whether the School should be subject to the same requirements as State schools;
- (b) where appropriate the Minister will consider the School's individual circumstances; and
- (c) the application of a guideline, standard, tool, instruction or template would generally only occur following discussion with the Sponsor unless the context requires otherwise.

#### **1.4 Effect of this clause 1 of Part 1 and the Introduction**

- (a) Clause 1 provides a guide to the Agreement and explains the nature of the Agreement. Paragraphs E and F of the Introduction set out the key values and the key principles that will apply to both parties in their dealings with each other under this Agreement. Nothing in this clause 1 of this Agreement or in paragraphs E and F of the Introduction is intended to create a legally binding obligation or commitment on either party.
- (b) This clause 1 is intended to assist the parties in understanding the design and content of the Agreement. In the event of a conflict or inconsistency with any other provision this clause 1 should be read consistently with that other provision, or where a consistent interpretation cannot be reached, should be discounted for the purpose of interpreting the meaning of that other provision or provisions.

## **2. Scope, Status and Construction of Agreement**

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### **2.1 Scope**

- (a) This Agreement comprises the base agreement (being clauses 1 to 35) and the Schedules and the Annexes to those Schedules.
- (b) The following order of precedence will apply in the event of a conflict or inconsistency between any of the documents forming part of this Agreement:
  - (i) Schedules and Annexes to those Schedules (except where any of them are expressly made subject to the provisions of the base agreement); and
  - (ii) base agreement (being clauses 1 to 35).

### **2.2 Status and Construction (including where sections in the Act are cross-referenced)**

- (a) This Agreement is a 'partnership school contract' (as defined in section 2(1) of the Act) for the purpose of the Act.
- (b) Nothing in this Agreement overrides or excludes the application of the Act in any way, including as regards the exercise of any right, power or discretion that the Minister, the Ministry or the Secretary may have under the Act.
- (c) Nothing in this Agreement will be construed or interpreted as a delegation, or a purported reduction in the scope, of any non-delegable statutory rights, powers, duties or discretions of any of the Minister, the Ministry or the Secretary nor the pre-determination of, or any fetter on, any statutory right, power or discretion. However, nothing in this

clause limits any powers of delegation permitted by the Act or the State Sector Act 1988.

- (d) Unless expressly provided for otherwise by the terms of this Agreement, the following construction rules apply in each case where this Agreement contains an express reference to a section in the Act (including as such sections may be amended, supplemented or replaced from time to time) (in paragraph (d) of this clause 2.2, a **Relevant Section**):
- (i) the inclusion of reference to a Relevant Section is intended principally to assist the Sponsor to identify those sections of the Act that are most relevant to the particular subject matter provided that if the Relevant Section imposes an obligation (including a duty or a responsibility) on the Sponsor (including with respect to the School or its operation), then a failure by the Sponsor to perform or comply with that obligation (including, but only to the extent permitted by the Relevant Section, as that obligation may be expressly amended by the terms of this Agreement) (in paragraph (d) of this clause 2.2, a **Relevant Obligation**) will be deemed to be a breach of this Agreement;
  - (ii) the rights, duties and responsibilities of each of the Minister, the Ministry, the Secretary and the Sponsor (as the case may be) under the Relevant Section shall not give rise to (or be construed or interpreted as giving rise to) separate corresponding contractual rights or obligations of the Minister (or the Ministry or the Secretary), or rights for the Sponsor, under this Agreement and no such rights or obligations shall be implied in this Agreement;
  - (iii) the Minister, the Ministry and the Secretary (as the case may be) will be free and entitled to exercise any rights, powers and discretions given to them under (or otherwise relating to) the Relevant Section and nothing in this Agreement will limit or constrain the exercise of any such rights, powers or discretions, including in circumstances where the Sponsor fails to perform or comply with a Relevant Obligation;
  - (iv) the Minister, the Ministry and the Secretary (as the case may be) may (but will not be obliged to) exercise any rights and powers conferred by this Agreement at the same time as, or at any time in addition to, the rights, powers and discretions given to them under the Relevant Section;
  - (v) in relation to any matter expressly provided for in a Relevant Section, and unless the Minister determines otherwise (in his or her discretion), the Minister, the Ministry and the Secretary (as the case may be) shall be presumed to be acting (or not acting) under the Relevant Section in the exercise of a statutory right, power or discretion and not exercising a contractual right or power under this Agreement;
  - (vi) no exercise by the Minister, the Ministry or the Secretary (as the case may be) of a right, power or discretion given to them under a Relevant Section will constitute or be construed as giving rise to a breach of this Agreement by the Minister; however, all public law claims and remedies otherwise available to the Sponsor as a result of the Minister, the Ministry or the Secretary (as the case may be) failing to properly exercise any such right, power or discretion are preserved but must be construed in the light of, and subject to the terms of, the agreements made by the Sponsor under this Agreement; and
  - (vii) in the event of any inconsistency between (on the one hand) any right, power or

discretion granted to the Minister, the Ministry or the Secretary (as the case may be) under a Relevant Section or any obligation (including a duty or a responsibility) imposed on the Sponsor by the Relevant Section and (on the other hand) a provision of this Agreement then the position under the Relevant Section shall prevail to the extent of the inconsistency and where possible the provisions of this Agreement shall be read and construed to the extent necessary to ensure consistency.

### **3. Appointment of Sponsor and School Establishment**

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- (a) The Sponsor is contracted by the Minister to provide educational services to students who enrol to attend the School on the terms described in this Agreement and otherwise in accordance with (and the Sponsor agrees to comply with) the Act and all other applicable laws, rules, regulations, Education Circulars, the terms of the Gazette Notice, and any applicable guidelines. For the avoidance of doubt, the Sponsor acknowledges that the Sponsor's duty to comply with all laws, rules and regulations may mean that a future law, rule or regulation (including the Act, as it may be amended, supplemented or replaced from time to time) supplements or overrides provisions contained in this Agreement and this Agreement will be deemed to be amended as and when, and to the extent necessary, to ensure such consistency at all times during the term of this Agreement.
- (b) It is the Sponsor's sole responsibility to ensure that at all relevant times it is aware of any laws, rules, regulations, Education Circulars and guidelines that apply to the Sponsor and the Sponsor's operation of the School (including without limitation those relating to transport, buildings, health and safety, and employment) and otherwise to the Sponsor's performance of its obligations under this Agreement.
- (c) Generally, and for the purpose of this Agreement, the Sponsor is a 'sponsor' as that term is defined in section 2(1) of the Act. The Sponsor also acknowledges that a number of other terms used in the Act will also apply to the School and/or the Sponsor. These include references in the Act to 'registered school', 'provider', 'educational service' and 'employer'. As such, the Sponsor should also ensure that it is at all relevant times aware of the various requirements in the Act that will apply to the School and the Sponsor because the School (and/or its activities) or the Sponsor are also caught within the scope of these other terms.
- (d) The parties acknowledge and agree that, prior to the date of this Agreement, the Sponsor has prepared and provided to the Ministry an Implementation Plan. The Sponsor agrees that it will use every reasonable effort to give effect to its Implementation Plan and complete the activities referred to in it. The Sponsor must obtain the Ministry's approval before making any material change to its Implementation Plan. As provided for in paragraph (b)(i) of clause 18.3, the Sponsor must complete and submit an Implementation Plan Monthly Progress Report to the Ministry within 5 Business Days of the end of every month after the commencement of this Agreement until it has completed and submitted an Establishment Completion Declaration under paragraph (f) of this clause 3.
- (e) At any time during the Establishment Period the Ministry may request the Sponsor to provide further detail or explanation about the Sponsor's progress against its Implementation Plan. In addition, the Minister may also request the Ministry or ERO to undertake reviews, or make further enquiries, regarding any material issues of concern or material interest the Minister may have with respect to the Sponsor's establishment activities or its progress against its Implementation Plan. In each case, the Sponsor agrees to provide the Ministry and ERO (as applicable), upon reasonable request, the

same access to the Premises (or intended Premises) that the Sponsor has and any materials, documents or other information relating to the Sponsor's proposed establishment or operation to the School, and to co-operate fully with the Ministry and ERO during the conduct of such review.

- (f) The Sponsor is required to complete and submit to the Ministry an Establishment Completion Declaration by no later than 10 Business Days before the School's scheduled date for opening (or such later date as the Ministry may agree, in its discretion). As provided for in clause 28 and notwithstanding anything to the contrary in this Agreement, the Minister will not be obliged to pay (or authorise payment of) the first Quarterly Operational Payment under Schedule 7 unless and until the Ministry has received a properly completed and executed Establishment Completion Declaration, together with any other supporting documents or evidence that the Ministry may reasonably request, in each case in a form and substance satisfactory to it.
- (g) For the avoidance of doubt, and without limiting paragraph (e) of this clause 3 above, the Sponsor's failure to comply with the requirements of any of paragraphs (d) to (f) of this clause 3 will be non-compliance, non-performance or a breach of this Agreement to which clause 21 applies and the consequence will be that the Minister may use any of the responses or interventions described in clause 24 and 25.1 of this Agreement.

## **4. Term of Agreement**

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- (a) This Agreement will commence when executed by both parties and will continue for a term that expires on the date which is six (6) years after 1 January 2019, unless terminated earlier, or extended, in accordance with the terms of this Agreement.
- (b) The Minister in his or her sole and absolute discretion shall have the right to extend the term of this Agreement for up to two further periods of six (6) years each (but extending only by one (1) such further period at a time) by giving the Sponsor a minimum of twelve (12) months' notice in writing prior to the end of the then current term of this Agreement.
- (c) As from the date which is twenty-four (24) months before the date when the term would otherwise expire the Minister (or his or her delegate) and the Sponsor will commence discussions about:
  - (i) whether or not each of the Minister and the Sponsor is likely to want the term of this Agreement to be extended (and the reasons of each for holding that view), and any matters that the Minister considers will be relevant to determining whether or not to extend (including any proposed changes to the base agreement); and
  - (ii) if, before the date which is twelve (12) months' prior to the end of the then current term of this Agreement, the Minister finally determines that he or she will not exercise the right to extend the term, how to ensure an orderly and efficient closure or transfer of the operation of the School as from the expiry of the term, including so that disruption to Students and their whānau and families is minimised provided that nothing in this clause shall limit anything in clause 27.
- (d) The Sponsor acknowledges that, as part of any term extension (and relevant to the Minister's determination whether or not to extend), various content in the Schedules to this Agreement and which relates to specified Years and periods will need to be supplemented to accommodate the further term. In particular, but only by way of example, this will

include the term dates (set out in Schedule 1) that will be applicable during the extended term.

## **5. Education Circulars**

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- (a) The Minister may at any time give written notice to the Sponsor that an Education Circular (or part thereof) that is not already specifically described as applying to the School or the Sponsor, shall apply to the School and the Sponsor (as the case may require) from the date specified in the Minister's notice (which date shall allow a reasonable timeframe for the Sponsor to make any necessary adjustments required to ensure it can apply or comply with the new requirements (or relevant part thereof)). Any reference to board of trustees, principal or school in an applicable Education Circular shall be read as a reference to the School, its principal, or the directors or trustees (as the case may be) of the Sponsor, as the case may require.
- (b) The Minister will be deemed to have given notice under (and in compliance with the requirements of) paragraph (a) of this clause 5 if the Education Circular specifically records that it (or any part of it) applies to Partnership Schools/Kura Hourua (whether by reference to the sponsor, the school or otherwise).
- (c) In the event that the Minister gives notice to the Sponsor under paragraph (a) or is deemed to have given notice under paragraph (b) of this clause 5, the applicable requirements in the Education Circular shall apply in place of any terms in this Agreement that are inconsistent with any requirement in the relevant Education Circular. Each party will use its reasonable endeavours to promptly notify the other as and when it identifies such an inconsistency (although a failure to do so will not give rise to a breach of this Agreement or any other consequence) and, once notified, the parties will discuss and agree how this Agreement will thereafter be construed and applied so as to accommodate the inconsistency.
- (d) The Minister may decide at any time, by giving written notice to the Sponsor, that any Education Circular that has been applied to the School or the Sponsor shall cease to apply to the School or the Sponsor (including from a date specified in the written notice). Notwithstanding paragraph (c) of this clause 5, the terms of this Agreement will prevail in the event of any conflict or inconsistency with an Education Circular.
- (e) Despite anything to the contrary referred to above in this clause 5 and unless the relevant Education Circular expressly states that Partnership Schools/Kura Hourua (of the same general type or kind as the School) are eligible to claim a payment, any reference in any Education Circular which applies to the Sponsor or the School and which relates to payments that a school is entitled to receive shall not apply to the School or the Sponsor. This is because the payment provisions in this Agreement shall be the only place where the Sponsor's entitlement to receive payment from the Minister (or, for the avoidance of doubt, the Ministry) is specified.
- (f) Any Education Circular which applies to the Sponsor or the School and which includes reference to regulations made pursuant to the Act but which regulations do not ordinarily apply to the Sponsor or the School pursuant to the Act or regulation itself, shall be deemed to apply but only to the extent this is required to give effect to the relevant Education Circular.

## **Part 2: Key Requirements of a Partnership School/Kura Hourua**

### **6. Special features of Sponsor's Partnership School/Kura Hourua**

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- (a) The special features of the Sponsor's Partnership School/Kura Hourua will be as set out in the Gazette Notice.
- (b) The Sponsor may only provide Religious Instruction in the School during School hours if Schedule 1 provides that the Sponsor is permitted to provide Religious Instruction to the Students.

### **7. Enrolment of Students at School and in Courses**

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#### **7.1 Maximum Roll and Minimum Roll**

- (a) The Maximum Roll and the Minimum Roll for the School are set out in Schedule 1.
- (b) If at any time the Maximum Roll specified in Schedule 1 has been reached the Sponsor will enrol (and the Maximum Roll will be deemed increased to include) any additional Student(s) whom the Secretary has directed the Sponsor to enrol in accordance with the Act.
- (c) The students who comprise the Maximum Roll can only be from the Class Levels specified for the relevant Year in the Gazette Notice. There is no maximum number of students per Class Level.
- (d) The students who comprise the Minimum Roll can only be from the Class Levels specified for the relevant Year in the Gazette Notice. There is no minimum number of students per Class Level that the Sponsor must enrol.
- (e) Either party may initiate a review of the Maximum Roll at any time after the School has completed one full School Year and the Sponsor has completed its scheduled reporting (including achievement of Performance Indicators and performance against the Performance Standards) for that School Year. The parties acknowledge that the principal considerations relevant to making a change in the Maximum Roll will be Student enrolment demand and Student achievement (or both). If the Minister agrees to adjust the Maximum Roll this must be effected (together with any other changes to this Agreement that the Minister reasonably considers to be consequent upon such an adjustment, which may include an adjustment to the Minimum Roll, provided that such other changes must be advised to the Sponsor before the Sponsor finally confirms its request to adjust the Maximum Roll) in writing by way of a variation to this Agreement which, in order to be effective from the start of a Year, must be signed by both parties by no later than 30 September of the preceding Year (or such later date as the Minister may specify or agree to).

#### **7.2 Acceptance of Students**

- (a) Subject to paragraphs (b) and (c) of this clause 7.2, the Sponsor must accept any Domestic Student who wishes to enrol at the School, provided that:

- (i) the student is of an eligible age or otherwise meets any necessary eligibility criteria (as provided for in the Act) to receive education in relation to the Class Levels specified for the relevant Year in the Gazette Notice and that are being taught at the School in that Year; and
  - (ii) accepting the student would not cause the Sponsor to exceed the Maximum Roll; or
  - (iii) the Secretary has directed the Sponsor to enrol the student in accordance with the Act.
- (b) If the Sponsor receives multiple applications for enrolment at one time from students who are eligible to enrol with the Sponsor under paragraph (a) of this clause 7.2 such that accepting all students who are seeking to enrol at that time would cause the Maximum Roll to be exceeded, the Sponsor must allocate places in accordance with sections 158N and 4(3) of the Act.
  - (c) If section 158S(1) or (2) of the Act gives the Sponsor grounds not to enrol a student seeking to enrol at the School, the Sponsor is not required to enrol that student at the School.
  - (d) Provided that the Sponsor complies with the requirements and restrictions set out in paragraphs (a), (b) and (c) of this clause 7.2, 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.

### **7.3 International Students**

- (a) The provisions in sections 4 to 4E of the Act relating to enrolment and tuition of International Students (as applied to Partnership Schools/Kura Hourua and their sponsors by section 158U of the Act) and the requirements under Part 18A of the Act apply to the School and the Sponsor.
- (b) 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 this will be set out in Schedule 1. Otherwise, if no number is recorded in Schedule 1 no such cap shall apply.
- (c) The parties will work together (each acting reasonably and in good faith) to agree in writing by way of a variation to this Agreement signed by both parties (if and when required), but in any event by no later than each 30 September (or such later date as the Minister may specify or agree to) during the term of this Agreement, the upper limit on International Students (if any) that will apply for the following Year. If agreement cannot be reached by that date the upper limit on International Students shall remain at its then current set or agreed level.

### **7.4 Students with Special Education Needs (Learning Support)**

Sections 158O and 158P of the Act apply in respect of students with Special Education Needs who wish to enrol at the Sponsor's School.

### **7.5 Providing a safe physical and emotional environment**

- (a) The Sponsor must provide a safe physical and emotional environment for the Students.
- (b) The Sponsor must prepare and, at all times during the term of this Agreement, maintain and at regular intervals review and update (if required), the School's policies for ensuring a safe physical and emotional environment for Students.
- (c) Such policies must be to a standard consistent with best practice applicable at the relevant time, including any guidelines provided or made available to the Sponsor by the Ministry. The Sponsor must prepare its initial policies by no later than the completion date specified for those policies in its Implementation Plan and, if no date is specified, by the date scheduled (or otherwise notified to the Sponsor) for the School's readiness review under paragraph (e) of clause 19.2, and provide a copy of such policies to the Minister upon request.
- (d) The Sponsor must make these policies publicly available either on the School's website (if a website is operated) or by other suitable means within a reasonable period of such policies being prepared.

## **7.6 Guidance and counselling**

The Sponsor must take all reasonable steps to ensure that:

- (a) in providing a safe physical and emotional environment for the Students, Students get access (as requested or otherwise reasonably required by Students) to good quality guidance and counselling appropriate to the needs of the Students; and
- (b) for any Class Levels specified for the relevant Year in the Gazette Notice to which it is relevant (which will include Class Levels 7 to 13, if applicable) and that are being taught in that Year, the Students receive (as requested or otherwise reasonably required by Students) guidance and counselling about selecting courses of study that do not close off future educational choices and to that end shall facilitate the Student undertaking any courses of study that are not Courses specifically offered by the Sponsor.

## **7.7 Career guidance**

If any of Class Levels 7 to 13 are specified for the relevant Year in the Gazette Notice and are being taught in that Year, the Sponsor must (as requested or otherwise reasonably required by Students) provide career education and guidance to Students in those Class Levels having regard to the Ministry's publication "Career Education and Guidance in New Zealand Schools" and Careers New Zealand's publication "Career Development Benchmarks", or any substitute publication notified by the Ministry to the Sponsor from time to time.

