

Funding Agreement for Partnership Schools | Kura Hourua Sponsor Support

The Ministry of Education

and

E Tipu E Rea Trustee Limited

May 2016

PARTIES

The Sovereign In Right of the Government of New Zealand acting by and through the **Secretary for Education** at Wellington (the *Ministry*)

E Tipu E Rea Trustee Limited, at Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland, 1010, New Zealand, Company No. 5841023 (the *Provider*), acting on behalf of E Tipu Rea Trust, of which it is the sole trustee.

BACKGROUND

The Government has a priority to raise educational outcomes for all learners, particularly for Māori, Pasifika, children from lower socio-economic backgrounds and learners with special education needs.

Partnership Schools | Kura Hourua (Partnership Schools) provide additional choice and create new opportunities for New Zealand students to achieve educational success.

The Partnership Schools policy is unique to New Zealand. Specialised support is needed for Partnership Schools Kura Hourua. A support service tailored to the sponsors of Partnership Schools is needed to support Partnership Schools to make the greatest possible impact on students. The Government has made provision to provide one-off funding to enable such a service to be established.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Agreement means this funding agreement and its Schedules;

Grant means the sum of \$500,000.00 (excluding GST), paid in accordance with clause [4] of this Agreement;

Minister means the Minister of Education;

Start Date means 20 May 2016

Term means the term of this Agreement specified in clause 2.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) headings are for convenience only and have no legal effect unless otherwise specified;
- (b) references to the singular include the plural and vice versa;

- (c) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);
- (d) references to clauses and Schedules are to the clauses and Schedules in this Agreement;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) references to a person include:
 - (i) an individual, firm, company, corporation or unincorporated body of persons;
 - (ii) any public, territorial or regional authority;
 - (iii) any government; and
 - (iv) any agency of any government or authority;
- (g) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;
- (i) wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation"; and
- (j) except as otherwise expressly stated, monetary references are references to New Zealand currency.

2 **TERM**

- 2.1 This Agreement starts on the Start Date and continues until 30 June 2017 unless terminated earlier in accordance with this Agreement or at law.

3 **PURPOSE AND USE OF THE GRANT**

- 3.1 The Provider will:

- (a) Develop a Business Plan that describes how they will :
 - i. provide the services (listed in 3.1(c)) consistent with the purpose of the grant outlined below and in Conditions (clause 5)
 - ii. ensure the services are in place within 12 months of the start date of this grant agreement including a timeline and milestones
 - iii. ensure the operating model is financially sustainable, and in particular how it is self-funding beyond the period of the grant.
- (b) Provide a budget detailing how the grant will be expended.
- (c) Implement delivery of a range of wrap around services for sponsors including:
 - i. **develop the pipeline of sponsors:** engage with interested parties to promote the model and develop a diverse pool of potential sponsors
 - ii. **support applicants:** work with prospective sponsors to ensure that they put forward strong, realistic applications in any selection rounds

- iii. **provide ongoing support:** support sponsors in the setting up and ongoing operation of their schools
- iv. **broker support:** act as a broker between potential and actual sponsors, and philanthropic or business organisations that might wish to support Partnership Schools
- v. **develop a pipeline of high-quality teachers and leaders** to work in Partnership Schools. This might include providing professional development and matching suitable candidates with Partnership Schools

4 PAYMENT OF THE GRANT

- 4.1 The Ministry will pay the Grant in instalments on the dates set out below, provided the specified milestone is met:

No.	Milestone	Due date	Amount (excluding GST)
1	On receipt of an acceptable business plan and budget.	Before June 2016	\$250,000.00
2	On receipt of an acceptable report on achievement against the business plan and Year 1 Milestones	January 2017	\$125,000.00
3	On receipt of an acceptable report on achievement against the business plan and Year 1 Milestones	April 2017	\$125,000.00
Total			\$500,000.00

- 4.2 Subject to clause 5.1, the Ministry will pay each such invoice on or before the 20th of the month following the month in which the valid invoice is received.