## **7.8 Reporting to Parents**

- (a) The Sponsor is required to inform each Student's Parent (and, if there is more than one, at least one for receipt on behalf of all others), at least twice per year, in writing and in plain language, of:
  - (i) the progress of the Student at the School;
  - (ii) any known or perceived barriers to the Student's progress at the School; and



- (iii) as applicable, the Student's progress and achievement in relation to National Standards and/or Ngā Whanaketanga Rumaki Māori and/or NCEA (as appropriate).
- (b) The Sponsor must provide a representative sample of the reports described under paragraph (a) of this clause 7.8 to the Ministry at the same time as such reports are provided to Parents.

## **7.9 Tuition outside school**

Section 25B of the Act (as applied to Partnership Schools/Kura Hourua and their sponsors by section 158U of the Act) applies in respect of Students who are or who wish to receive tuition outside of the Premises.

## **7.10 Child protection policy**

The Sponsor must comply with its obligations under section 18 of the Vulnerable Children Act 2014 to adopt a child protection policy that contains the content required by that Act, ensure that such child protection policy is available as required by that Act and that such policy is reviewed within three years of its adoption and thereafter within three years of any such earlier review. The Sponsor must prepare its initial policy by no later than the completion date for that policy specified in its Implementation Plan and, if no date is specified, by the date scheduled (or otherwise notified to the Sponsor) for the School's readiness review under paragraph (e) of clause 19.2. The Sponsor must, upon request, provide the Ministry with a copy of its child protection policy and confirmation that it has undertaken (and responded appropriately to the results of) all vetting and safety checks required under Part 3 of the Act and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.

# **8. Student attendance and absences from School**

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## **8.1 School hours and terms**

- (a) The Sponsor is permitted to set and change the School hours and term dates for when Students are required to be in attendance at the School, provided that:
  - (i) the School hours and term dates do not reduce below the minimum levels set out in Schedule 1 (except where the reason the hours and term dates have reduced below these minimum levels is due to a strike or lockout or a Force Majeure Event which has caused a closure of the School during ordinary School hours and term dates); and
  - (ii) the Students and Parents are notified in writing, and with reasonable advance notice, of the School hours and term dates and any changes to those hours and dates.
- (b) Section 158Q of the Act applies in relation to the setting of multiple timetables in the School.

## **8.2 Students' attendance at school**

The provisions in sections 25 to 25B and 27 of the Act (as applied to Partnership Schools/Kura

Hourua and their sponsors by section 158U of the Act) apply in respect of Students' attendance at the School.

### **8.3 Standing down, suspending, expelling and exclusion**

- (a) The provisions in sections 13 to 15, 17 to 17C, 18 and 19 of the Act (as applied to Partnership Schools/Kura Hourua and their sponsors by section 158U of the Act) and the provisions in the Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999 (as applied to Partnership Schools/Kura Hourua and their sponsors by section 158V of the Act), and any other rules or regulations made under the Act or the rules or regulations made in relation to those provisions of the Act referred to above, apply to the School and/or the Sponsor in relation to the standing down, suspending, expelling and exclusion of Students.
- (b) The Sponsor is required to comply with any requirements specified under the provisions referred to in paragraph (a) of this clause 8.3 in relation to standing down, suspending, expelling or the exclusion of Students, and also any requirements specified in any Education Circulars or other relevant Ministry guidelines relating to standing down, suspending, expelling or the exclusion of Students which apply to the School and/or the Sponsor.

## **9. Curriculum and Qualifications**

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### **9.1 Curriculum**

- (a) The Sponsor will ensure that it teaches its Students in accordance with the Curriculum described in Schedule 2.
- (b) Notwithstanding any description of the Curriculum in Schedule 2, the Sponsor must ensure that the Curriculum is, at a minimum, appropriately reflective of the elements embodied in any applicable Foundation Curriculum Policy Statement.
- (c) The Sponsor is not permitted to open the School and enable Students to attend to receive education at the School unless it has in place instruments for assessing the educational achievement of the Students in each Class Level specified for the relevant Year in the Gazette Notice and that are being taught at the School in that Year, which instruments that have been agreed with, or notified to the Sponsor by, the Minister in accordance with paragraph (b) of clause 20.3.
- (d) The Sponsor must prepare and at all times during the term of this Agreement maintain and at regular intervals review and update (if required), curriculum policy documents and a curriculum handbook, setting out the academic programme available to its Students.
- (e) Such curriculum policy documents and the School's curriculum handbook must be to a standard consistent with best practice applicable at the relevant time, including any guidelines provided or made available to the Sponsor by the Ministry. The Sponsor must prepare its initial curriculum policy documents and curriculum handbook by no later than the completion date for such documents specified in its Implementation Plan and, if no date is specified, by the date scheduled (or otherwise notified to the Sponsor) for the School's readiness review under paragraph (e) of clause 19.2. A copy of the curriculum policy documents and handbook must be provided to the Minister upon request.

- (f) The Sponsor must make the curriculum handbook publicly available either on the School's website (if a website is operated) or by other suitable means within a reasonable period of such handbook being prepared.

## **9.2 Qualifications offered**

- (a) The Sponsor will offer the relevant Qualifications specified in Schedule 2 to any Student seeking to undertake the necessary assessments to achieve the relevant Qualification and who is in the normal Class Level or has the academic ability to undertake the necessary assessments to achieve the relevant Qualification.
- (b) Students in a lower Class Level than would ordinarily undertake the necessary assessments to achieve such Qualification will be permitted to do so if they so wish provided that, in the Sponsor's reasonable opinion, the Student is capable of achieving the relevant Qualification.
- (c) The Sponsor shall encourage all Students to achieve the relevant Qualification that corresponds to their Class Level and/or ability.
- (d) The Sponsor shall not discourage any Student from undertaking any assessment to achieve a Qualification that the Sponsor offers.

## **10. School Rules, Off-site Activities, Student transportation and interaction with Parents and communities**

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### **10.1 Off-site visits and courses**

- (a) Section 158T of the Act sets out the position regarding the Students' ability to attend courses of education, obtain work experience, or make visits outside the Premises.
- (b) If a Student is attending a course of education, obtaining work experience or making a visit outside the Premises, the Sponsor continues to remain responsible for the Student while they are doing so.
- (c) The Sponsor is responsible for every Student who is attending a Learning Experience Outside the Classroom and must comply with any relevant Ministry guidelines or Education Circulars which apply to the Sponsor.
- (d) When providing any education experience to Students outside the confines of a classroom located on the Premises, and in order to ensure the safety of the Students, the Sponsor must comply (as relevant) with chapters 2 to 8 of the Ministry publication entitled 'EOTC Guidelines' published in 2016 subject to any updates or replacements to those chapters made from time to time and published on the Ministry's website. For this purpose, any reference to board of trustees or CEO in that publication shall be read as also referring to the directors and/or trustees (as the case may be) of the Sponsor.
- (e) If a Student is absent from the Premises to attend courses of education, obtain work experience or make a visit outside the Premises (as contemplated under section 158T of the Act), or is otherwise released to receive tuition outside of the Premises pursuant to section 25B of the Act, the Sponsor must ensure that it receives written confirmation from the provider of the course of education or work experience, or other person whom the

Student is supposed to be in attendance with, which confirms that the Student was (or was not) present at the required time at the course of education, work experience or the other off-site visit. This confirmation must be collected shortly following the Student's attendance (or required attendance) at that off-site visit (but in any event no later than five (5) Business Days following the Student's attendance (or required attendance) at that off-site visit.

- (f) The Sponsor must promptly provide written evidence of Student attendance, required attendance and non-attendance that is collected under paragraph (e) of this clause 10.1 to the Ministry as and when required by the Ministry.

## **10.2 Transport**

- (a) The Sponsor will provide transport for Students as required by and described in Schedule 3. If no transport is specified in Schedule 3 the Sponsor is not required to provide transport for the Students.
- (b) If Schedule 3 states that the Sponsor is required to provide transport for Students or if the Sponsor actually provides transport for Students that is not listed in Schedule 3, the Sponsor is responsible for ensuring that:
  - (i) the Sponsor, its drivers or any person or organisation engaged by the Sponsor to provide the required transport services, hold all applicable licences required under land transport legislation, including but not limited to the Land Transport Act 1998 and any regulations and rules made pursuant to that Act or any other relevant Act, regulation or rule applying at the time;
  - (ii) the vehicle or vehicles used in the provision of the transport services comply at all times with all relevant transport legislation, including any transport regulations and rules; and
  - (iii) the transport services are otherwise provided in accordance with any applicable Act, regulation, rule, Education Circular or guidelines.

## **10.3 School Rules**

In accordance with section 158I of the Act, the Sponsor may make any School Rules that the Sponsor considers necessary or desirable for the control and management of the School.

## **10.4 Extra-curricular Activities**

- (a) The Sponsor may offer any Extra-curricular Activities it chooses to provide to its Students.
- (b) The Minister is not required to make any payment towards the Sponsor's provision of Extra-curricular Activities to the Students.
- (c) The Sponsor may require the Parent of the Student to make a payment towards a Student's participation in an Extra-curricular Activity that the Sponsor chooses to make available for its Students provided the Extra-curricular Activity that a payment is being sought in relation to is truly extra-curricular and is not part of (or is otherwise necessary for) the Curriculum that is required to be taught to the Student.
- (d) If the Sponsor does provide any Extra-curricular Activities, the Sponsor must ensure that it

takes all due care to ensure that the safety and welfare of the Students is paramount.

## **10.5 Engagement with a Parent making a complaint**

- (a) The Sponsor must ensure that if a Parent makes a complaint or allegation, or raises a dispute with, the Sponsor, the chief executive of the School, a principal, teacher, or other employee of the School about a matter affecting their child who is a Student, the Sponsor will handle that matter promptly and must have in place an appropriate internal disputes management policy which includes within that policy an Independent Review Process. The policy must cover the matters described in, and be consistent with, the framework set out in Schedule 8.
- (b) The Sponsor must, by no later than the commencement of its First School Year, ensure that it has in place the policy described in paragraph (a) of this clause 10.5.
- (c) In developing the policy required under paragraph (a) of this clause 10.5, the Sponsor may have reasonable regard to practicalities and the resource implications for it in applying the framework set out in Schedule 8.

## **10.6 Engagement with Parents, family, whānau, iwi and communities**

- (a) The Sponsor must prepare and maintain and at regular intervals review and update (if required), at all times during the term of this Agreement, a policy setting out how it will engage with Parents, family, whānau, iwi and communities of the Students.
- (b) Such policy must be to a standard consistent with best practice applicable at the relevant time, including any guidelines or advice provided or made available to the Sponsor by the Ministry. The Sponsor must prepare its initial policy by no later than the completion date for that policy specified in its Implementation Plan and, if no date is specified, by the date scheduled (or otherwise notified to the Sponsor) for the School's readiness review under paragraph (e) of clause 19.2. A copy of the policy must be provided to the Minister upon request.
- (c) The Sponsor must make this policy publicly available to Parents, family, whānau, iwi and communities of the Students either on the School's website (if a website is operated) or by other suitable means within a reasonable period of such policy being prepared.

# **11. Fees and donations**

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## **11.1 Tuition fees**

- (a) The Sponsor acknowledges the right of every Domestic Student to free enrolment and free education as set out in section 3 of the Act. This principle shall be taken into account in relation to the application of this clause 11. Unless otherwise notified by the Minister in writing, the Sponsor must also apply any current Education Circular or guideline issued by the Ministry that relates to payments by parents of fees in the school context more generally at the relevant time, even if that Education Circular or Ministry guideline does not specifically state that it applies to Partnership Schools/Kura Hourua and even if the Minister has not made that Education Circular applicable to the Sponsor under clause 5 or the Minister has not determined or informed the Sponsor that the Ministry guideline shall apply to the School.

- (b) The Sponsor must not charge a Domestic Student any fee for receiving tuition at the School. This includes any fee relating to teaching or delivery of the Curriculum, unless otherwise expressly permitted under clause 11 of this Agreement.
- (c) Section 7A of the Act applies in relation to charging Students fees for receiving tuition from a Correspondence School.
- (d) Sections 4B and 4C of the Act apply in relation to fees that the Sponsor may charge International Students for receiving tuition at the School.
- (e) The Sponsor acknowledges that it is responsible for the payment of any fee, charge or levy payable by the Sponsor under the Act (in whatever capacity the Act may apply to the School or the Sponsor), including any export education levy set under any regulations made pursuant to section 238H of the Act.

## **11.2 Payments for uniform and stationery**

The Minister reserves the right to set an upper limit on expenditure by Parents for fees, uniform and stationery if, in the Minister's opinion, these are imposing an undue burden on Parents. The Minister will consult with the Sponsor before setting any upper limit.

## **11.3 Donations**

The Sponsor may (consistent with any then current Education Circular or guideline issued by the Ministry that applies as provided for in clause 11.1) seek a donation (whether monetary or in-kind) from Parents but if a Parent does not make a donation, this must not affect the tuition that the Student of that Parent receives at the School and must not disadvantage that Student compared with any other Student whose Parent does make a donation to the School unless an Education Circular or Ministry guideline that applies as provided for in clause 11.1 expressly provides that a school may exclude a Student from participating in certain activities if a donation has not been made.

# **12. Governance of the School**

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## **12.1 Chief executive**

- (a) The Sponsor may appoint any person to the role of 'chief executive' of the School. The person appointed does not have to be a person holding a Practising Certificate, but can be responsible for the day-to-day running of the school.
- (b) The Sponsor must notify the Ministry who has been appointed to the role of chief executive (promptly after their appointment) and must update the Ministry as soon as possible following a change in the person appointed to this role.
- (c) Notwithstanding the appointment of a chief executive, the Sponsor remains responsible for the performance of all obligations under this Agreement and any duties, obligations and requirements of a sponsor under the Act (in whatever capacity the Act may apply to a sponsor).

## **12.2 Responsibility for teaching and learning**

- (a) The Sponsor will ensure that, at all times, it has appointed a person employed or otherwise contracted by the Sponsor to be the person responsible for teaching and learning across the School, who may or may not be the same person that is employed or otherwise contracted by the Sponsor to be the Professional Leader (as that term is defined in the Act).
- (b) The Sponsor will ensure that any person appointed under paragraph (a) has a proven background in educational leadership.

## **13. Teachers and other Sponsor employees and contractors**

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### **13.1 Qualifications of teachers**

The Sponsor will ensure that the teachers employed by the Sponsor to deliver the Curriculum to Students (including unregistered teachers) are appropriately qualified in the subject matter being taught and have the necessary skills to be able to teach the Students whom the teacher is tasked with teaching (even if that teacher does not have formal teaching training).

### **13.2 Number of Teaching Positions and other staff**

The Sponsor will ensure that it has teachers and other staff who are suitable for the age range, Class Level and abilities of its Students and the Curriculum taught at the School.

### **13.3 Number or percentage of people holding a Practising Certificate or Limited Authority to Teach**

In accordance with section 158D(3)(d) of the Act, the Sponsor will, during all term times, ensure that the number or percentage of Teaching Positions that are filled by people holding a Practising Certificate or Limited Authority to Teach as compared with the total number of Teaching Positions is maintained at or above the minimum level set out in clause 1 of Schedule 4.

### **13.4 Percentage of Curriculum time to be taught by people holding a Practising Certificate or Limited Authority to Teach**

- (a) The Sponsor will, during all term times, ensure that the percentage of the Curriculum time taught by people holding a Practising Certificate or Limited Authority to Teach as compared with the total Curriculum time taught by any person holding a Teaching Position is maintained at or above the minimum level set out in clause 3 of Schedule 4.
- (b) For the purpose of this clause 13.4, a person holding a Teaching Position is said to be instructing Students if they are providing the primary instruction to the Students during the relevant lesson.

### **13.5 Police and other vetting**

- (a) Sections 78C to 78CD of the Act (as applied to Partnership Schools/Kura Hourua and their sponsors by section 158U of the Act) apply to the School and the Sponsor.
- (b) The Sponsor will only employ or continue to employ (or permit the employment or continued employment of) any person who will have unsupervised access to or contact with Students, or allow an individual contractor to enter on to its Premises during ordinary

School hours or otherwise have unsupervised access to Students:

- (i) who has first obtained a clear Police vet in accordance with sections 78C to 78CD of the Act; and
  - (ii) who has successfully cleared all vetting and safety checks required under Part 3 of the Vulnerable Children Act and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.
- (c) If the Sponsor employs or continues to employ (or permits the employment or continued employment of) a person, or allows a person (including an individual contractor) to have access or contact with Students, who has not obtained (and maintained) clearance under all vetting and safety checks required under clause 13.5(b) the Minister may direct the Sponsor by notice in writing not to allow such person to have unsupervised access to, or contact with, any Student or to be present on the Premises.

### **13.6 Teacher salaries and wages**

- (a) The Sponsor is able to pay its employees and contractors any wage or salary agreed between the Sponsor and the Sponsor's employee or contractor, provided this is in accordance with all applicable employment laws.
- (b) Neither the Minister nor the Ministry will be responsible or liable in any way for the payment of the Sponsor's employees or contractors.

## **14. Property**

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### **14.1 Buildings**

- (a) The Sponsor will operate the School in the location described in the Gazette Notice and only from the Premises described in (or determined in accordance with) Schedule 5 (or any other premises that the Minister approves pursuant to paragraph (e) of this clause 14.1).
- (b) The Sponsor will ensure that during all School hours and term dates, it has and maintains the Premises so that they are available and suitable for a school of the description specified in the Gazette Notice and for the number of Students at the School.
- (c) The Sponsor is responsible for all costs associated with ensuring that the Premises are available and suitable to be used to operate the School, are appropriately maintained and continue to meet all necessary health and safety requirements, building law or building code requirements and are otherwise fit for purpose (in the Minister's reasonable opinion) as an educational facility for the Class Levels and Curriculum offered by the Sponsor.
- (d) The Sponsor is permitted to use its Premises for any other purpose outside of School hours provided that doing so does not impact on the performance of, or compliance with, the Sponsor's obligations under this Agreement.
- (e) The Sponsor must notify the Minister and obtain the Minister's prior approval in writing before using premises other than the Premises described in (or determined in accordance with) Schedule 5 for the regular delivery of Courses to Students.



- (f) In considering whether to give his or her approval under paragraph (e) of this clause 14.1 the Minister may take into account matters of the same general type and kind as those included in, or addressed by, the property aspects of the Sponsor's Implementation Plan (adjusted as necessary to reflect the relevant attributes, including tenure, applicable to the new premises) and the longer term financial viability of the Sponsor or the School (including as regards the affordability of the alternative premises) and, if requested by the Minister, the Sponsor must provide reasonable supporting explanations and materials to enable the Minister's assessment.
- (g) 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.

## **14.2 Equipment**

The Sponsor will ensure that it has, and at all times during the term of this Agreement will have and maintain, the equipment (or access to the equipment) that is suitable or necessary for the Curriculum being delivered or to be delivered at the School, the Class Level(s) and abilities of its Students.

## **14.3 Hostel facilities**

If the Sponsor proposes to operate hostel accommodation (as defined under the Act) in connection with the School then the provisions in section 144B to 144E of the Act (including any regulations made under those provisions) will apply. A hostel may only be used as premises from which aspects of the Curriculum are delivered with the prior approval of the Minister.

## Part 3: Performance Regime

### 15. Objectives

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- (a) The Objectives of the Sponsor in relation to the operation and management of the School are set out in clause 1 of Schedule 6.
- (b) The Objectives are not a Performance Standard under this Agreement.

### 16. Minimum Requirements

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#### 16.1 Minimum Requirements

The following are the Minimum Requirements which must be complied with by the Sponsor and/or with respect to the School (as the case may be) at all times during the term of this Agreement. The Sponsor must ensure that:

- (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;
- (b) no serious criminal activity (as defined in section 2 of the Act) occurs at the School or on the Premises that the Minister reasonably considers could have been prevented by the Sponsor;
- (c) the Sponsor operates the School in accordance with the requirements set out in the Gazette Notice;
- (d) the Sponsor at all times maintains enrolments at the School at a number that is at or above the Minimum Roll;
- (e) the Sponsor ensures the School does not exceed the Maximum Roll;
- (f) the Sponsor accepts students in accordance with clauses 7.2 to 7.4 of this Agreement;
- (g) the School hours and term dates never reduce below the minimum levels set out in Schedule 1;
- (h) the stand-down or suspension periods for Students do not exceed the maximum periods set out in the Act;
- (i) the Sponsor complies with the legislative requirements in relation to the standing down, suspending, excluding or expelling of Students, including as set out in the Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999;
- (j) the Sponsor complies with:
  - (i) every direction given to it under the Act; and
  - (ii) every reasonable direction properly given to it pursuant to the provisions of this

Agreement;

- (k) any transport required to be provided is provided as described in Schedule 3 in accordance with clause 10.2 of this Agreement;
- (l) the Sponsor has a person appointed as the person responsible for teaching and learning in accordance with clause 12.2 of this Agreement, and that person performs that function at all times;
- (m) the number or percentage of Teaching Positions filled by people holding a Practising Certificate or Limited Authority to Teach does not fall below the minimum number or percentage set out in clause 2 of Schedule 4;
- (n) the percentage of the Curriculum time taught by people holding a Practising Certificate or Limited Authority to Teach as compared with the total Curriculum time taught by any person holding a Teaching Position does not fall below the minimum percentage set out in clause 3 Schedule 4;
- (o) the Sponsor complies with all requirements in relation to vetting and safety checks in accordance with clause 13.5 of this Agreement, and complies with all requirements on Police and other vetting and safety checks reporting under this Agreement;
- (p) the Sponsor reports to the Minister in accordance with clause 18.2 of this Agreement;
- (q) the Sponsor reports to the Ministry in accordance with clause 18.3 of this Agreement;
- (r) the Sponsor reports to Parents and to the Ministry in accordance with clause 7.8 of this Agreement;
- (s) the Sponsor reports to the public in accordance with clause 18.4 of this Agreement;
- (t) the Sponsor prepares and provides audited accounts as required by clause 18.5 of this Agreement;
- (u) the Sponsor provides all of the required reports to the Minister by the dates or within the timeframes set out in clause 18.2 of this Agreement; and
- (v) the Sponsor complies with all record keeping requirements as specified in clause 18.1 of this Agreement.

## **16.2 Compliance with Minimum Requirements a factor in relation to using interventions**

The Sponsor's compliance with the Minimum Requirements and the frequency of any non-compliance with any of the Minimum Requirements, either individually or collectively, will be a factor taken into account by the Minister when determining whether and how to exercise his or her rights under the intervention regime in Part 4 of this Agreement.

## **16.3 Evidence as to compliance with Minimum Requirements**

The Minister may, at any time and from time to time by notice in writing to the Sponsor, require the Sponsor to produce reasonable evidence sufficient to demonstrate (to the reasonable

satisfaction of the Minister) that the Minimum Requirements (or any particular Minimum Requirement/s, including, in any case, by reference to particular events or time periods, identified in the Minister's request) have been complied with. The Sponsor agrees to produce such evidence and provide this evidence to the Minister as and when required by the Minister and the Minister shall allow the Sponsor a reasonable timeframe within which to respond (which shall reflect the nature and extent of the request and the type of evidence that the Sponsor will need to source and compile in order to comply with the request). Failure to provide such evidence to the Minister within the time required by the Minister shall be a breach of this Agreement and will entitle the Minister to use the interventions described in clause 24 of this Agreement.

## **17. Performance Management System**

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### **17.1 Performance Standards and Performance Indicators**

The parties acknowledge and agree that the Performance Standards in Schedule 6 are used to assess the level of performance by the Sponsor under this Agreement. The Performance Indicators in Schedule 6 are used to demonstrate a range of other performance related matters, including whether or not the Sponsor is on track to achieve the Performance Standards relating to the same subject matter area.

### **17.2 Setting of Performance Standards and Performance Indicators**

- (a) The Performance Standards and Performance Indicators set out or referred to in Schedule 6 (including the Annexes, as relevant) are Performance Standards and Performance Indicators for the School Year(s) indicated in the relevant tables in Schedule 6.
- (b) In circumstances where a Performance Standard that is intended to apply from (and including) the First School Year is not set out in clauses 2.1 to 2.5 of Schedule 6 (including the Annexes, as relevant) when this Agreement commences, the Minister may at any time after the commencement of this Agreement, following a reasonable period for discussion with the Sponsor and otherwise in accordance with this clause 17.2, set reasonable Performance Standards in respect of any such matter.
- (c) The Minister will, following a reasonable period for discussion with the Sponsor and otherwise in accordance with this clause 17.2, set reasonable Performance Standards and reasonable Performance Indicators to apply for specified future Years during the Term of this Agreement (not being Years already specified in Schedule 6 when this Agreement commences or set pursuant to paragraph (b) of this clause 17.2). Once set by the Minister, the Ministry will provide the Sponsor with updated and supplementary tables in the form set out in clauses 2.1 to 2.5 of Schedule 6 (including the Annexes, as relevant) prior to the start of the School Year to which those Performance Indicators and Performance Standards will apply and, once provided to the Sponsor, such tables shall supplement and be deemed to be incorporated into and also form part of and amend Schedule 6 without the need for the parties to separately agree a variation to this Agreement in writing.
- (d) If the Minister considers it necessary, and following a reasonable period for discussion with the Sponsor, the Minister may also set new reasonable Performance Indicators and/or reasonable Performance Standards under entirely new performance categories (other than those set out or referred to in Schedule 6 (including the Annexes, as relevant) when this Agreement commences) provided that any such additional Performance Standards will only be set after the Minister has reviewed a full School Years' worth of baseline data.

Once set by the Minister, the Ministry will provide the Sponsor with supplementary tables (in the case of new Performance Standards, prior to the start of the School Year to which those Performance Standards will apply) and, once provided to the Sponsor, such tables shall supplement and be deemed to be incorporated into and also form part of and amend Schedule 6 without the need for the parties to separately agree a variation to this Agreement in writing.

- (e) If the Minister considers it necessary, and following a reasonable period for discussion with the Sponsor, the Minister may:
  - (i) change or update any Performance Indicators; and/or
  - (ii) with effect from a date no earlier than 3 months after notice is given to the Sponsor in writing by the Minister, convert one or more Performance Indicators into new Performance Standards.

Once changed, updated or converted (as the case may be) by the Minister, the Ministry will provide the Sponsor with supplementary tables reflecting the change and, once provided to the Sponsor, such tables shall supplement and be deemed to be incorporated into and also form part of and amend Schedule 6 without the need for the parties to separately agree a variation to this Agreement in writing.

- (f) The Minister and the Sponsor may also at any time agree to change and update any Performance Standards that have already been set for future Years provided that any change must be agreed prior to the start of the School Year to which those Performance Standards will apply and recorded in updated and supplementary tables which, once provided to the Sponsor by the Ministry, shall be deemed to amend and be incorporated into and also form part of and amend Schedule 6 without the need for the parties to separately agree a variation to this Agreement in writing.
- (g) If the Minister does not set a particular Performance Standard or Performance Indicator to apply for a specified future Year by the start of that School Year, and that Performance Standard or Performance Indicator remains unset as at 30 April of that School Year (or such later date as the parties may agree), the equivalent Performance Standard or Performance Indicator that applied in relation to the previous School Year will apply.
- (h) In setting Performance Standards:
  - (i) the Minister will, if the Minister considers it relevant to the applicable Performance Standard, take into account the School's individual circumstances and the characteristics of the Students enrolled;
  - (ii) the Minister may take into account whether the Performance Standard is in line with the Government's current objectives at the time in relation to the establishment of the Partnership School/Kura Hourua and may also take into account applicable broader education sector measures, objectives, priorities and/or targets; and
  - (iii) the Minister will, following a reasonable period for discussion with the Sponsor, develop (and, once completed, share details of it with the Sponsor) a process to be followed to set Performance Standards for the future Years during the Term of this Agreement and new Performance Standards.

- (i) The Sponsor acknowledges and agrees that, despite any provision to the contrary in this

Agreement, the Minister may specify new, different or varied reasonable Performance Indicators and new, different or varied reasonable Performance Standards that will apply to School Years during the period of any renewal or extension of the term of this Agreement. Nothing in this paragraph (i) of this clause limits anything in clause 4(c).

## **18. Records and reporting**

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### **18.1 Records**

- (a) Section 77A of the Act sets out the requirements for enrolment records that apply to the principal of the School.
- (b) In addition to the requirements referred to in paragraph (a) of this clause 18.1, the Sponsor must:
  - (i) use a student management system that is approved, and notified in writing to the Sponsor, by the Minister writing; and
  - (ii) use electronic attendance files for gathering data on Student attendance at School.
- (c) In addition to any records that the Sponsor is required to keep under paragraphs (a) or (b) of this clause 18.1, the Sponsor must maintain detailed records in accordance with prudent educational and business practice which are sufficient to enable the Sponsor to complete its reporting obligations under, and otherwise be able to demonstrate compliance with the terms of this Agreement, the Act and any other applicable laws.
- (d) The Sponsor must maintain all records that are required to be kept under paragraphs (a) to (c) of this clause 18.1 in an easily accessible form (including as to readability) and must handle and deal with such records in accordance with any current 'School Records Retention and Disposal' publication issued by the Ministry and Archives New Zealand and as available on the Ministry's website.
- (e) Any data gathered by the Sponsor through the electronic attendance files described in paragraph (b)(ii) of this clause 18.1 and any other records about the School or Students that the Ministry (by written request) requires the Sponsor to collect and maintain (provided that the Ministry may only require the Sponsor to have or maintain such other records that the Ministry also requires State schools to have or maintain), must be provided to the Ministry, in such form as reasonably requested by the Ministry, and at such times as reasonably required by the Ministry.

### **18.2 Reporting to the Minister**

- (a) The Sponsor will complete and submit the following reports to the Minister:
  - (i) a Quarterly Report, to be submitted to the Minister by 30 April, 31 July and 31 October of each School Year (or such later date as the Minister may specify or agree to) in relation to the previous three (3) months of that School Year; and
  - (ii) an Annual Report, to be submitted to the Minister by 17 February of each year (or

such later date as the Minister may specify or agree to) in respect of the previous School Year (and which, for the avoidance of doubt, will also include information for the last three (3) months of the previous School Year in place of a separate Quarterly Report for that period).

- (b) The Ministry may provide report templates to the Sponsor (which may include making entries directly into on-line or electronic reporting systems) for the purpose of assessing the Sponsor's performance against the Minimum Requirements, the achievement of Performance Indicators and performance against Performance Standards, and which the Sponsor will be required to use or complete for the purposes of (and which will form part of) the Sponsor's Implementation Plan Monthly Progress Reports, Quarterly Reports and Annual Reports. The Ministry may also provide other report templates to the Sponsor, or require the Sponsor to subscribe to (and complete) on-line reporting tools, which seek the provision of information from the Sponsor that the Minister reasonably requires to assess the Sponsor's performance under this Agreement and the Sponsor will complete such templates in accordance with any instructions and timeframes provided to it by the Ministry.
- (c) The Minister may, if he or she is not satisfied with the level of detail contained in a report received from the Sponsor in accordance with paragraph (a) and (b) of this clause 18.2, require the Sponsor to provide a supplementary report containing additional details and submit this to the Minister within any reasonable timeframe specified by the Minister (which shall reflect the nature and extent of the additional details requested).
- (d) The Sponsor's appointed contract manager must attend contract review meetings with the Minister's appointed contract manager on a quarterly basis, within one (1) month after submission of each Quarterly Report. The dates and times for those meetings will be as agreed between the parties' appointed contract managers.
- (e) The Sponsor agrees that it will promptly notify the Minister of the occurrence or existence of any of the following matters or circumstances (together with, either at the same time as such notification, or as soon as is reasonably practicable after such notification, reasonable supporting details, so that the Minister can understand and assess the reason/s for the occurrence or existence of such matters or circumstances and the Sponsor's actual or proposed response or remedial action):
  - (i) any source of funding (whether borrowed money, grant or equity) anticipated by the Sponsor and on which the ongoing financial viability of the Sponsor or the School is dependent (including all sources of funding anticipated by its Implementation Plan) is not made available (or the Sponsor reasonably anticipates that it will not be made available) in the amount and by the time anticipated or stated in its Implementation Plan or required by the Sponsor, unless an equivalent replacement source of funding has been secured by the Sponsor;
  - (ii) the Sponsor has failed to pay or is unable to pay any indebtedness for borrowed money (including term debt) which has become due and payable by the Sponsor or the Sponsor reasonably anticipates that it will fail to pay or become unable to pay any such indebtedness in the future; or
  - (iii) any other event described in clause 25.1(a) has occurred or will occur.
- (f) If the Sponsor is servicing any term debt, the Sponsor must report to the Minister as part of each Quarterly Report and each Annual Report on the Sponsor's debt service coverage

ratio.

- (g) Any reporting that the Sponsor is required to provide to the Minister on a Student achievement Performance Indicator or Performance Standard must report on the Student population as a whole and in addition must provide separate reporting for each of Māori, Pasifika, Students with Special Education Needs and Students from low socio-economic backgrounds.
- (h) The Minister may at any time request the Sponsor to provide a separate report addressing or responding to specified issues or concerns identified by the Minister or the Ministry and the Sponsor's actual or proposed response or remedial action to such issue or concern. Any such report must contain supporting explanations sufficient for the Minister to understand the nature, extent and materiality of the issue or concern and provide the Minister with assurance that the Sponsor has responded (or will take action to respond) in an appropriate manner (such that the issue or concern will be addressed or resolved and not recur).

### 18.3 Reporting to Ministry

- (a) The Sponsor must report in writing to the Ministry at least twice each Year (including in the middle of the Year and at the end of the Year) on National Standards and/or Ngā Whanaketanga Rumaki Māori and/or NCEA (as applicable to each Student) achieved by each Student.
- (b) The Sponsor will also
  - (i) complete and submit an Implementation Plan Monthly Progress Report to the Ministry within 5 Business Days of the end of every month after the commencement of this Agreement until it has completed and submitted an Establishment Completion Declaration under paragraph (f) of clause 3; and
  - (ii) report to the Ministry in writing at reasonable intervals requested by the Ministry (and being no more frequent than the Ministry makes equivalent reporting requests to State schools) on any other matter on which the Ministry gathers data from all State schools or a particular category of State school, in the form reasonably requested by the Ministry. For this purpose, the Sponsor will utilise any guideline, instruction or tool that the Ministry requires State schools to utilise for the purpose of gathering and/or analysing data on Students, as notified by the Ministry.
- (c) The Sponsor must comply with any applicable Education Circulars that relate to reporting and any guidelines, tools (including assessment tools), standards or templates that the Ministry may specify (in writing) that the Sponsor is required to comply with for the purpose of reporting to the Ministry, including as any of them may be varied from time to time by the Ministry. This is expected to include:
  - (i) reporting on the numbers and proportions of Students at, above, below or well below the National Standards and/or Ngā Whanaketanga Rumaki Māori, including by Māori, Pasifika, gender, and by Class Level (where this does not give rise to unauthorised disclosure of any Student's personal information); and
  - (ii) reporting on how Students are progressing and achieving against National Standards and/or Ngā Whanaketanga Rumaki Māori and/or NCEA (as applicable to each Student).



The reporting of information required under paragraphs (c)(i) and (ii) of this clause 18.3 shall be in the format provided to the Sponsor by the Ministry.

#### **18.4 Annual reporting to the public**

- (a) By no later than 31 May in each Year (or such later date as the Minister may specify or agree to) during the term of this Agreement (commencing in the School Year immediately following the First School Year) the Sponsor must report publicly (at a minimum on its website or in the main local or regional newspaper circulating in the location of the Premises) on the progress of the School in respect of the full data for the previous Year (except in the case of School leavers data) against the Objectives, the Minimum Requirements, the Performance Indicators and the Performance Standards set out in Schedule 6 (including as updated by the Minister as provided for under clause 17.2 of this Agreement). Without limiting anything else in this clause 18.4, the Sponsor must report publicly in the above manner on School leaver data for the previous Year as soon as that data becomes available.
- (b) The Sponsor must notify the Ministry where the report required by paragraph (a) of this clause 18.4 can be located, as soon as the report has been published.
- (c) The reporting under paragraph (a) of this clause 18.4 must also include the most recent audited annual financial statements relating to the School, or should provide information about how a copy will be made available by the Sponsor to a requester (which the Sponsor must promptly make available upon receiving a request from any person).

#### **18.5 Audited accounts**

- (a) By no later than 120 days (being all days including Business Days and non-Business Days) after:
  - (i) the date specified in clause 1 of Schedule 9 of this Agreement in each Year (being the end of the Sponsor's financial year), the Sponsor must provide the Ministry with audited annual financial statements relating to the Sponsor for the prior financial year or, if the Sponsor is a member of a consolidated group of entities for reporting purposes, audited consolidated annual financial statements relating to that group for the prior financial year and, if requested by the Minister, an unaudited pro forma statement showing the financial position of the Sponsor which must be signed by at least one director or trustee (as the case may require) of the Sponsor on behalf of the board of directors or trustees (as the case may be); and
  - (ii) the end of each Year, the Sponsor must provide the Ministry with audited annual financial statements relating to the School for the prior Year.
- (b) The audited annual financial statements must be prepared in accordance with generally accepted accounting practice (as defined in section 8 of the Financial Reporting Act 2013).

#### **18.6 Information required by the Secretary**

Section 144A of the Act sets out the requirements around reporting to the Secretary, which must be complied with by the Sponsor.

#### **18.7 Reporting generally**

Nothing in this clause 18 alters or affects the Sponsor's other obligations under the Act or any other enactment to report on matters that it may be required to report on by law, including without limitation reporting to the Education Council in accordance with any relevant provision in Part 32 of the Act.

## 19. Review and audit rights

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### 19.1 Inspections

- (a) Section 78A of the Act sets out the position regarding powers of entry and inspection of the School by any person holding an authorisation under that provision.
- (b) The Sponsor agrees that for the purpose of applying section 78A, the reference to 'board of the school' shall be taken to mean the directors or trustees (as the case may be) of the Sponsor.
- (c) The Sponsor agrees to co-operate fully with any person holding an authorisation under section 78A of the Act who is carrying out any inspection under the Act.

### 19.2 ERO review

- (a) The provisions in Part 28 of the Act apply in relation to the review of the Sponsor conducted by the Chief Review Officer (and review officers appointed by the Chief Review Officer) of ERO under that Part.
- (b) Section 327 of the Act includes a power of entry and inspection of any place occupied by the Sponsor.
- (c) Section 328G of the Act includes powers of review that apply in respect of any Hostel that the Sponsor operates.
- (d) The Sponsor agrees to co-operate fully with any Chief Review Officer of ERO and any review officer appointed by the Chief Review Officer under Part 28 of the Act who is carrying out any inspection under the Act.
- (e) It is expected that ERO will undertake a School readiness review including onsite visits to the School timed according to the School's context and development prior to the School opening (a **readiness review**), a review six (6) months after the School opening, a review eighteen (18) months after the School opening and thereafter a review every three years, unless ERO considers more frequent reviews to be necessary.