5 CONDITIONS

- 5.1 The Provider must:

- (a) Develop, and provide a copy of a business plan and budget;
- (b) Implement the business plan; including meeting the Year 1 Objectives timeline:

Year 1 Objective	Expected completion date
Governance, executive and human resource in place, including appointment of Chief Executive Officer.	31 August 2016
E Tipu E Rea entities exist as legal entities with the relevant operational facility to function in line with its objects.	30 September 2016
An initial programme of support, tailored to the needs of Partnership School sponsors who are applying and who are in the process of setting up established and delivered.	30 December 2016
Working with existing schools.	30 March 2017

2017 is developed.	
Review of initial work undertaken in late 2016.	30 March 2017
Initial development of work with prospective, setting-up and established sponsors and schools through 2017 and beyond.	30 March 2017

- (c) Provide a report on achievement against business plan and year 1 objectives (in January 2017);
This report will confirm implementation of the business plan including commencement of service delivery, and confirmation on how the services or entity will be sustained.
- (d) Provide a final report on achievement against business plan (in April 2017);
This report will include achievement against business plan, reflections, considerations, challenges and issues experienced.

Financial reporting:

- (e) Provide reports on how the grant funding has been expended to date in the January 2017 report.
- (f) Provide the support entities' audited annual financial reports for the period covered by the funding, and for the year following that period, being the Financial Year ending 30 June 2018

5.2 Monitoring visits may be conducted at such times as agreed by both parties.

5.3 Vulnerable children policy

- (a) If the Provider is providing children's services as defined in the Vulnerable Children Act 2014, the Provider will maintain during the term of this Agreement a child protection policy that accords with the requirements of section 19 of the Vulnerable Children Act 2014 (the *VC Policy*). If the Provider does not have in place a VC Policy as at the Start Date, it undertakes to adopt one as soon as practicable, but in any event no later than three months after the Start Date. The Provider further undertakes to ensure its VC Policy is reviewed on a regular basis so that at any time during the term of this Agreement its VC Policy has been reviewed within the last three years.

6 AUDIT

Notice of audit

- 6.1 The Ministry may at any time notify the Provider that the Ministry wishes to audit any or all of the Provider's compliance with the terms of this Agreement, provided that the Ministry may only conduct an audit once in any 12 month period and at any other time where the Ministry has reasonable grounds to suspect the Provider has not complied with this Agreement.

Audit

- 6.2 The Ministry will notify the Provider of the date on which the audit will commence, which must be at least two Business Days after receipt of a notice under clause 6.1. The Provider will allow the Ministry or its nominee to inspect the Provider's premises, systems and records on and from the date notified by the Ministry during the Provider's normal business hours for

the purpose of conducting the audit. The Ministry will comply with the Provider's reasonable security and confidentiality requirements in conducting any audit under this clause 6.2.

Assistance

- 6.3 The Provider will assist the Ministry with any audit conducted under clause 6.2 and will ensure its personnel and subcontractors also assist the Ministry, including by making their premises, systems and records available to the Ministry or its nominee if requested.

Non-compliance

- 6.4 Without limiting any of the Ministry's other rights or remedies, if any audit conducted under clause 6.2 discloses any failure to comply with this Agreement by the Provider, the Provider will promptly remedy the non-compliance. The Provider will refund any amount of the Grant not applied in accordance with clauses 3.1 and 5 within five Business Days of completion of an audit and delivery of an audit report.

7 TERMINATION

- 7.1 The Ministry may terminate this Agreement at any time by giving at least 20 Business Days written notice to the Provider.

- 7.2 This Agreement may be terminated by the Ministry if the Provider:

- (a) has breached clause 3.1 of this Agreement; or
- (b) has not complied with clause 5 of this Agreement; or
- (c) ceases to continue in business, becomes bankrupt or insolvent, or is in receivership or liquidation; or
- (d) is the subject of an investigation for fraud or financial mismanagement by a government agency; or
- (e) is in debt to the Ministry and is unable or unwilling to repay that debt within the timeframes prescribed by the Ministry; or
- (f) is in breach of this Agreement and the breach has not been remedied by the Provider within 10 working days of the Ministry notifying the Provider of the breach, or the breach is not capable of being remedied; or
- (g) repeatedly fails to perform or comply with the terms of this Agreement.

Consequences of termination

- 7.3 If the Agreement is terminated under clause 7.2:

- (a) the Ministry may require the Provider to repay all or part of the Grant to the Ministry. The amount of the Grant to be repaid will be determined by the Ministry calculated on a pro-rata basis over the remaining period of the Term;
- (b) the amount to be repaid shall include any interest earned by the Provider on the Grant;

- (c) If the Grant or part of the Grant, becomes payable to the Ministry, by the Provider pursuant to this clause 7.3, the Provider must repay the Grant (or the amount determined by the Ministry that is repayable) within 28 days of a demand made in writing by the Ministry to the Provider.