### 19.3 Minister's audit rights

- (a) The Sponsor agrees that the Minister may at any time, upon giving reasonable notice to the Sponsor, enter 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). Where the results of the audit disclose that there have been performance failures or breaches of this Agreement by the Sponsor, the costs of undertaking this audit are to be shared equally between the Minister and the Sponsor. (For this purpose, the Minister will invoice the Sponsor for its share of the costs by no later than 20 Business Days of the audit being completed and the auditor's

invoice of fees and costs submitted to the Minister, with such invoice to be paid by the Sponsor within 20 Business Days of receipt of such invoice, provided the invoice is not subject to a dispute by the parties).

- (b) For the avoidance of doubt, the Minister may delegate the exercise of his or her rights under paragraph (a) of this clause 19.3.

#### **19.4 Evaluation by external research group**

- (a) The Sponsor acknowledges that the Ministry may contract an external research group to conduct research and evaluation at any stage during the term of this Agreement.
- (b) The Sponsor agrees to provide the members of the Ministry's contracted external research group with reasonable access to the Premises, the chief executive of the School, the teachers, the Students, the Parents and any other personnel employed or contracted by the Sponsor in order to enable the research and evaluation work to be undertaken. The Sponsor also agrees to provide all reasonable cooperation in respect of any requests made by the members of the external research group.

#### **19.5 Advisory Group's role in respect of educational performance**

- (a) 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 Schools/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.
- (b) The Sponsor agrees to provide all reasonable assistance to the Advisory Group to enable the Advisory Group to undertake its role of advising the Minister in respect of the educational performance of the School.
- (c) The Minister has created terms of reference which describe the functions of the Advisory Group and these will be made available to the Sponsor.

### **20. Measuring performance and good faith obligations**

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#### **20.1 Good faith obligation (in relation to measuring performance)**

- (a) The parties acknowledge that measurement and/or reporting of the Sponsor's achievement of Performance Indicators and performance against the Performance Standards may involve a degree of qualitative assessment, where there is scope for differing views on the degree of performance or non-performance, but that ultimately the Minister must be satisfied that the relevant measures are being satisfactorily applied and that the overall Gazette Notice Objectives for which the School was established are being successfully achieved.
- (b) The parties further acknowledge that the qualitative and other elements of the Performance Indicators and Performance Standards may be such that a School may appear to be achieving the target or 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.

- (c) Accordingly, the parties acknowledge and agree that good faith is required both from the Sponsor in performance reporting, and from the Minister in monitoring progress in achieving Performance Indicators and assessing performance against the Performance Standards. The Minister may take any action that he or she may consider reasonable in the circumstances if the Minister considers that the Sponsor:
  - (i) is not acting in good faith in this regard; or
  - (ii) 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 and intent required by this clause 20.1 of this Agreement.

## 20.2 **Measuring performance against the Performance Indicators and Performance Standards**

- (a) The Sponsor acknowledges that the Minister may monitor progress in achieving Performance Indicators and assess the Sponsor's performance against the Performance Standards on a quarterly basis or, if an alternative reporting frequency is set in relation to any particular Performance Indicator or Performance Standard in the 'Measurement Frequency' column in any tables forming part of (or incorporated into) Schedule 6, the alternative measurement frequency that is specified for that Performance Indicator or Performance Standard.
- (b) The Sponsor's performance against each Performance Standard will be assessed by the Minister and assigned to one of the following categories of performance against the Performance Standard (from highest to lowest):
  - (i) exceeds the Performance Standard;
  - (ii) meets the Performance Standard;
  - (iii) almost meets the Performance Standard;
  - (iv) does not meet the Performance Standard but is capable of remedy; or
  - (v) does not meet the Performance Standard and is incapable of remedy.
- (c) For the purpose of assessing the Sponsor's performance against the Performance Standards, the Minister may take into account:
  - (i) any information provided by the Sponsor in accordance with the Sponsor's reporting requirements as set out in clause 18 (including any failure to report);
  - (ii) any information received by the Minister as a result of an audit conducted by the Minister;
  - (iii) any information that the Minister, the Secretary or the Ministry receives as a result of a person holding an authorisation under section 78A of the Act undertaking an inspection of the School;
  - (iv) any information that the Minister, Secretary or Ministry receives directly or indirectly

as a result of a review undertaken by the Chief Review Officer of the ERO or any review officer appointed by the Chief Review Officer under Part 28 of the Act;

- (v) any other information that the Minister, Secretary or Ministry receives under this Agreement, the Act, or from any government department, the Crown or any Crown-owned entity; and
  - (vi) any information that is publicly available, is supplied by the Sponsor to the Minister, Secretary or Ministry (other than as required under this Agreement) or is provided to the Minister, Secretary or Ministry by a Parent or by a member of the community, and that (in each case) the Minister or Ministry has determined to be accurate.
- (d) For the avoidance of doubt, the Minister has the right to carry out assessments of the Sponsor's performance following the receipt of any required reports or at any other time that the Minister decides. For this purpose, the Minister may rely on his or her own assessment of the Sponsor's performance against the Performance Standards, taking into account any of the sources in paragraph (c) of this clause 20.2.
- (e) The following rules describe how a Performance Indicator and a Performance Standard will be used to determine the Sponsor's progress in achieving Performance Indicators and how the Sponsor's performance compares with the Performance Standards:
- (i) if the Performance Indicator or Performance Standard is expressed as a percentage, number or ratio, the Sponsor's actual achievement or performance will be directly compared with the Performance Indicator or Performance Standard over the relevant period; and
  - (ii) if the Performance Indicator or Performance Standard is expressed as "collect baseline data", the results from the Sponsor's reporting in relation to the relevant 'metric' will be used to create baseline data which the Minister can then use to set a Performance Indicator or Performance Standard in the current or a future Year.

### **20.3 Guidance on measuring performance against the Performance Indicators and Performance Standards**

- (a) 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.
- (b) The Sponsor agrees to use PAT and/or e-asTTle and/or Te Waharoa Ararau and PaCT assessment instruments for all appropriate Class Levels (or any applicable equivalent replacement assessment instruments that may be developed from time to time and specified by notice in writing to the Sponsor for this purpose by the Ministry). Promptly after the commencement of this Agreement, the parties will work together (each acting reasonably and in good faith) to agree on which of these assessment instruments and approaches is most appropriate to each learning area for measuring improvement in Student achievement for Students in all Class Levels for which the School will provide the Courses. For this purpose, the Sponsor must prepare its initial assessment instruments and approaches by no later than the completion date specified in its Implementation Plan and, if no date is specified, by the date scheduled (or otherwise agreed to by the parties) for the School's readiness review under paragraph (e) of clause 19.2. If, notwithstanding each party having used its reasonable endeavours to reach agreement, agreement

between the parties cannot be reached on the final assessment instruments and approaches that are to be applied by the Sponsor by the date which is three (3) months prior to the date on which the School is scheduled to open (or such later date as the Minister may agree), the Minister may decide on the appropriate assessment instruments and approaches and will notify the Sponsor in writing of the assessment instruments and approaches that must be used by the Sponsor. At any time after the school opens, the Minister may give written notice to the Sponsor requiring the Sponsor to use different assessment instruments or approaches from the date specified in the notice (which date shall allow a reasonable period for the Sponsor to make any necessary adjustments or transition).

## **Part 4: Breach, Interventions for Poor Performance and in Certain Risk Situations and Termination**

### **21. Consequences of failing to meet Performance Standards or where there has been a breach or is likely to be a breach of this Agreement or the Act**

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- (a) The Minister may give written notice to the Sponsor if at any time (including following an audit, monitoring or investigation) the Minister has reasonable grounds to believe that the Sponsor has failed to comply with or perform or has otherwise breached any of its obligations under this Agreement (including achieving a Performance Standard and which, for the avoidance of doubt, shall include a failure to do anything required of it or the School under the Act) or it is likely that such a failure or breach will happen in the future. The written notice must set out the obligation that the Sponsor has failed to comply with or perform or the breach that has been identified and require the Sponsor to remedy (if capable of remedy) the non-compliance, non-performance or breach within a specified but reasonable timeframe (as determined by the Minister). At any time the Minister and the Sponsor may discuss what an appropriate response would be and the Sponsor must implement any agreed actions.
- (b) If the Minister has reasonable grounds to believe that the Sponsor's then current level of performance under this Agreement is such that its future performance is likely to be below the level of performance required of the Sponsor under this Agreement, the Minister may give written notice to the Sponsor of that belief and the Minister and the Sponsor may agree to discuss what an appropriate response would be. The Minister may advise the Sponsor what steps the Minister considers are required to be taken by the Sponsor to ensure that it does not end up being in breach of this Agreement, or end up performing at a level below the level of performance required of the Sponsor under this Agreement.
- (c) In addition to the Minister's rights under paragraphs (a) and (b) of this clause 21, if the Sponsor:
  - (i) fails to remedy the non-compliance, non-performance or breach under paragraph (a) of this clause 21 within the timeframe specified in the Minister's notice, or the Sponsor fails to implement any other agreed actions, or the non-compliance, non-performance or breach is incapable of remedy; or
  - (ii) is not achieving the Performance Standard(s),

in either case, the consequence will be that the Minister (or the Secretary where applicable) may use any of the responses or interventions described in clause 24 and 25.1 (as applicable) of this Agreement. These responses and interventions range from the provision of a Performance Notice to termination of this Agreement. More than one such response or intervention may be used at a time. It is expected that the more material the failure, non-compliance, non-performance or breach is, the more serious the response or intervention selected by the Minister would be.

- (d) The Minister agrees that a failure by the Sponsor to achieve a Performance Indicator will not, in and of itself, be a breach of this Agreement that entitles the Minister to terminate this Agreement. However, the fact that the Sponsor's failure to achieve one or more

Performance Indicators may demonstrate that the Sponsor is not on track to achieve a Performance Standard shall in no way limit the rights or powers of the Minister, Ministry or the Secretary under this Agreement or the Act if and when a breach of a Performance Standard were to occur although the prior failure to achieve (or remedy non-achievement of) a related Performance Indicator may be taken into account by the Minister, Ministry or the Secretary when determining its response to that breach.

## **22. General ability to intervene**

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In addition to assessing the Sponsor's performance against the Performance Standards, 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 responses or interventions set out in clauses 24 and 25.1 that the Minister in good faith reasonably considers to be appropriate in the circumstances. For the avoidance of doubt, the Minister is not required to follow the procedure under paragraph (c) of clause 21 first where the circumstances in this clause 22 apply.

## **23. Escalation of interventions**

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If, despite use of one of the responses or interventions set out in clauses 21, 22 and 24, the Sponsor's performance against Performance Standards is not improving to the Minister's satisfaction or the Minister is not satisfied a failure, non-compliance, non-performance or other breach has been appropriately addressed or remedied, or the Minister has reasonable grounds to believe that there continues to be a risk of the kind referred to in clause 22, the Minister may then utilise an alternative response or intervention if the Minister considers that to be appropriate in the circumstances. The Minister may escalate his or her use of alternative responses or interventions more than once in relation to the same event or issue.

## **24. Interventions**

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### **24.1 Utilisation of interventions**

The responses and interventions in this clause 24 and clause 25.1 can only be used in the circumstances described in clauses 21 and 22 and will only be used by the Minister in the manner contemplated by clauses 21, 22 and 23.

### **24.2 Performance Notice**

- (a) The Minister may issue the Sponsor with a Performance Notice in writing which specifies the Sponsor's performance failure(s) (being any of the matters or events contemplated in clause 21 and 22, including any failure(s) to achieve the Performance Standards) and the actions the Minister either recommends or (acting reasonably) requires the Sponsor to take to address or remedy such performance failure(s).
- (b) This notice may (at the Minister's discretion) include a direction given by the Minister to



comply with particular terms of this Agreement or the Act.

### **24.3 Remedial Plan**

- (a) The Minister may, by giving notice in writing, require the Sponsor to prepare a Remedial Plan.
- (b) A Remedial Plan may be required in relation to any aspect of the Sponsor's performance (including any failure to achieve a Performance Standard) 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 of the Remedial Plan must be submitted to the Minister for approval by the Minister.
- (c) When the Minister receives a draft of the Remedial Plan, the Minister may either approve it, require the Sponsor to make amendments to the draft Remedial Plan and resubmit it to the Minister for approval, or reject it.
- (d) The Sponsor must comply with any Remedial Plan approved by the Minister and the obligations of the Sponsor recorded in the Remedial Plan will be legally binding obligations between the Minister and the Sponsor (as if they were terms set out in this Agreement). The Minister may at any time determine, by notice in writing to the Sponsor, that the Remedial Plan is no longer required.
- (e) Where:
  - (i) the Sponsor has failed to submit a draft Remedial Plan requested by the Minister by the due date set by the Minister;
  - (ii) the Sponsor has failed to make amendments required by the Minister to a draft Remedial Plan;
  - (iii) the Sponsor has failed to satisfactorily implement a Remedial Plan that the Minister has approved under this clause 24.3; or
  - (iv) the Minister has rejected the Sponsor's draft Remedial Plan,the Minister may invoke any other response or intervention in this clause 24 and clause 25.1 that the Minister considers is appropriate.

### **24.4 Increased reporting**

The Minister may require the Sponsor to report (whether generally or in respect of particular reports or subject matter) more frequently than the timeframes set out in clause 18.2 and/or clause 18.3 of this Agreement, and at such frequency as the Minister determines is appropriate, by giving notice in writing to the Sponsor.

### **24.5 Specialist audit**

The Minister may exercise the Minister's right to audit under clause 19.3 of this Agreement (whether generally or in respect of particular matter), at such frequency as the Minister determines is appropriate, by giving notice in writing to the Sponsor in accordance with that provision.

## **24.6 ERO investigation through early or special review**

Subject only to obtaining agreement to do so from ERO, the Minister may arrange 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.

## **24.7 Appointment of specialist adviser**

- (a) If required by the Minister, the Minister or the Secretary may, by giving written notice to the Sponsor, require the Sponsor to appoint an independent adviser (either an individual or an organisation) that is appropriately qualified to assist the Sponsor in improving performance in a particular area or areas.
- (b) The Minister or the Secretary may (in each case, acting reasonably and after having regard to the circumstances relevant to the appointment and the resources of the Sponsor and following prior discussion with the Sponsor, including as regards the anticipated cost of the adviser) specify the type of independent adviser the Sponsor is required to engage pursuant to paragraph (a) above and the term, scope, timing and purpose of such appointment.
- (c) The Sponsor must promptly comply with the written notice provided by the Minister or the Secretary.
- (d) The Sponsor is solely responsible for any costs associated with appointing an independent adviser and neither the Minister nor the Secretary shall have any liability in respect of such appointment.

## **25. Termination**

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### **25.1 Minister's right to terminate**

- (a) Subject to paragraph (b) of this clause 25.1, the Minister may terminate this Agreement immediately upon the occurrence of any of the following events:
  - (i) under-performance by the Sponsor against the Performance Standards;
  - (ii) the existence of circumstances that entitle the Minister to exercise his or her general ability to intervene under clause 22;
  - (iii) the Sponsor has breached any term in this Agreement or is repeatedly breaching any term or terms in the Agreement (including any Minimum Requirements) or in the Minister's opinion is failing to take appropriate action in a timely manner in response to the Minister's use of another response or intervention, to such an extent that the Minister (acting reasonably) considers that termination is warranted in the circumstances;
  - (iv) the Sponsor has breached or is breaching its statutory duties in relation to the School under the Act or any other enactment;
  - (v) the Minister has reasonable grounds to believe that serious criminal activity (as

defined in section 2 of the Act) is occurring at the School;

- (vi) the Sponsor becomes bankrupt or insolvent;
  - (vii) other than by or at the request of the Minister, 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;
  - (viii) the Sponsor ceases to continue in business or to operate the School;
  - (ix) failure of the Sponsor to comply with clause 34.6 (Sub-contracting) or 34.7 (Assignment);
  - (x) the Sponsor provides information to the Minister that is misleading or deliberately inaccurate in any material respect;
  - (xi) the Sponsor has a Conflict of Interest that the Minister considers (acting reasonably) materially and adversely impacts the operation of the School, or the position of the Minister, the Ministry or the Crown in relation to this Agreement which cannot be managed or eliminated to the Minister's reasonable satisfaction;
  - (xii) any shareholder, trustee, member, director or other owner or board member (or equivalent) of the Sponsor is or becomes an Unsuitable Person (unless they are promptly removed and replaced upon becoming so);
  - (xiii) the legal or beneficial ownership or control of the Sponsor (whether directly or indirectly) changes from that represented to the Minister prior to this Agreement being entered into, or the status of the Sponsor is no longer considered to be charitable by the Inland Revenue Department, without the prior consent of the Minister to such change having been sought and given and provided that the Minister acknowledges and agrees that because the Students of the School from time to time will comprise a class of the ultimate beneficiaries of the activities of the Sponsor, changes in the identity of the members of that class over time will not be treated by the Minister as a change in beneficial ownership that requires consent under this paragraph;
  - (xiv) the Sponsor does not carry out, or cannot demonstrate that it has made every reasonable effort to carry out, the activities (whether generally, or by reference to a particular activity) set out in its Implementation Plan and the Minister is not satisfied that the School will be able to open and commence operations in accordance with the terms of this Agreement by its scheduled date for opening or there is some other failure of the Sponsor to comply with paragraphs (d) to (f) of clause 3 of this Agreement.
- (b) If the Minister wishes to terminate this Agreement due to the occurrence of one or more of the events listed in paragraph (a) of this clause 25.1, the Minister must follow the following process:
- (i) the Minister will provide the Sponsor with a written notice setting out the Minister's intention to terminate this Agreement and the reason for the proposed termination;
  - (ii) the Sponsor shall have ten (10) Business Days after receipt of the notice within which to advise the Minister in writing as to any reasons why the Sponsor does not

consider that this Agreement should be terminated;

- (iii) if the Minister is not satisfied with the reasons provided by the Sponsor under sub-clause (ii) above or the Sponsor fails to respond before the end of the period provided for in sub-clause (ii), the Minister may at any time after the end of the period provided issue a written notice to the Sponsor terminating this Agreement and specifying the date from which this Agreement shall be terminated;
  - (iv) the date of termination must not be a date sooner than the date which is twenty (20) Business Days after the date on which the notice under sub-clause (iii) is sent to the Sponsor. If no date is provided in a notice given under sub-clause (iii), the date of termination will be the date which is twenty (20) Business Days after the date on which notice under sub-clause (iii) is sent to the Sponsor.
- (c) If a notice of termination under paragraph (b)(iii) of this clause 25.1 is to be given by the Minister in respect of a particular event or events giving rise to the right to terminate:
  - (i) that notice of termination must be given within a reasonable period of time after the Minister becomes aware of both the event or events and that such event or events give the Minister the right to terminate; or
  - (ii) if the Minister has previously used other response/s or intervention/s in respect of the particular event or events with a view to attempting to resolve the issue(s) but such response/s or intervention/s have not resolved such issues within a reasonable period of time of such response/s or intervention/s being invoked, that notice of termination must be given within a reasonable period of time after the last such other response or intervention has failed to resolve the issue(s).
- (d) If the Sponsor receives a notice given by the Minister pursuant to paragraph (b)(iii) of this clause 25.1, the Sponsor must inform the school community within three (3) Business Days of the Sponsor receiving the notice of termination pursuant to paragraph(b)(iii) of this clause 25.1.
- (e) The Minister will not be liable for any costs incurred by the Sponsor as a result of termination under (and in accordance with) this clause 25.1 and is only required to make any payments that are due to be paid to the Sponsor under this Agreement up until the date of termination but the Minister may (in the Minister's absolute discretion) deduct from that payment any proportion of that payment that relates to the operations and management of the School after the date of termination.
- (f) In addition to the Minister's ability to make deductions from any payments due to be made, in accordance with paragraph (e) of this clause 25.1, the Sponsor is required to return any proportion of a payment already made by the Minister under this Agreement that relates to operation and management of the School after the date of termination (as invoiced by the Minister), together with any sum of money received by the Sponsor under this Agreement which has not been spent by the Sponsor in performance of this Agreement as at the date of termination. Any such sum (as reasonably determined by the Minister) will be payable by the Sponsor as a debt due to the Minister.
- (g) Where this Agreement is terminated in accordance with this clause 25.1 at any time during the period until the end of the third School Year after the School first opens, and in addition to any amount to be repaid by the Sponsor in accordance with paragraph (f) of this clause 25.1, the Sponsor is also required to pay to the Minister, an amount to be calculated as

follows, such sum being payable by the Sponsor as a debt due to the Minister:

- (i) if the Market Value of the School's Assets is greater than the set-up component of the Establishment Payment as specified in clause 1.2(b) of Schedule 7, the Sponsor is required to pay an amount equal to the set-up component of the Establishment Payment; or
- (ii) if the Market Value of the School's Assets is less than the set-up component of the Establishment Payment as specified in clause 1.2(b) of Schedule 7, the Sponsor is required to pay an amount equal to the Market Value of the School's Assets.
- (iii) For the avoidance of doubt, where the School is or is contemplated to be used for multiple purposes, the value of any mixed use assets owned by the Sponsor is considered to be 100% of the Market Value of the asset, irrespective of the portion of its use designated for schooling activity.

## **25.2 Minister's termination for convenience**

- (a) The Minister may terminate this Agreement at any time for convenience in accordance with the process set out in paragraph (b) of this clause 25.2.
- (b) If the Minister wishes to terminate this Agreement in accordance with paragraph (a) of this clause 25.2, the Minister must follow the following process:
  - (i) the Minister will provide the Sponsor with a written notice stating that it is a notice given under this clause 25.2 of this Agreement and the date from which termination will take effect;
  - (ii) the date of termination must not be a date sooner than the date which is six (6) months after the date on which the notice under sub-clause (i) above is sent to the Sponsor and, in any event, termination can only take effect on the last day of the final term of a School Year. If no date is provided in a notice given under sub-clause (i) above, the date of termination will be the last day of the final term of the first School Year to end after the expiry of the period of six (6) months after which the notice under sub-clause (i) above is sent to the Sponsor;
  - (iii) the Sponsor shall have ten (10) Business Days after receipt of the notice within which to advise the Minister in writing as to any reasons why the Sponsor does not consider that this Agreement should be terminated; and
  - (iv) unless the Minister thereafter revokes the notice of termination, this Agreement will terminate in accordance with the notice already given.
- (c) If the Sponsor receives a notice given by the Minister pursuant to paragraph (b)(i) of this clause 25.2, the Sponsor must inform the school community within three (3) Business Days of the Sponsor receiving the notice of termination unless the Sponsor gives (or will give) its own notice to the Minister under paragraph (b)(iii) of this clause 25.2 in which case the three (3) Business Day period will run from the date on which the Minister informs the Sponsor that he or she will not revoke the notice of termination.
- (d) The Minister will not be liable for any costs incurred by the Sponsor as a result of termination under (and in accordance with) this clause 25.2 and is only required to make any payments that are due to be paid to the Sponsor under this Agreement up until the

date of termination but the Minister may (in the Minister's absolute discretion) deduct from that payment any proportion of that payment that relates to the operations and management of the School after the date of termination.

- (e) In addition to any payments that the Minister is required to make under paragraph (d) of this clause 25.2, the Minister and the Sponsor agree to negotiate (each acting reasonably and in good faith) to agree on the amount of an additional payment that the Minister will make to the Sponsor in respect of Committed Costs (if any).

### **25.3 Sponsor's termination for convenience**

- (a) The Sponsor may terminate this Agreement at any time 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 last day of the final term of a School Year.
- (b) If the Sponsor gives a notice given to the Minister pursuant to paragraph (a) of this clause 25.3, the Sponsor must inform the school community within three (3) Business Days of the Sponsor giving the notice of termination.
- (c) The Minister will not be liable for any costs incurred by the Sponsor as a result of termination under this clause 25.3 and is only required to make any payments that are due to be paid to the Sponsor under this Agreement up until the date of termination but the Minister may (in the Minister's absolute discretion) deduct from that payment any proportion of that payment that relates to the operations and management of the School after the date of termination.
- (d) In addition to the Minister's ability to make deductions from any payments due to be made, in accordance with paragraph (c) of this clause 25.3, the Sponsor is required to return any proportion of a payment already made by the Minister under this Agreement that relates to operation and management of the School after the date of termination (as invoiced by the Minister), together with any sum of money received by the Sponsor under this Agreement which has not been spent by the Sponsor in performance of this Agreement as at the date of termination. Any such sum (as reasonably determined by the Minister) will be payable by the Sponsor as a debt due to the Minister.
- (e) Where this Agreement is terminated in accordance with this clause 25.3 at any time during the period until the end of the third School Year after the School first opens, and in addition to any amount to be paid by the Sponsor in accordance with paragraph (d) of this clause 25.3, the Sponsor is also required to pay to the Minister, an amount to be calculated as follows, such sum being payable by the Sponsor as a debt due to the Minister:
  - (i) if the Market Value of the School's Assets is greater than the set-up component of the Establishment Payment as specified in clause 1.2(b) of Schedule 7, the Sponsor is required to pay an amount equal to the set-up component of the Establishment Payment; or
  - (ii) if the Market Value of the School's Assets is less than the set-up component of the Establishment Payment as specified in clause 1.2(b) of Schedule 7, the Sponsor is required to pay an amount equal to the Market Value of the School's Assets.
  - (iii) For the avoidance of doubt, where the School is or is contemplated to be used for multiple purposes, the value of any mixed use assets owned by the Sponsor is considered to be 100% of the Market Value of the asset, irrespective of the portion

of its use designated for schooling activity.

#### **25.4 Force majeure**

- (a) If either party's performance of this Agreement is affected by a Force Majeure Event that party will notify the other party as soon as practicable after the Force Majeure Event occurs and use reasonable endeavours to:
  - (i) provide information regarding the extent of its inability to perform and an estimate of the time required to overcome the Force Majeure Event;
  - (ii) remedy or mitigate the effect of the Force Majeure Event;
  - (iii) resume performance of its obligations under this Agreement to the greatest extent practicable and as quickly as is practicable, having regard to the nature and effect of the Force Majeure Event; and
  - (iv) upon cessation of the effects of a Force Majeure Event, give notice to the other party of such cessation as quickly as practicable.
- (b) Either party may immediately terminate this Agreement if that party has been unable to fulfil its obligations under this Agreement for a continuous period of 20 Business Days or more due to the occurrence of a Force Majeure Event by giving the other party written notice.
- (c) 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.

#### **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.

### **26. Secretary's step-in rights**

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- (a) Section 158M of the Act enables the Secretary to step in and take over the management of the School in certain circumstances for any period that the Secretary considers necessary in accordance with the Act. Without in any way limiting the Secretary's powers under section 158M of the Act, the Secretary's step-in rights may involve the Secretary:
  - (i) accessing the Premises or any other premises utilised by the Sponsor in relation to the operation or management of the School, to the same extent that the Sponsor has access to those Premises and any other relevant premises;
  - (ii) assuming the management of the School (or certain aspect(s) of the School's management) and doing all other things that the Sponsor is permitted to do under this Agreement; and
  - (iii) taking any steps that the Minister considers necessary to manage the School and

undertaking the performance of the Sponsor's obligations under this Agreement.

- (b) During the period in which the Secretary is exercising the Secretary's step-in rights under section 158M of the Act, the Sponsor's rights and obligations (to the extent required to enable the Secretary to exercise the Secretary's step-in rights) are temporarily suspended. This includes the Sponsor's right to receive payment from the Minister in respect of the management of the School during that period where the Secretary has incurred costs and expenses in relation to stepping in. In that case, the Minister may elect to withhold from any amounts otherwise payable to the Sponsor under this Agreement an amount equal to such costs and expenses incurred by the Secretary and apply the amount withheld to pay or reimburse those costs and expenses of the Secretary. However, the Sponsor agrees to co-operate and provide all reasonable assistance during that period to enable the Secretary to exercise the Secretary's rights under section 158M of the Act.
- (c) On and from the end date of step-in, the Sponsor will immediately recommence managing the School in its entirety and performing any of the obligations under this Agreement that had been temporarily taken over by the Secretary pursuant to section 158M of the Act.



## **Part 5: Disengagement**

### **27. Sponsor co-operation**

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Where this Agreement expires, or terminates in accordance with clause 25, the Sponsor agrees to co-operate with the Minister and to comply with any reasonable instructions issued by the Minister in order to ensure the orderly and efficient closure or transfer of the operation of the School and to comply with any reasonable disengagement plan that the Minister may issue for the purpose of such closure or transfer of operations.

## Part 6: Payment

### 28. Payment

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- (a) Without limiting anything else in this clause 28, the Minister will pay the Sponsor the amounts (including the Establishment Payment referred to in clause 1.2(b) of Schedule 7)) at the times and subject to any pre-conditions set out (or provided for) or otherwise determined in accordance with the provisions in Schedule 7 in order to fund (or assist with the funding of) the Sponsor to undertake its establishment, operation and management of the School in accordance with this Agreement.
- (b) Unless the Minister determines otherwise in his or her discretion, and except for the Minister's obligation to make the Establishment Payment, the Minister will not have any payment obligation under this Agreement unless and until the Minister is satisfied that each of the following has occurred:
  - (i) the Ministry has received (in each case, in a form and substance satisfactory to it) an Establishment Completion Declaration, together with any other supporting documents or evidence reasonably requested by the Ministry, in accordance with paragraph (f) of clause 3; and
  - (ii) ERO has undertaken a School readiness review and, in addition, the Minister is satisfied with the findings in the resulting ERO report (including after taking into account any subsequent actions undertaken by the Sponsor in response to that report) and considers that the School will be able to open and commence operations in accordance with the terms of this Agreement by its scheduled date for opening; and
  - (iii) all other sources of funding (whether borrowed money, grant or equity) anticipated by the Sponsor and on which the ongoing financial viability of the Sponsor or the School is dependent have either been made available or the Sponsor reasonably anticipates that they will (or will continue to) be made available in the amounts and by the times anticipated or required by the Sponsor.
- (c) Where the Sponsor uses the set-up component of the Establishment Payment (as specified in clause 1.2(b) of Schedule 7) to purchase assets that are to be used in, or for the purpose of, operating the School, the Sponsor must, during the period until the end of the third School Year after the School first opens, continue to own those assets in its own name and must not dispose of, or grant any mortgage or security interest over, those assets to any other person during that period without the Minister's prior written consent.
- (d) The Sponsor undertakes that it will at all times hold the Establishment Payment (or any remaining balance, after the making of any payments required in order to give effect to its Implementation Plan) paid to the Sponsor by the Minister under this Agreement in an interest bearing bank account with a New Zealand registered bank (details of which, including signing authority on the account, must be provided to the Minister before the date on which the Establishment Payment is paid to the Sponsor).

### 29. Invoicing

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The Sponsor will invoice the Minister in accordance with the provisions in Schedule 7.

## **Part 7: General**

### **30. Representations, warranties and undertakings**

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The Sponsor represents and warrants to the Minister that as at the date of signing this Agreement:

- (a) it has the power to execute, deliver and perform its obligations under or as contemplated by this Agreement and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this Agreement constitutes valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies;
- (c) the execution by it of, the performance by it of its obligations under, and the compliance by it with the provisions of, this Agreement does not and will not contravene any existing law to which it is subject; and
- (d) to the best of its knowledge (having made all reasonable enquiries), it does not have any material Conflicts of Interest (including any actual or potential Conflicts of Interest) in operating and managing the School or in entering into this Agreement that may impact on the Sponsor's ability to perform its obligations without its independence or impartiality being called into question, other than any Conflicts of Interest that the Sponsor has already disclosed to the Minister.

### **31. Confidentiality and intellectual property**

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#### **31.1 Confidentiality**

- (a) Each party confirms that it has security measures consistent with best industry practice to safeguard the other party's Confidential Information from unauthorised access or use by third parties and that it will not use or disclose the other party's Confidential Information to any person or organisation other than:
  - (i) to the extent that use or disclosure is necessary for operating and managing the School or otherwise complying with any obligations under this Agreement or the Act;
  - (ii) if the other party gives prior written approval to the use or disclosure;
  - (iii) if the use or disclosure is required by law (including the Official Information Act 1982), Ministers or parliamentary convention; or
  - (iv) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties.
- (b) The Sponsor must ensure that its personnel are aware of and comply with the confidentiality obligations in this clause 31.1.

#### **31.2 Intellectual property**

- (a) Pre-existing Intellectual Property Rights and/or Intellectual Property as at the date of this Agreement remain the property of their current owner. . The Sponsor warrants that any Intellectual Property it at any time uses or provides (or otherwise makes available, including those sourced from third parties) under or in connection with this Agreement will not infringe the Intellectual Property of any third party.
- (b) As between the parties to this Agreement, the Sponsor owns any Intellectual Property Rights in any materials that are developed by the Sponsor for the purpose of this Agreement except for any Intellectual Property Rights in any reports, data or other information prepared by the Sponsor that are required to be provided to the Minister or Ministry in accordance with this Agreement (and which shall also include any data and records required to be maintained by the Sponsor under clauses 18.1, 18.2 or 18.3), but does not include any Intellectual Property Rights in any materials that are developed, owned or licensed by the Sponsor and which may be referred to in such reports, records, data or other information), which instead become the property of the Minister when such materials are created.
- (c) The Sponsor agrees to negotiate in good faith with the Minister to enable the Minister to have access to any Intellectual Property Rights in any materials that are developed by the Sponsor for the purpose of this Agreement (and owned or controlled by the Sponsor) that the Minister requires access to. The Sponsor shall grant (or, if it is not the owner, use all reasonable commercial endeavours to procure to grant) such access in the form of a licence to the Minister and Ministry (severally), the terms of which are to be agreed between the parties. For the avoidance of doubt, where the Intellectual Property Rights are licensed to the Sponsor, the Minister and/or Ministry cannot require such terms that give more beneficial or inconsistent rights to those granted to the Sponsor.
- (d) For the avoidance of doubt, the Minister or Ministry owns any Intellectual Property Rights in any reporting templates or other materials developed by the Minister or Ministry for the purpose of this Agreement.

## **32. Indemnities and liability**

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### **32.1 Sponsor indemnity**

The Sponsor must indemnify and keep indemnified each of the Minister and the Ministry against any loss, damage, cost or expense suffered or incurred by the Minister or the Ministry arising directly or indirectly from the Sponsor's breach of this Agreement.

### **32.2 No liability**

Neither the Minister nor the Ministry shall be liable to the Sponsor or any personnel of the Sponsor in respect of any act or omission of the Minister or the Ministry in relation to this Agreement, other than in respect of obligations of the Minister or the Ministry that are expressly set out in this Agreement.

## **33. Insurance**

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The Sponsor will be required to maintain all insurances that are necessary, desirable or customary in connection with the operation or management of the School in accordance with this Agreement and any applicable laws. This shall include, at a minimum, holding the types of insurance at the levels specified in Schedule 9.

## **34. Miscellaneous Terms**

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### **34.1 Minister's right to appoint person to administer this Agreement**

- (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, provided that nothing in this clause limits anything in paragraph (c) of clause 2.2 of this Agreement). It is expected that the Ministry will assist the Minister in the administration this Agreement and that the Minister will appoint and maintain at all times during the term of this Agreement a person to be the Minister's contract manager and provide written notice to the Sponsor of the identity and contact details of such contract manager and promptly advise the Sponsor as and when there is any change to the identity and/or contact details of that person.
- (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.

### **34.2 Public statements**

- (a) The Sponsor must not make any public announcements or statement about the Minister, the Ministry or the Secretary or the contents of this Agreement (but may disclose the existence of this Agreement) without the written consent of the Minister.
- (b) The Sponsor must not make any objectionable or derogatory comments about the Minister, the Secretary, the Parliamentary Under-Secretary to the Minister of Education or the Ministry or any of the Ministry's personnel in any written or oral form. For the avoidance of doubt, any failure under this clause shall be considered a breach of this Agreement.

### **34.3 Conflicts of Interest**

The Sponsor must advise the Minister of whether and whenever it has knowledge of any actual or potential Conflict of Interest in connection with operating and managing the School or in performing this Agreement that may impact on the Sponsor's ability to perform its obligations without its independence or impartiality being called into question. The Sponsor must follow the reasonable directions of the Minister if the Minister notifies the Sponsor that it has determined that the Sponsor has such an actual, potential or perceived Conflict of Interest.

### **34.4 Relationship between the parties**

Nothing in this Agreement constitutes a legal relationship between the parties in the nature of partnership, joint venture, agency or employment. The Sponsor is responsible for the liability of its own, and its personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Sponsor's business or the engagement of its personnel.

### **34.5 Sponsor contract manager**

The Sponsor must promptly after the commencement of this Agreement appoint and maintain at all times during the term of this Agreement a person to be the Sponsor's contract manager and provide written notice to the Minister of the identity and contact details of its contract manager. It must promptly advise the Minister as and when there is any change to the identity and/or contact details of that person.

#### 34.6 **Sub-contracting**

- (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.
- (b) For the purpose of this Agreement, the Minister has, as at the date of this Agreement, consented to the persons listed in Schedule 9 being sub-contractors to the Sponsor in respect of the roles, activities or tasks described in Schedule 9 next to the relevant sub-contractor.

#### 34.7 **Assignment**

- (a) The Sponsor may not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Minister.
- (b) The Minister may assign or transfer any of the Minister's rights or obligations under this Agreement.

#### 34.8 **Notices**

- (a) A notice, consent, approval or other communication under this Agreement must:
  - (i) be in writing addressed to the recipient from time to time designated for the purpose by the addressee to the other party. The initial address of each party is as follows:

**Minister of Education:**

Parliament Office  
Private Bag 18888  
Parliament Buildings  
**Wellington 6160**

Partnership.Schools@education.govt.nz

**Sponsor:**

c/- Anderson Creagh Lai  
PO Box 106740  
**Auckland 1010**

brettoriley@xtra.co.nz

- (ii) and be signed by an authorised representative of the sender.
- (b) A communication will be deemed to be received:

- (i) in the case of a letter, on the second Business Day after posting (with all postage

paid);

- (ii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (except that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and
- (iii) in the case of personal delivery, when delivered.