8 **DISPUTES**

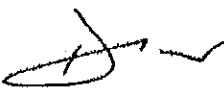
- 8.1 If a dispute, disagreement, question, difference or claim arises between the parties in connection to this Agreement or its subject matter (*Dispute*), either party may give the other written notice (*Dispute Notice*) requiring that the Dispute be determined in accordance with the dispute resolution process set out in Schedule A.

9 **GENERAL**

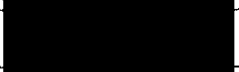
- 9.1 The parties agree:
 - (a) that they will perform their obligations under this Agreement as independent contractors to each other.
 - (b) this Agreement will not create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, unless it expressly states otherwise. Neither party may make or allow anyone to represent that any such relationship exists between the parties.
 - (c) Neither party will have the authority to act for, or incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.
- 9.2 The Provider shall not sell, transfer or assign any rights or obligations under this Agreement without the Ministry's prior written agreement.
- 9.3 This Agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

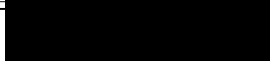

SIGNATURES

For The Sovereign in right of the Government of New Zealand acting by and through the Secretary for Education or his delegate:
Signature: 
Name: Karl Le Quesne
Position: Associate Deputy Secretary
Date: 16 May 2016

For E Tipu E Rea Trustee Limited
Signature: 
Name: Robert Andrew Munn
Position: Director
Date: 19 May 2016

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Witnessed by: 
Name: Julian Moore
Date: 16 May 2016

Witnessed by: 
Name: 
Date: 19 May 2016

SCHEDULE A

DISPUTE RESOLUTION PROCESS

1 **Negotiation**

The parties will enter into negotiations to resolve the Dispute within 10 Business Days of the Dispute Notice being issued. Negotiations will be held between representatives of the parties (who must have authority to settle the Dispute). The Dispute will be escalated to senior management as necessary.

2 **Mediation**

If:

- (a) the parties agree; and
- (b) the Dispute is not resolved by negotiation within 10 Business Days of receipt of the Dispute Notice,

then the Dispute may be referred to mediation by one party giving written notice to the other (*Mediation Notice*). The mediation will be heard as soon as possible in Wellington, New Zealand and conducted in accordance with the provisions of the then-current LEADR New Zealand Incorporated Standard Mediation Agreement (*Mediation*). The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Business Days following the date of the delivery of the Mediation Notice, the Chair for the time being of LEADR New Zealand Incorporated will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee.

3 **Arbitration**

If the Dispute:

- (a) has not been resolved within a period of 10 Business Days (or such longer period as the parties may agree) in accordance with paragraph 1 of this Schedule; or
- (b) in accordance paragraph 2 of this Schedule,

then either party may issue a notice (*Arbitration Notice*) referring the Dispute to arbitration.

Each Arbitration Notice will be regarded as a reference of the Dispute to arbitration in accordance with the Arbitration Act 1996 (the *Act*). Each such arbitration will be conducted on the following terms:

- (c) the place of arbitration will be Wellington, New Zealand;
- (d) the tribunal will consist of a sole arbitrator, to be appointed by agreement of the parties, but if the parties fail to reach such agreement within 10 Business Days of the date of the Arbitration Notice, then the arbitrator will be appointed by the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc;
- (e) the arbitration will be conducted as quickly as possible and, as far as is practicable, the arbitrator will issue his or her award within four months of his or her appointment. When determining the procedure and scheduling of the arbitration, the arbitrator will take this time period into consideration;

(f) each party will pay its own costs in relation to the arbitration.

4 **Interlocutory relief**

Nothing in this Schedule will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Agreement.

5 **Continuity**

In the event of a dispute between the parties concerning this Agreement, the Provider will continue to provide the Services and Deliverables unless the Ministry requires otherwise in writing.

6 **Without prejudice**

Unless and until a Dispute is resolved by an express written agreement of the parties, any and all statements and undertakings made by the parties in connection with the associated Dispute resolution process (excluding any arbitration proceedings) will be deemed to have been made on a "without prejudice" basis.