#### **34.9 Dispute resolution**

- (a) If any dispute arises between the parties in respect of any fact, matter or thing arising out of or in connection with this Agreement, a party may give notice to the other party specifying:
  - (i) the dispute or difference;
  - (ii) particulars of the reasons for that dispute or difference; and
  - (iii) the position that is believed to be correct.
- (b) Representatives of each of the parties shall meet within five (5) Business Days of receipt of the notice given under paragraph (a) of this clause 34.9 and undertake discussions with a view to resolving the dispute or difference.
- (c) If the parties cannot reach agreement under paragraph (b) of this clause 34.9 within ten (10) Business Days of first meeting (or such other period of time that the parties may agree), the dispute or difference may be referred to mediation by either party.
- (d) Mediation will take place in a location to be agreed between the parties, and failing agreement on the location being reached within a reasonable time, in Wellington, and will be conducted by a single mediator agreed between the parties, or if they cannot agree, appointed by the Chair of the Arbitrators' and Mediators Association of New Zealand (AMINZ). The mediator's costs will be shared equally between the parties and each party will be responsible for its own costs incurred in relation to the mediation.
- (e) If a dispute or difference is not resolved by the date which is twenty (20) Business Days after the first day of the first mediation meeting, either party will be free to start any Court proceedings.
- (f) This clause 34.9 does not affect either party's right to seek urgent interlocutory and/or injunctive relief from any Court of competent jurisdiction.

#### **34.10 Counterparts**

This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may execute this Agreement by executing any counterpart.

#### **34.11 Severability**



If any provision in this Agreement is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision will be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.

#### **34.12 Waiver**

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of this Agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other subsequent breach.

#### **34.13 Entire agreement**

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all prior agreements and understandings (written or oral) between the parties about their respective subject matters.

#### **34.14 Variations**

Except as expressly provided otherwise by this Agreement (for example, paragraph (a) of clause 3), no amendment to this Agreement will be effective unless it is in writing and signed by both parties.

#### **34.15 Survival**

The clauses that by their nature should remain in force on expiry or termination of this Agreement do so.

#### **34.16 Governing law and jurisdiction**

This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

## 35. Definitions and Interpretation

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### 35.1 Definitions

In this Agreement, unless the context otherwise requires:

**Act** means the Education Act 1989 as amended or replaced from time to time;

**Advisory Group** means the advisory group appointed by the Minister pursuant to section 158C of the Act and includes a single member of the Advisory Group acting on behalf of the Advisory Group. The Advisory Group may be known as the “Authorisation Board”;

**Agreement** means this Agreement and includes all Schedules (and the Annexes to the Schedules) to this Agreement;

**Annual Reports** means the reports to be provided by the Sponsor under paragraph (b)(ii) of clause 18.2 of this Agreement, using the template provided to the Sponsor by the Minister or Ministry and which incorporates quarterly reporting information for the fourth quarter of the previous School Year within that report;

**Business Day** means a day when most businesses are open for business in New Zealand which excludes Saturday, Sunday and any statutory public holiday;

**Chief Review Officer** has the meaning given to that term in section 2(1) of the Act;

**Class Level** means a class level from year one (1) to year thirteen (13) (year 1 being the first year that a child may attend school), in which a Student is enrolled to take Courses;

#### **Committed Costs:**

- (a) means future costs that the Sponsor has an irrevocable contractual responsibility to pay to a third party which are directly related to the Sponsor's provision of the School as required by this Agreement, which the Sponsor has used all commercially reasonable endeavours to mitigate through its contractual arrangements in order to minimise any costs payable on early termination, and which have been committed to in the ordinary course of business and on reasonable commercial terms, and after the Sponsor has (following receipt of notice of early termination) used all commercially reasonable endeavours to reduce, avoid or otherwise mitigate, including:
  - (i) building lease costs;
  - (ii) equipment lease costs;
  - (iii) sub-contractor break costs (being costs under sub-contracts entered into in the ordinary course of business and on reasonable commercial terms that will cause losses to be incurred if the sub-contract is terminated early); and
  - (iv) property holding or disposal costs;
- (b) does not include:
  - (i) redundancy costs for staff; and

- (ii) any future costs that the Sponsor has committed to beyond the then current term of this Agreement (which, for the avoidance of doubt, shall not include any further renewal or extension period unless the Minister has given notice of the Minister's decision to extend this Agreement for a further period of six (6) years);

In no circumstances will Committed Costs be an amount greater than the amount that the Sponsor would be reasonably entitled to expect to receive from the Minister (as set out in Schedule 7 of this Agreement) until the end of the then current term of this Agreement.

In all circumstances Committed Costs are capped at \$1,000,000 (including any relevant taxes).

**Confidential Information** means information that:

- (i) by its nature is confidential;
- (ii) is marked by either party as 'confidential' or 'in confidence' (or any similar description);
- (iii) is provided by either party, or third party 'in confidence'; or
- (iv) is of a sensitive nature or is commercially sensitive to either party;

**Conflict of Interest** means any matter, circumstance, interest or activity of the Sponsor, its directors, personnel (including employees) or subcontractors arising by whatever means that:

- (a) directly conflicts with:
  - (i) the duties of the Sponsor and any of its personnel or subcontractors under this Agreement; or
  - (ii) the interests of the Minister in relation to this Agreement or otherwise in respect to the performance of this Agreement;
- (b) otherwise impairs or could reasonably be expected to impair the ability of the Sponsor (or any of its personnel or subcontractors) to properly perform its role and obligations under this Agreement.

**Correspondence School** has the meaning given to that term in section 2(1) of the Act;

**Course** means a course being taught to Students under the Curriculum;

**Crown** has the meaning given to that term in section 2(1) of the Public Finance Act 1989;

**Curriculum** means the curriculum described in Schedule 2 of this Agreement that the Sponsor is required to teach to Students;

**Domestic Student** has the meaning given to that term in section 2(1) of the Act;

**Education Circular** means any document published by the Ministry on its website that is expressed to be an 'education circular' in force for the time being;

**Education Council** means the Education Council of Aotearoa New Zealand established under Part 32 of the Act;

**ERO** means the Education Review Office;

**Establishment Completion Declaration** means the declaration in (or substantially in) the form

set out in Schedule 10;

**Establishment Period** has the meaning given to it in the Implementation Plan and means the period prior to the opening of the School during which the Sponsor will carry out the activities required under, or contemplated by, its Implementation Plan;

**Extra-curricular Activity** means an activity outside of the Curriculum which is offered to Students;

**First School Year** means the School Year when the Sponsor first opens the School for Students to attend and receive tuition under the Curriculum provided that, for the purposes of applying paragraph (b) of clause 17.2, it also means the first School Year in which the Class Level to which the Performance Indicator or Performance Standard relates is first offered at the School (which may be a later School Year than the one in which the School first opens);

**Force Majeure Event** means an event that is beyond the reasonable control of the party immediately affected by the event, but does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care, is or was directly responsible for, or a lack of funds for any reason. Examples include:

- (i) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- (ii) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (iii) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
- (iv) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties;

**Foundation Curriculum Policy Statement** means a foundation curriculum policy statement published under section 60A(1)(aa) of the Act;

**Gazette Notice** means the Gazette Notice actually published by the Minister for the purposes of section 158B of the Act in respect of the Sponsor and the School (including as it may be supplemented or replaced from time to time) and that, as at the date of this Agreement, is shortly intended to be published and a final draft of which is attached as Annex 1 to Schedule 1 of this Agreement;

**Gazette Notice Objectives** means the aims, purposes and objectives stated in the Gazette Notice.

**Hostel** has the meaning given to that term in section 2(1) of the Act;

**Implementation Plan** means an implementation plan prepared by the Sponsor (in a form reasonably acceptable to the Ministry) which plan must set out the key activities, milestones and target completion dates relevant to the establishment of the School and which need to be successfully completed in order for the Sponsor to commence and carry out operations at the School in accordance with the requirements of this Agreement;

**International Student** has the meaning given to that term in section 2(1) of the Act;

**Independent Review Process** or **IRP** means the process developed by the School pursuant to paragraph (a) of clause 10.5;

**Intellectual Property Rights** means an intangible asset that consists of human knowledge or ideas that is capable of protection at law, including patents, copyright, trademarks, design, software and similar industrial, commercial or artistic property and can also include any modifications, upgrades and versions and **Intellectual Property** shall be construed consistent with this;

**Learning Experience Outside the Classroom** means the Ministry curriculum support project of that name;

**Limited Authority to Teach** means limited authority to teach granted to a person under section 366 of the Act where such authority has not been cancelled in accordance with the relevant provisions of the Act;

**Market Value** means the value of the property or goods on the open market in New Zealand on an arm's length basis, such value to be agreed between the Sponsor and the Minister (each acting reasonably and in good faith) with reference to evidence of similar recent sales of such property or goods, or failing agreement within a reasonable period, to be determined by an appropriately qualified independent valuer appointed by the Minister, the cost of such independent valuer to be shared equally between the parties. For the avoidance of doubt, this is net of selling costs and GST if any;

**Maximum Roll** means the maximum roll specified in Schedule 1 for the School but subject to the operation of paragraph (b) of clause 7.1;

**Minimum Requirements** means the minimum requirements described (or referred to) in clause 16.1 of this Agreement;

**Minimum Roll** means the minimum roll specified in clause 2 of Schedule 1 for the School;

**Minister** means the person holding the office of Minister of Education from time to time;

**Ministry** means the government department going by the name Ministry of Education;

**National Standards** means the national standards published by the Minister pursuant to section 60A of the Act;

**NCEA** means the National Certificate of Educational Achievement developed and set by the New Zealand Qualifications Authority in accordance with the Act;

**Ngā Whanaketanga Rumaki Māori** means the Māori medium expression of national standards in literacy and numeracy;

**Objectives** means the objectives described in clause 1 of Schedule 6;

**Parent** has the meaning given to that term in section 2(1) of the Act.

**Partnership School/Kura Hourua** has the meaning given to that term in section 2(1) of the Act;

**Performance Indicators** means the performance indicators for a given subject matter area or matter for one or more or all Class Levels and Year as set out in clause 2 and Annex A to C of Schedule 6 (which includes any performance indicators specified in a replacement table for a future Year provided to the Sponsor by the Minister in accordance with this Agreement);

**Performance Management System** means the system described in this Agreement for measuring the Sponsor's achievement against the Performance Indicators and performance against the Performance Standards;

**Performance Standards** means the performance standards for a given subject matter area or matter for one or more or all Class Levels and Year as set out in clause 2 and Annex A to C of Schedule 6 (which includes any performance standards specified in a replacement table for a future Year provided to the Sponsor by the Minister in accordance with this Agreement, including matters which were previously Performance Indicators and which the Minister has converted to performance standards pursuant to paragraph (e) of clause 17.2);

**Practising Certificate** has the meaning given to that term in section 348 of the Act provided that such practising certificate has not been cancelled, has not expired or has not been suspended in accordance with the relevant provisions of the Act;

**Pre-existing Intellectual Property Rights** means Intellectual Property Rights developed before the date of this Agreement but does not cover later modifications, adaptations or additions;

**Premises** means the premises where the School is located from which the Students will primarily be taught the Curriculum, and which is described in (or determined in accordance with) Schedule 5 and includes any other premises that the Minister has approved under paragraph (e) of clause 14.1;

**Qualifications** means the qualifications described in clause 4 of Schedule 2 of this Agreement that the Sponsor is required to offer to Students;

**Quarterly Reports** means the reports to be provided by the Sponsor under paragraph (b)(i) of clause 18.2 using the template provided to the Sponsor by the Minister or Ministry;

**Religious Instruction** means instruction in religion, including for example, instruction in prayer and religious observances as distinct from providing education about different religions and religious beliefs;

**Remedial Plan** means a plan describing actions that the Sponsor must take to improve the Sponsor's performance under this Agreement that is required in accordance with clause 24.3 of this Agreement;

**School** means the School described in the Gazette Notice that is operated by the Sponsor in accordance with this Agreement;

**School Rule** means any rule made by the Sponsor pursuant to section 158I of the Act;

**School's Assets** means those assets owned by the Sponsor that are used in, or for the purpose of, operating the School which, as at the date of termination of this Agreement, are not subject to a security interest in favour of a person who has loaned money to the Sponsor for the purpose of funding the operation and management of the School (except where such security has been granted without the Minister's prior written consent in breach of paragraph (c) of clause 28);

**School Year** means the total period of time in a Year during which the School is open for Students to attend and receive tuition under the Curriculum or undertake assessments related to the Curriculum or Qualifications;

**Secretary** means the Secretary for Education;

**Special Education Needs** means Students who are included within or who are in receipt of the following (as each of these terms is defined in applicable policy documents at the relevant time, including as they may be modified or replaced from time to time,):

- (i) 'Ongoing Resourcing Scheme';

- (ii) 'Intensive Wrap-around Services'; and
- (iii) 'High Needs Learning Service' provided through 'Resource Teachers Learning and Behaviour';

**Student** means any student who has been and continues to be enrolled to attend the School;

**Teaching Position** has the meaning given to that term in section 348 of the Act;

**Unsuitable Person** means any person:

- (i) who is involved in any activity which, in the reasonable opinion of the Minister, is incompatible with the operation of the School under this Agreement or where the person's involvement in such activity would otherwise bring the Minister or the Ministry into disrepute; and/or
- (ii) who the Minister reasonably considers is otherwise inappropriate to be involved in the education sector or to be connected with the operation of the School under this Agreement by reason of the Police, Serious Fraud Office or other regulatory or law enforcement agency undertaking a review or investigation into the conduct of that person;

**Year** means a calendar year.

Terms not otherwise defined in this Agreement have the meanings specified in the Act.

## 35.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (b) where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (c) any reference to 'include' or any derivatives of that term are not to be treated as limiting;
- (d) a reference to a statute includes all regulations or rules made under and amendments to that statute or any statute passed in substitution for that statute or any statute incorporating the provisions of that statute. A reference to a particular provision in a statute includes any provision that is intended to be a substitute for that provision;
- (e) any reference to a clause, schedule or annex is a reference to a clause, schedule or annex in this Agreement;
- (f) the singular includes the plural and vice versa;
- (g) all amounts are in New Zealand dollars;
- (h) a reference to 'party' means a party to this Agreement and includes that party's successors or permitted assigns;
- (i) all references to date and time are references to dates and times in New Zealand; and
- (j) the word 'person' includes a natural person and any body or other entity whether incorporated or not.

## Execution

Executed as an agreement,

*Associate*  
SIGNED by The Minister of Education,  
acting in the name and on behalf  
of the Crown

*John Macindoe*

6/9/17  
Date

SIGNED by City Senior School Limited

s 9(2)(a) OIA

Authorised Signatory / Director

*Claire Amos*  
Print Name

05/09/17  
Date

Authorised Signatory / Director

*Robyne Walker*  
Print Name

5 September 2017  
Date

in the presence of:

Witness Signature

Print Name

Witness Occupation

Place of residence

*Jeffrey Lai*

JEFFREY LAI  
SOLICITOR  
AUCKLAND

Confirmed as being signed in accordance  
with the constitutive documents of City Senior  
School Limited and the Companies Act 1993.

By signing, we confirm that we have the authority to sign for City Senior School Limited and that all consents and approvals required under, and for the purposes of, its constitutive documents and Companies Act 1993 in connection with the entry into, execution and performance of this Agreement have been obtained and remain in full force and effect.



## Schedule 1: Student Enrolment, School hours and term and special features

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### 1. Maximum Roll

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The Maximum Roll for the School is 300.

### 2. Minimum Roll

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The Minimum Roll for the School is 80 which must be achieved by 1 September 2019.

### 3. International Student vacant place upper limit

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Not applicable – no International Student places

### 4. School hours and terms

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#### 4.1 School hours

The minimum number of hours each day that the School must be open and teaching Students during the term times set out in this Agreement is as follows:

Day	School hours
Monday	10:00am – 04:00pm
Tuesday	10:00am – 04:00pm
Wednesday	10:00am – 04:00pm
Thursday	10:00am – 04:00pm
Friday	10:00am – 04:00pm
Saturday	Closed
Sunday	Closed
Public Holidays	Closed

## 4.2 School terms

The minimum term dates for each Year when the School must be open for teaching Students are as follows:

Year	Term Dates
2019	Term 1: 07 February – 12 April (94 half days)
	Term 2: 29 April – 5 July 98 half days)
	Term 3: 22 July – 27 September (100] half days)
	Term 4: 14 October – 13 December (94 half days)
	Total number of half days: 380
2020	Term 1: 7 February – 9 April (90 half days)
	Term 2: 28 April – 3 July (96 half days)
	Term 3: 20 July – 25 September (100 half days)
	Term 4: 12 October – 16 December (94 half days)
	Total number of half days: 380
2021	To be the same dates as the school term and dates as shown on the Ministry of Education website (unless otherwise agreed)
2022	To be the same dates as the school term and dates as shown on the Ministry of Education website (unless otherwise agreed)
2023	To be the same dates as the school term and dates, as shown on the Ministry of Education website (unless otherwise agreed)
2024	To be the same dates as the school term and dates, as shown on the Ministry of Education website (unless otherwise agreed)

## 5. Ability to provide Religious Instruction

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The Sponsor is permitted to provide Religious Instruction to the Students during School hours.

## Annex A: Draft Gazette Notice

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### New Zealand Gazette Notice

#### *Education Act 1989*

#### **Approval of City Senior School Limited as Sponsor of City Senior School establishment notice**

Pursuant to section 158B of the Education Act 1989, I hereby give the following notice:

1. I hereby approve City Senior School Limited to be a Sponsor of a partnership school | kura hourua.
2. The name of the Sponsor's school is City Senior School.
3. The Sponsor's school will be located in Central Auckland.
4. City Senior School will be a co-educational secondary school.
5. Education at City Senior School will be given for class levels 11 to 13.
6. City Senior School is permitted to provide religious instruction to students.
7. City Senior School will operate with the following aims, purposes and objectives:
  - (i) to produce students who have strong communication skills, physical and mental health, wellbeing, and self-management skills to fully engage in their own futures; and
  - (ii) through STEM-related educational outcomes, to produce science and technology-competent learners, and students who have the ability to choose STEM-related career pathways.
8. This notice shall come into force the day after its publication in the *New Zealand Gazette*.

Dated at Wellington this [insert day] day of [insert month][insert year].

Hon Nikki Kaye  
**Minister of Education**

## Schedule 2: Curriculum & Qualifications

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### 1. Curriculum

- (a) The City Senior School curriculum will deliver the New Zealand Curriculum, and will have three curriculum foci:
- (i) the science, technology, engineering, the arts, and mathematics (STEAM) curriculum;
  - (ii) the Green Innovation Project – small group or individual projects with an environmental focus, that seek to benefit the community in some way; and
  - (iii) Whānau Mentoring – focusing on communication skills, self-management, well-being, and ethics.

### 2. Curriculum Framework:

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- (c) The Sponsor's strategy for the School is:
- (i) to nurture and support young people, with a particular focus on becoming innovative and creative global citizens who can confidently contribute to the rapidly changing world;
  - (ii) to provide direct exposure and entry for students to companies and career pathways; and
  - (iii) to foster student partnerships with business, industry and local and global communities.
- (d) The Sponsor shall apply the following principles to the operation of the School:
- (i) *we Innovate* – supporting students to engage in self-directed learning, and to work alongside and within the business sector;
  - (ii) *we Connect* – creating a unique social learning environment, supporting students to build partnerships with business and industry mentors, and connecting learning areas to real world contexts; and
  - (iii) *we Contribute* – focusing on the concept of environmental sustainability, and engaging students in service learning.
- (e) The School shall operate in a manner which encourages and models the following values:
- (i) environmental sustainability;
  - (ii) community engagement; and
  - (iii) embracing diversity.
- (f) The School will support students to develop the following key competencies:

- (i) Scientific capabilities – gathering and interpreting data, using evidence, critiquing evidence, interpreting representations and promoting engagement in Science;
- (ii) Technology and Engineering - undertaking technological and engineering practices within innovative problem solving situations and understanding the nature of technology and engineering;
- (iii) Arts - learning to work both independently and collaboratively to construct meanings, produce works, and learning to use imagination to engage with unexpected outcomes and to explore multiple solutions;
- (iv) Mathematics - understanding mathematics as a language, understanding and communicating information and ideas using mathematics;
- (v) Communication – developing written, oral and visual communication skills, Te Reo Māori and Tikanga, with optional Mandarin;
- (vi) Self-management – developing goal setting skills, time management and financial literacy;
- (vii) Wellbeing – developing and supporting mental and physical wellbeing, health and fitness; and
- (viii) Critical Thinking – developing an understanding of philosophy, ethics, history and future thinking.

(g) The learning areas of particular focus for the School are outlined in the below table:

Curriculum	Subjects	Foundation Phase (Year 11)	Incubation Phase (Year 12)	Innovation Phase (Year 13)
<b>STEAM Curriculum</b>	Science	General Science	Physics, Chemistry and/or Biology	Physics, Chemistry and/or Biology
	Technology and Engineering	Technology, Digital Technology, Robotics	Technology, Digital Technology, Robotics	Technology, Digital Technology, Robotics
	Arts	Visual Arts and Drama Plus extra-curricular Music lessons (optional)	Visual Arts or Drama Plus extra-curricular Music lessons (optional)	Visual Arts or Drama Plus extra-curricular Music lessons (optional)
	Mathematics	Mathematics, Statistics and Calculus	Mathematics, Statistics and Calculus	Mathematics, Statistics and Calculus
	Environmental Sustainability	Social Sciences - Place and Environment	Social Sciences - Place and Environment	Social Sciences - Place and Environment

<b>Innovation Projects</b>	Design Thinking	Introduction to Design Thinking	Understanding Design Thinking in action	Applying Design Thinking
	Mentoring Internships	Business Studies Health and Physical  Education - Relationships with other people	Business Studies Health and Physical  Education - Relationships with other people	Business Studies Health and Physical  Education - Relationships with other people
<b>Whānau Mentoring</b>	Communication Skills	English - Written, oral and visual communication skills Te Reo and Tikanga Māori Optional Mandarin	English - Written, oral and visual communication skills Te Reo and Tikanga Māori Optional Mandarin	English - Written, oral and visual communication skills Te Reo and Tikanga Māori Optional Mandarin
	Self-Management	Financial literacy  Goal Setting and Time Management	Financial literacy  Goal Setting and Time Management	Financial literacy  Goal Setting and Time Management
	Wellbeing	Health and Physical Education - Personal health and physical development	Health and Physical Education - Personal health and physical development	Health and Physical Education - Personal health and physical development
	Critical Thinking	Social Sciences - Intro to Philosophy, Ethics, History, Futures Thinking	Social Sciences - Intro to Philosophy, Ethics, History, Futures Thinking	Social Sciences - Intro to Philosophy, Ethics, History, Futures Thinking

- (h) The School may also offer the following learning opportunities:
- (i) externally provided online courses, dependent on the needs of individual students, including: Te Reo Māori through Auckland University of Technology;
  - (ii) supplementary specified courses delivered through Coursera, from Stanford University, California Institute of the Arts, the Museum of Modern Art, and the University of Pennsylvania;
  - (iii) for Years 12 and 13 students, the opportunity to enrol in tertiary papers.

### 3. Curriculum Delivery

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- (a) The curriculum will be divided into three levels:
- (i) The Foundation Programme – whereby Year 11 students:

- a. will be introduced to all STEAM learning areas;
  - b. will be guided through the Green Innovation Project.
  - c. will be supported by an extensive mentoring programme; and
  - d. will work through learning objectives derived from Level 6 and Level 7 of the New Zealand Curriculum;
  - e. will work towards their Level Two NCEA Certificate.
- (ii) The Incubation Programme and the Innovation Programme – whereby Years 12 and 13 students:
- a. will be engaged in specialised and personalised programmes and select one, two, or three STEAM learning areas to focus on in greater depth;
  - b. will have the flexibility to spend additional time developing their Green Innovation Project;
  - c. will work towards becoming self-directed learners;
  - d. will, as part of the Incubation Programme, work through learning objectives derived from Level 7 and 8 of the New Zealand Curriculum;
  - e. will gain their Level Two NCEA Certificate;
  - f. will, as part of the Innovation Programme, work through learning objectives derived from Level 8 of the New Zealand Curriculum and beyond; and
  - g. will gain their Level Three NCEA Certificate and University Entrance.

(b) The Sponsor will deliver the curriculum using the following instructional methods:

Approach	Description
Self-directed Learning	Students will be supported to develop the skills and dispositions needed to become self-directed learners, and to take responsibility for their own continuing, life-long learning. Modules will be delivered online and supported by face-to-face teaching support.
Experiential Learning	Students will be supported to connect with a range of local businesses, develop Innovation Projects that have authentic business and community contexts and partners, and to ultimately be supported to work alongside and within the business sector.
Social Learning	<p>Student learning will occur in a unique social learning environment, based on collaborative work-share spaces and open flexible spaces to allow students to work either independently or collaboratively, with meeting rooms and cave spaces also available for more focused group work or dedicated quiet time.</p> <p>The social nature of the School will also be supported by the Whānau Mentoring curriculum that will see Students put into a small Whānau Group</p>

	which will support them throughout their time at school.
Building Partnerships	A particular focus within the Innovation Projects will be to develop partnerships between students and business or industry mentors. Students will be encouraged to develop real world partnerships and clients from the surrounding community and business sector.
Connected Learning	Wherever possible learning will be delivered through integrated modules and projects. By connecting learning areas and applying them to real world contexts will give students a deeper understanding of what they are learning and why it is important.
Sustainability Focus	<p>The School will explore the concept of sustainability through all areas of the school curriculum, and the STEAM curriculum will use 'Sustainability' as an overarching theme and context for studying each of the Learning Areas.</p> <p>Environmental Sustainability will feature as one of the three sub strands of the Innovation Project, with students engaging in explicit learning programmes about the topic and students looking to exploring ways in which we may be a more sustainable community, city, country or world</p>
Service Learning	The Innovation Projects will be framed in such a way that they will provide a service, product or solution that will benefit our wider community.

#### 4. **Qualifications**

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- (g) The following Qualifications will be offered by the School:
- (i) National Certificate in Educational Achievement Level 1 Literacy and Numeracy credits;
  - (ii) National Certificate in Educational Achievement, Level 2;
  - (iii) National Certificate in Educational Achievement, Level 3; and
  - (iv) University Entrance.

#### 5. **Curriculum Policy and Curriculum Handbook Documents**

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The Sponsor will develop, prepare, maintain and update its curriculum policy documents and the School's curriculum handbook in accordance with clause 9.1 of the Agreement



## **Schedule 3: Additional Student Services Offered**

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### **1. Student transport assistance**

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Not applicable.

## Schedule 4: Governance and Teachers

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### 1 Number or percentage of people holding a Practising Certificate or Limited Authority to Teach

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The minimum percentage of people in teaching positions holding a Practising Certificate or Limited Authority to Teach will be as follows:

Year	Percentage
2019	100%
2020	100%
2021	100%
2022	100%
2023	100%
2024	100%

### 2 Percentage of Curriculum time taught by people holding a Practising Certificate or Limited Authority to Teach

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The minimum percentage of the Curriculum time to be taught by people holding a Practising Certificate or Limited Authority to Teach is 100%.

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#### Guidance relating to this Schedule 4

- (a) The School will have a number of people who will be expert tutors with industry experience.
- (b) For clarity, those tutors (whether or not they hold a Practising Certificate or Limited Authority to Teach) have been excluded for the purposes of setting the percentages in clauses 1 and 2 of this Schedule 4.

## Schedule 5: Property

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### 1. Premises

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The initial Premises from which the School must be operated are:

#### **Identified premises**

- (a) Those premises that are specified in the Implementation Plan (by reference to a specific area of land, street address and particular building and facilities), and that are to be made available by the Sponsor in the manner provided for in the Implementation Plan. To the extent that the premises specified in the Implementation Plan are not leased by the Sponsor for any reason whatsoever, the provisions in clause 1(c) of this Schedule 5 shall apply.

#### **More than one identified option to be selected from**

- (b) If the Implementation Plan describes or refers to more than one premises option, then the Sponsor must determine the option it will adopt on or before the 'premises selection' decision date specified in the Implementation Plan provided that the Sponsor may only select an option which is capable of completion so that the School will be able to open and commence operations in accordance with the terms of the Agreement by its scheduled date for opening. Once the Sponsor has selected an option, it must promptly notify the Ministry in writing of the option it has selected (by reference to a specific area of land, street address and particular building and facilities) and those premises will be deemed to be the initial Premises that will be made available by the Sponsor in the manner provided for in the Implementation Plan.

#### **No option identified or selected**

- (c) If the Implementation Plan anticipates that the Sponsor will identify and select premises after the date of the Agreement, then the Sponsor must propose to the Minister in writing (by reference to a specific area of land, street address and particular building and facilities) the premises it wishes to use on or before the 'premises selection' decision date specified in the Implementation Plan provided that the Sponsor may only propose an option which (after allowing a period of not less than 7 Business Days for obtaining for the approval referred to below) is capable of completion so that the School will be able to open and commence operations in accordance with the terms of the Agreement by its scheduled date for opening. The Sponsor must obtain the approval of the Minister or the Minister's delegate to those premises, such approval to be given (or withheld) in the Minister's or the Minister's delegate's sole discretion. Once approval in writing has been given (which may be subject to conditions, including changes or additions to the Implementation Plan) those premises will be deemed to be the initial Premises that will be made available by the Sponsor in the manner provided for in the Implementation Plan.

In each of the above cases, and without limiting the requirements in this Schedule 5 and clause 14.1 of the Agreement, the Sponsor will confirm in its Establishment Completion Declaration (required to be given by the Sponsor under clause 3(f) of the Agreement) the location of the initial Premises from which the School will be operated.

## Schedule 6: Performance Management System

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### 1. Objectives

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- (a) The following are the objectives for the School:
- (i) to produce students who have strong communication skills, physical and mental health, wellbeing, and self-management skills to fully engage in their own futures; and
  - (ii) through science, technology, engineering, arts and maths (STEAM) -related educational outcomes, to produce science and technology-competent learners, and students who have the ability to choose STEAM-related career pathways; and

### 2. Performance Standards

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#### 2.1 Student achievement

The performance standards framework is as follows. Performance Standards for the School can be found at Annex A. The Sponsor will be periodically assessed.

Measure	Metric	Performance Standard	Measurement Frequency
Students achieving at NCEA at high levels, with a focus on STEM	NZQA reporting  Number of NCEA credits gained (All Class Levels)	See Annex A of this Schedule for separate Performance Standards for each Class Level (and where appropriate course)	Annually
Improvement in Student achievement	Sponsor uses assessment instruments as per clause 20.3 (appropriate Class Levels)	To be determined (Annex B will refer)	Quarter 1, Quarter 2 and Annually
STEM focused	STEM subjects are offered and taken up by Students  NZQA reporting  Number of NCEA credits gained (All	See Annex D of this Schedule for separate Performance Standards	Annually

Measure	Metric	Performance Standard	Measurement Frequency
	Class Levels)		
Leaver destination	To be determined	To be determined	Annually

## 2.2

**Student engagement**

The Sponsor will be periodically assessed against the following Performance Standards in relation to student engagement:

Measure	Metric	Performance Standard	Measurement Frequency
Unjustified absences	Measured through attendance data provided to the Ministry by the Sponsor	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly
Stand downs	Measured through information provided to the Ministry and measured in Ministry systems	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly
Suspensions	Measured through information provided to the Ministry and measured in Ministry systems	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly
Exclusions	Measured through information provided to the Ministry and measured in Ministry systems	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly And as they occur
School culture	wellbeing@school annual student survey  The result of the wellbeing survey must be provided to the Ministry along with an action plan responding to any areas for improvement from the wellbeing survey	Plan provided and results reasonably satisfactory to the Minister  Evidence that findings have been analysed and that a plan has been delivered	Annually

### 2.3 Financial performance

The Sponsor will be periodically assessed against the following Performance Standards in relation to financial performance:

Measure	Metric	Performance Standard						Measurement Frequency
		2019	2020	2021	2022	2023	2024	
Operating surplus	Measured through information provided to the Ministry	2%-5%*	2%-5%*	2%-5%	2%-5%	2%-5%	2%-5%	Quarterly
Working capital ratio	Measured through information provided to the Ministry	2:1	2:1	2:1	2:1	2:1	2:1	Quarterly
Debt/equity ratio	Measured through information provided to the Ministry	0.5:1	0.5:1	0.5:1	0.5:1	0.5:1	0.5:1	Quarterly
Operating cash	Measured through information provided to the Ministry	Positive cash flow forecast= actual	Positive cash flow forecast = actual	Positive cash flow forecast= actual	Positive cash flow forecast= actual	Positive cash flow forecast= actual	Positive cash flow forecast= actual	Quarterly
Enrolment Variance	Measured through information provided to the Ministry	Achieve the minimum roll  (of 80 Students)	N/A	N/A	N/A	N/A	N/A	Quarterly

## Annex A: Performance Standards for Student Achievement

### 1. Class Levels 11 to 13

Performance areas	Performance standards and Performance Indicators					
	2019	2020	2021	2022	2023	2024
Roll based pass rate as defined and reported by NZQA – NCEA Level 1, Class Level 11	Indicator	Indicator	Indicator	Indicator	Indicator	Indicator
Roll based pass rate as defined and reported by NZQA – NCEA Level 2, Class Level 12	N/A	Indicator	Indicator	Indicator	Indicator	Indicator
Roll based pass rate as defined and reported by NZQA – University Entrance, Class Level 13	N/A	N/A	Indicator	Indicator	Indicator	Indicator
School leavers with NCEA Level 1 literacy and numeracy assessment standards as defined by NZQA	Indicator	Indicator	Indicator	Indicator	Indicator	Indicator
School leavers with NCEA Level 2 or above	N/A	87.3%	90.0%	90.0%	90.0%	90.0%
School leavers with NCEA Level 3 or above	N/A	N/A	62.0%	64.5%	67.0%	67.0%
Of those school leavers with NCEA Level 2 or above that achieved 14 NCEA Level 2 credits in the Mathematics / Pāngarau learning area, achieved it with merit or excellence	N/A	N/A	Indicator	Indicator	Indicator	Indicator
Of those school leavers with NCEA Level 2 or above that achieved 14 NCEA Level 2 credits in the Science / Pūtaiao learning area, achieved it with merit or excellence	N/A	N/A	Indicator	Indicator	Indicator	Indicator



Of those school leavers with NCEA Level 2 or above that achieved 14 NCEA Level 2 credits in the Technology / Hangarau learning area, achieved it with merit or excellence	N/A	N/A	Indicator	Indicator	Indicator	Indicator
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1.1 Guidance relating to Performance Standards and Performance Indicators for Student Achievement:

(a) In this Annex A:

- (i) a percentage (%) means that a Performance Standard has been set;
  - (ii) “Indicator” means a Performance Standard has not been set and a Performance Indicator will be used instead;
  - (iii) “N/A” means not applicable – usually this is because the Sponsor has indicated that not all Class Levels will be present (as a cohort of Students at one level are enrolled in the first year, and then go through the School as further cohorts get added each subsequent year). If the Sponsor enrolls Students in Class Levels that are not subject to a Performance Standard, they are to notify the Ministry’s Contract Manager. In such cases, the Minister reserves the right to set Performance Standards for those Class Levels (as provided for in accordance with clause 17 of the Agreement).
  - (iv) Performance Standards that rely on school leavers are “deemed to be met” if the School had no school leavers.
- (b) The NCEA Level 2, NCEA Level 3 and University Entrance Performance Standards were set based on achievement higher than the estimated national average across the education system and in accordance with clause 17.1 of the Agreement;
- (c) Where an “Indicator” is used, this means a result against the indicator will be a comparison of the Sponsor’s performance against national averages and/or averages for similar schools. For STEM learning areas, students with non-NZQF qualifications are not included;
- (d) If a standard expressed as a percentage would result in a fraction of a student (not achieving the qualification), for example, due to small sample size concerns, then the number will always be rounded down to the nearest whole number (ie 1.8 students would be rounded down to 1, 1.2 students would be rounded to 1). However, the minimum shall be no lower than “1 student”;
- (e) NZQA is responsible for administering NCEA in accordance with Part 20 of the Education Act 1989.

## **Annex B: Performance Standards for Student achievement**

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## Annex C: Performance Standards for Student engagement

### 1. Secondary (Class Levels 11 to 13)

Measure	Performance Standard					
	2019	2020	2021	2022	2023	2024
Unjustified absences	0.028 multiplied by the number of students multiplied by the number of days the school is open*	0.028 multiplied by the number of students multiplied by the number of days the school is open*	0.028 multiplied by the number of students multiplied by the number of days the school is open*	0.028 multiplied by the number of students multiplied by the number of days the school is open*	0.028 multiplied by the number of students multiplied by the number of days the school is open*	0.028 multiplied by the number of students multiplied by the number of days the school is open*
Stand downs	2.1 instances per year per 100 students	2.1 instances per year per 100 students	2.1 instances per year per 100 students	2.1 instances per year per 100 students	2.1 instances per year per 100 students	2.1 instances per year per 100 students
Suspensions	The higher of 0.42 instances per year per 100 Students or 1.	The higher of 0.42 instances per year per 100 Students or 1.	The higher of 0.42 instances per year per 100 Students or 1.	The higher of 0.42 instances per year per 100 Students or 1.	The higher of 0.42 instances per year per 100 Students or 1.	The higher of 0.42 instances per year per 100 Students or 1.

Exclusions	The higher of 0.15 instances per year per 100 Students or 1.	The higher of 0.15 instances per year per 100 Students or 1.	The higher of 0.15 instances per year per 100 Students or 1.	The higher of 0.15 instances per year per 100 Students or 1.	The higher of 0.15 instances per year per 100 Students or 1.	The higher of 0.15 instances per year per 100 Students or 1.
Expulsions	0	0	0	0	0	0

\* where the standard produces a number other than a whole number, the number will be rounded up to the nearest whole number (not including for Expulsions).

## Annex D: STEM Focus

### 1.1 NCEA

Performance areas	Performance standards					
	2019	2020	2021	2022	2023	2024
School leavers with at least 14 credits in each of two STEM learning areas, at NCEA Level 1	N/A	63.7%	63.8%	63.9%	64.0%	64.1%
School leavers with at least 14 credits in each of two STEM learning areas, at NCEA Level 2	N/A	39.0%	39.9%	40.8%	41.7%	42.6%
School leavers with at least 14 credits in each of two STEM learning areas, at NCEA Level 3	N/A	N/A	22.5%	23.2%	23.8%	24.4%

### 1.2 Guidance relating to Performance Standards and Performance Indicators for Student Achievement:

(a) In this Annex D:

- i. a percentage (%) means that a Performance Standard has been set;
- ii. “N/A” means not applicable – usually this is because the Sponsor has indicated that not all Class Levels will be present (as a cohort of students at one level are enrolled in the first year, and then go through the school as further cohorts get added each subsequent year). If the Sponsor enrolls Students in Class Levels that are not subject to a Performance Standard, they are to notify the Ministry’s Contract Manager. In such cases, the Minister reserves the right to set Performance Standards for those Class Levels (as provided for in accordance with clause 17 of the Agreement).

(b) STEM learning areas include: Mathematics / Pāngarau learning area, Science / Pūtaiao learning area, and/or Technology / Hangarau learning areas and are defined by NZQA (and subject to update by NZQA from time to time), and the list of STEM learning areas to be provided by the Ministry, and updated as appropriate.

(c) Standards have been set based on the national averages for achievement in two STEM subjects. It is expected this will function as a minimum standard to ensure a STEM focus, and the focus of the School will remain on student achievement.

(d) NZQA is responsible for administering NCEA in accordance with Part 20 of the Education Act 1989.

## Schedule 7: Payment

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### 1. Payment

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#### 1.1 Interpretation

For the purpose of this Schedule 7, unless the context otherwise requires:

**Establishment Payment** means the amount set out in paragraph (b) of clause 1.2 of this Schedule 7;

**GST** means Goods and Services Tax under the Goods and Services Tax Act 1985; and

**Quarterly Operational Payment** means a payment calculated by the Ministry on behalf of the Minister in accordance with clause 1.3 of this Schedule 7.

#### 1.2 Establishment Payment

(a) The Sponsor will receive a one-off Establishment Payment from the Minister as a contribution towards the costs the Sponsor will need to incur to ensure the School is operational in time for the commencement of the 2019 Year.

(b) The Establishment Payment is the following amount (plus GST, if any):

$$EP = SU + P + Sal$$

where:

EP means the total Establishment Payment;

SU means the set-up component, being \$400,000.00

P means the equivalent of six months property funding, being \$165,196.08 and

Sal means the equivalent of five terms of a principal's salary, being a total of \$162,500.00

(c) The total Establishment Payment will be \$727,696.08 plus GST.

(d) 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 paragraph (b) above.

#### 1.3 Quarterly Operational Payments

(a) From the 2019 Year, the Sponsor will receive Quarterly Operational Payments from the Minister which will be the sum of the three payment components set out in the following table, plus GST (if any):

Type of payment	Description of payment	Payment adjustment mechanism
Property (includes insurance) funding	<p>Based on Space Entitlement</p> <p>Space Entitlement is dependent on the size of the school's roll and is calculated using the School Property Guide Calculator on the Ministry's website</p> <p>Based on a roll of 100 Students (in the Class Levels proposed in the Sponsor's Application to operate a Partnership School /Kura Hourua in 2019 (Round 5)), the space entitlements would be:</p> <p>1,752 m<sup>2</sup></p> <p>The applicable rate as at the date of this Agreement is \$188.58 m<sup>2</sup></p> <p>The amount payable each quarter during a School Year is 25% of the actual total determined for that School Year by reference to the actual roll</p>	The rate paid per m2 is reviewed at three yearly intervals
Teaching and Operating Rate	<p>25% of the annual cashed up teaching and operating rate multiplied by the number of Students enrolled at the school at the time of payment calculation. (subject to paragraph (b) in the case of the first School Year).</p> <p>Secondary Rates are as follows:</p> <ul style="list-style-type: none"> <li>For the first 100 Students: \$12,431 per Student;</li> <li>For each additional Student over 100: \$6,892 per Student</li> </ul>	Consumers price index and labour cost index, reviewed annually

Centrally funded support	25% of the annual cashed up centrally funded support amount per Student (being, as at the date of this Agreement, an annual amount of \$276 per Student) multiplied by the number of Students enrolled at the School at the time of payment calculation	Reviewed every three years
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- (b) For the 2019 Year, including for the purpose of determining any funding component described in the table in paragraph (a) of this clause 1.3 where the School's roll is used to calculate a payment, the School's roll will be deemed to be 100 Students or (if greater) the actual roll submitted through relevant roll returns or counts as per clause 2 of this Schedule 7 (Payment Notice).
- (c) Each Quarterly Operational Payment for the 2019 Year will not be less than \$400,273.04. This amount has been calculated in accordance with paragraphs (a) and (b) of this clause 1.3. Nothing in (g) below shall apply to the 2019 Year.
- (d) The Quarterly Operational Payment for any Year from 2020 onwards will be calculated by the Ministry on behalf of the Minister in accordance with the framework described in paragraphs (a) and (e) to (k) of this clause 1.3.
- (e) Quarterly Operational Payments are paid in advance of the quarterly period to which the funding relates in order to provide the Sponsor with funds from which to operate and manage the School. Quarterly Operational Payments will be made during the term of this Agreement in accordance with clause 2 of this Schedule 7 (Payment Notice).
- (f) From November 2020, the Sponsor must notify the Ministry in writing of the projected roll for the next School Year by no later than 30 November of the prior year. This will be the roll number used to calculate the first quarter funding payment.
- (g) From (and including) 2020, if the number of enrolled Students in the first quarter of a School Year (as submitted through the 1 March roll return) is less than the projected roll for that School Year (as advised under (f) above), the Minister shall be entitled to adjust the second Quarterly Operational Payment downwards by an amount equal to the difference between the actual first Quarterly Operational Payment and what the first Quarterly Operational Payment would have been if the actual number of enrolled Students had been used instead of the projected roll, provided that the Minister may elect to spread the deduction of that amount across more than one subsequent Quarterly Operational Payment.
- (h) From (and including) 2019, if the number of enrolled Students in the first quarter of a School Year (as submitted through the 1 March roll return) is greater than the projected roll for that School Year (as advised under (f) above), the Minister shall adjust the second Quarterly Operational Payment upwards by an amount equal to the difference between the actual first Quarterly Operational Payment and what the first Quarterly Operational Payment would have been if the actual number of enrolled Students had been used instead of the projected roll.



- (i) From (and including) the second quarter of each Year from the 2020 Year to the conclusion of the fourth quarter of the 2024 Year (or, if the term of this Agreement is extended, such later Year which is the final full Year during the term of this Agreement), when determining any funding component described in the table in paragraph (a) of this clause 1.3 where the School's roll is used to calculate a payment, the School's roll will be deemed to be the actual roll submitted through relevant roll returns or counts as per clause 2 of this Schedule 7 (Payment Notice); at the time of payment calculation.
- (j) As indicated in the third column of the table in paragraph (a) of this clause 1.3, in respect of the teaching and operating rate that the Ministry will use to calculate Quarterly Operational Payments, the payment adjustment mechanism that will be used by the Ministry will be the consumers price index and the labour cost index. During the third-quarter of each Year, the Minister shall calculate through a combined use of the labour cost index and the consumers price index a percentage change to the teaching and operating rate amounts. This adjustment will take effect from the first quarter of the next Year. The percentage of each of the base funding and per student funding amounts that will be adjusted by the labour cost index and the consumers price index will be as follows:
  - (i) Labour cost index = 70%; and
  - (ii) Consumers price index = 30%
- (k) As indicated in the third column of the table in paragraph (a) of this clause 1.3, in respect of the "property (includes insurance) funding" and the "centrally funded support" components that the Ministry will use to calculate Quarterly Operational Payments, the payment adjustment mechanism that will be used by the Ministry is that the Ministry will review the payments once in every three year period and may, following a review, determine that the underlying payment amounts used in any calculations should be adjusted.

#### **1.4 Variable Operational Payments**

- (a) The Sponsor may be entitled to apply to the Minister to receive additional 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.
- (b) Variable operational payments will be paid by the Minister to the Sponsor either at the same time as (but in addition to) the Quarterly Operational Payment or, depending on the type of payment, on an alternative basis, in either case as advised by the Minister.

#### **1.5 Sponsor's bank account**

- (a) Any Quarterly Operational Payment, variable operational payment, top-up property funding and the Establishment Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be paid by electronic transfer of funds to the Sponsor's nominated bank account, which the Sponsor must provide to the Minister in writing no later than the date on which the tax invoice described in clause 1.2(d) of this Schedule 7 is to be provided.
- (b) The Sponsor may change its nominated bank account by giving the Minister written notice of the Sponsor's new bank account.

## 2. Payment Notice

- (a) Any Quarterly Operational Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be payable following the Sponsor's receipt of a payment notice from the Minister, and within the timeframes for payment specified elsewhere in this Schedule 7.
- (b) The Minister shall provide to the Sponsor a payment notice setting out the amount payable for the next quarter taking into account any adjustments from the previous quarter(s).
- (c) Unless otherwise agreed, Quarterly Operational Payments are to be made in accordance with the following schedule:

Quarter	Payment notice due	Payment Date	Period Covered	Roll used to calculate payment
Quarter 1	15 December	For the 2019 Year, means the later of (i) 10 January, and (ii) the 5 <sup>th</sup> Business Day after the Ministry has confirmed receipt and acceptance of the Sponsor's Establishment Completion Declaration together with any other supporting documents or evidence under clause 3(f)  For subsequent Years, commencing with 2020, within 3 Business Days of the Monday in the first week in January in which there is no Public Holiday (in Wellington)	January to March	Projected roll (An adjustment will be made based on 1 March roll return if higher or lower than projected, noting that a minimum figure of 100 will apply in 2019)
Quarter 2	15 March	1 April	April to June	1 March Roll Return and/or roll count from ENROL
Quarter 3	15 June	1 July	July to September	1 June roll count from ENROL
Quarter 4	15 September	1 October	October to December	1 September roll count from ENROL

### 3. **Invoicing**

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- (a) Any Establishment Payment, variable operational payment or Quarterly Operational Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be payable following receipt of a valid tax invoice from the Sponsor to the Minister, following the Sponsor's receipt of a payment notice from the Minister, and within the timeframes for payment specified elsewhere in this Schedule 7.
- (b) For the purpose of this Schedule 7, a valid tax invoice is one that:
  - (i) clearly shows all GST due;
  - (ii) is in New Zealand currency;
  - (iii) is clearly marked 'Tax Invoice';
  - (iv) contains the Sponsor's name, address and GST number if the Sponsor is registered for GST;
  - (v) is addressed to the Minister and is sent to the address and contact person referred to in the corresponding payment notice;
  - (vi) states the date the invoice was issued; and
  - (vii) states the total payment due, as specified by the Minister in the corresponding payment notice.

### 4. **Clause 28 of the Agreement**

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This Schedule 7 shall at all times be read subject to the requirements of clause 28 of the Agreement.

## Schedule 8: Independent Review Process Framework

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### 1. Independent Review Process (IRP)

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- (a) The IRP should be used to offer Students and their Parents, families and whānau an avenue to challenge decisions, actions or omissions of the School or complain or make an allegation about other events or matters occurring at, or relating to, the School.
- (b) The IRP should reflect the principles of natural justice, and include:
  - (i) the right to a timely, fair, accessible and culturally appropriate hearing;
  - (ii) the right to an independent and unbiased review;
  - (iii) the right for parties to input into decisions to be made that may affect them (such as where a complaint, allegation or dispute involves a third party such as a teacher or another pupil), and to comment on any information adverse to them; and
  - (iv) the right to a written statement of reasons for decisions taken by the Sponsor.
- (c) It is essential that the mechanics of the review process are both accessible, responsive and culturally appropriate to the needs of the complainant.
- (d) The process should aim to be restorative in nature, to achieve a mutually agreed and beneficial resolution for all parties to help restore a school environment that is conducive to positive learning and improved outcomes.
- (e) Where the complaint, allegation or dispute is about violence, harassment or bullying, the overriding concern is to provide a safe physical and emotional environment for all Students.
- (f) In accordance with clause 10.5, a Partnership School/Kura Hourua is required to have an internal disputes management policy as part of its general obligation to manage the School efficiently.
- (g) If a Parent wishes to initiate the IRP process, a request must be made in writing to the Sponsor or their delegate (who has been clearly nominated for that purpose). Where appropriate, the School's management should provide support to the complainant in drafting their request so that it accurately reflects the nature and scope of their complaint, allegation or dispute.
- (h) The Sponsor must call a meeting with the complainant in a timely manner to discuss their request, the complaint, allegation or dispute and the possible options for resolution. In determining what is "timely" for this purpose (including as regards the actual time proposed for the meeting), the Sponsor must act reasonably and take into account the complainant's work and other care commitments.
- (i) There should be provision for the needs of complainants at this meeting, such as the ability to bring a whānau member as support, and complainants must be advised of such options sufficiently far in advance of the proposed meeting so that they have a reasonable opportunity to take advantage of those options. This meeting, and any subsequent meetings, should be held in a culturally appropriate, accessible and neutral venue (if practicable this should be of the complainant's choosing).

- (j) The complainant should be able to choose only one of the following two options:
  - (i) review (described further in clause 2 of this Schedule 8 below); or
  - (ii) mediation (described further in clause 3 of this Schedule 8 below).
- (k) The IRP should be presided over by an appropriate individual or group that is trained in the relevant field, accredited and registered with an appropriate body and bound by a code of practice or conduct.
- (l) A number of organisations offer dispute resolution services. Organisations include the following:
  - (i) Arbitrators' and Mediators Association of New Zealand (AMINZ); and
  - (ii) the Resolution Institute.
- (m) The Sponsor bears the costs of the IRP, unless the presiding person determines otherwise (for example, they determine that the complaint, allegation or dispute is vexatious, frivolous or otherwise without any merit or made in bad faith) and specifies that such costs should be borne or apportioned differently.
- (n) Where the Sponsor considers a complaint, allegation or dispute to be vexatious, frivolous or otherwise without any merit or made in bad faith, the Sponsor may notify the independent reviewer or mediator of this view, (as applicable, according to which option has been chosen under clause 1(j) of this Schedule 8) and the independent reviewer or mediator may, at their discretion, determine how the complaint allegation or dispute will be handled. The independent reviewer or mediator, may, where they consider a complaint, allegation or dispute to be vexatious, frivolous or otherwise without any merit or made in bad faith, vary any aspect of the IRP in order to deal with the complaint, allegation or dispute as they think fit (including, without limitation, deciding that they can submit a report on the basis of written information presented by the parties, without the need for the parties to meet in person). The Sponsor will include appropriate provisions in the policy referred to in clause 10.5 of this Agreement to provide for any further procedural steps needed to give full effect to this paragraph (n).

## 2. **Review**

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- (a) Review is a dispute resolution process in which a reviewer investigates a complaint or allegation.
- (b) Following completion of the review, the reviewer submits an objective report to the School and the complainant which includes the findings, conclusions and any recommendations. Following receipt of the report, the Sponsor must arrange a meeting with the complainant to discuss the next actions (if required).
- (c) The reviewer's role is to provide objective information rather than binding directives.

## 3. **Mediation**

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- (a) Mediation is a process in which an independent mediator facilitates negotiation between the parties to assist them to resolve their dispute. The mediator assists both parties to make their own decisions on the issue.
- (b) The mediator's role is to guide the process to a natural, agreed conclusion.

## Schedule 9: Miscellaneous

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### 1. Sponsor's financial year

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- (a) In accordance with clause 18.5(a) of this Agreement, the end of the Sponsor's financial year is 31 December.
- (b) The School's financial year is 1 January to 31 December.

### 2. Sub-contractors

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As at the date of this Agreement, the following are noted as sub-contractors of the Sponsor for the role, activity or task specified for that sub-contractor described below:

Sub-contractor name	Role, activity or task
Auckland University of Technology	Te Reo Māori and other online course
Coursera	International courses such as courses offered by Stanford University, California Institute of the Arts, the Museum of Modern Art, and the University of Pennsylvania
Media Design School	Curriculum development, teacher professional development, tutors, teachers and mentors, facilities and equipment sharing

### 3. Required insurances

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In accordance with clause 33 of this Agreement, the Sponsor must hold the following types of insurance at the minimum levels specified next to each type of insurance:

- (a) professional indemnity \$ 2,000,000;
- (b) principal's professional indemnity \$ 1,000,000;
- (c) professional liability \$ 2,000,000;
- (d) public liability \$ 10,000,000;
- (e) contents \$ Replacement Value;
- (f) vehicle (if applicable) \$ Replacement Value; and
- (g) building insurance (if applicable) \$ Replacement Value.

## Schedule 10: Establishment Completion Declaration

We refer to the Partnership Schools / Kura Hourua Agreement (**Agreement**) dated [ ] between the Minister of Education and [ ] (**Sponsor**).

This is the Establishment Completion Declaration required to be given by the Sponsor under clause 3(f) of that Agreement.

Topic	Requirement
Premises	<p>The Sponsor is lawfully occupying the Premises contemplated by the Implementation Plan (or otherwise approved by the Ministry) and those Premises are in a fit and proper condition to be used for their intended purpose under, and in accordance with, the Agreement.</p> <p>All consents, approvals and authorisations required in relation to the use of the Premises and the activities that will be carried out by the Sponsor from the premises (including those necessary to operate as a school from Term 1 of the 2019 School Year) have either (i) been obtained and are in force and any conditions to which those consents, approvals or authorisations may be subject have been satisfied, or (ii) will be obtained, in force and all conditions satisfied by no later than they are required for the relevant use or activity to be carried out lawfully.</p> <p>The Sponsor confirms that the initial Premises from which the School will be operated are located at [ ]</p>
School leadership and key teaching staffing	<p>The Principal (Tumuaki) of the School has been appointed and is continuing in that role</p> <p>All the key teaching staff required for the School to open in February 2019 have been appointed.</p>
Operational Documents	<p>Each of the following operational documents has been completed and published (and, unless specified otherwise, has been approved by ERO):</p> <ul style="list-style-type: none"> <li>Initial policies for safe physical and emotional environment</li> <li>Initial child protection policy</li> <li>Initial curriculum policy document and School's curriculum handbook</li> <li>Initial policy on Parent, family, whānau, iwi and community engagement</li> </ul>
Students enrolments	<p>The enrolment activity (including as contemplated by the Implementation Plan) and required for the School to achieve the Minimum Roll under the Agreement is underway and progressing consistent with that objective. In particular, enrolment policies have been completed and published, enrolment packs have been issued and registrations of interest have been completed and returned to the Sponsor.</p>



	As at the date of this Declaration, [    ] Students have been enrolled.
Declaration	<p>The Sponsor declares that it has accurately completed this Declaration.</p> <p>The Sponsor understands that the falsification of information, supplying misleading information or the suppression of material information in relation to this Declaration will be grounds for termination of the Agreement.</p>
<p><b>DECLARATION</b></p> <ul style="list-style-type: none"> <li>• This declaration has been approved, and is executed by, a director, trustee, or other representative of the Sponsor who has the authority to do so.</li> <li>• This director, trustee, or other representative declares that the particulars provided above are accurate, true and correct.</li> </ul>	
Signature:	
Full name:	
Title / position:	
Date:	