



07 JUL 2016



## Briefing Note: Update on changes to the Partnership Schools contract

Date:	6 July 2015	Priority:	High
Security Level:	In Confidence	METIS No:	1010676
To:	Minister of Education, Hon Hekia Parata		
Copy to:	David Seymour MP, Parliamentary Under-Secretary to the Minister of Education		
Approved by:	Lisa Rodgers	DDI / Mob	463 7794 / 027 243 6385

### Purpose

1. This paper provides you with an update on the agreement to be applied to Sponsors approved in the third application round.

### Background

2. You agreed to a number of enhancements to the draft agreement issued with the round three application [METIS 945671 refers] resulting from our experiences from previous rounds.
3. Through the negotiation process, we have further refined details of the agreement.
4. The most significant refinement has been to remove the school's objectives and the financial performance standards from consideration on whether they should be paid the 1% of funding held in retention. This change comes about to better reflect the policy intent.
5. Other key changes to the agreement through the negotiation phase include:
  - Addition of Ngā Whanaketanga Rumaki Māori standards as an alternate to National Standards;
  - Addition of the school curriculum handbook as an operative document and a requirement to make this publicly available;
  - Addition of further grounds to terminate the agreement where the sponsor fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan; and
  - Clarity on how the schools assets would be valued in a termination event.
6. Refer to Appendix 1 for a table setting out the remainder of the changes that have been made to the contract.

### Contractual Off-Ramps prior to opening of the school

7. Sponsors are required to confirm and/or deliver a number of artefacts during the establishment period each of which could trigger the Crown's right to intervene. Appendix 2 sets out the relevant clauses that apply to this scenario.

8. Sponsors must provide to us:

- their Parents, family, whānau, iwi and community, engagement policy by 1 October;
- their health, safety and wellbeing policies, and curriculum handbook by 1 November; and
- have confirmed their intended property at a minimum of 90 days prior to opening; and

9. In addition the Minister may terminate the agreement if it fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan.

10. The contract provides the Minister with a general ability to intervene for any reason to believe that a 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 their Agreement such that there are reasonable grounds to believe that there is a risk to the operation of the school. This option does not require the intervention framework to be followed.

11. Therefore, through the ERO readiness review, the delivery of the requirements set out above (including the need for Sponsors to meet their own establishment milestones), and potentially any notification/concern raised by the Governance Facilitator the Ministry will be able to make an assessment of the sponsor's readiness to open in early November. This will enable the Minister to make a decision to prevent the school from opening by the end of November, if required.

12. If a decision were made to prevent a school from opening, it would be done through clause 22. (General ability to intervene) and clause 25.1 (Minister's right to terminate). The Minister would be required to issue a notice of intention to terminate. This would then provide the sponsor ten days to respond with reasons why the agreement should not be terminated.

13. If the sponsor were able to address the issues and/or provide the required level of assurance, then the Minister need take the matter no further. Otherwise the Minister could issue a notice of termination taking effect at a minimum of 20 business days from the date of that decision.

14. In the event of termination, the sponsor would be obligated to pay the Crown the set-up component of the establishment grant (\$400k for secondary schools), or an amount equal to the value of the school's assets (where the asset value is less than \$400k).



## Appendix 1 – Summary of alterations to draft agreement issued with RFA

Clause	Subject	Change
4(b)	Term of Agreement	<ul style="list-style-type: none"> <li>Change of minimum notice of intent to extend the agreement from 6 to 12 months.</li> </ul>
5(c)	Education Circulars	<ul style="list-style-type: none"> <li>Addition of 'reasonable' to timeframe to comply with any new requirements of changed or additional circulars</li> </ul>
7.4	Providing a safe physical and emotional environment	<ul style="list-style-type: none"> <li>Health and wellbeing policies need to be submitted by 1 November for approval – previously 1 December.</li> </ul>
7.8	Reporting to Parents	<ul style="list-style-type: none"> <li>Addition of definition of Parents to include primary caregiver and legal guardian.</li> <li>Addition of Ngā Whanaketanga Rumaki Māori and NCEA to reporting requirements.</li> </ul>
9.1	Curriculum	<ul style="list-style-type: none"> <li>Addition of curriculum handbook as an operative document, and a requirement to make this publicly available.</li> </ul>
10.6	Engagement with Parents, family, whānau, iwi and communities	<ul style="list-style-type: none"> <li>Policies need to be submitted by 1 October for approval – previously 1 November.</li> </ul>
15	Part 3 Performance Regime - Objectives	<ul style="list-style-type: none"> <li>Addition - Although progress towards the Objectives is reported quarterly, they are not considered a Performance Standard for the purposes of assessing the release of any funding withheld under clause 7.3c of Schedule 7 "Payment".</li> </ul>
17.1	Performance Standards in the Performance Management System	<ul style="list-style-type: none"> <li>Redraft of section – removing financial performance measures from consideration of the 1% held at risk.</li> </ul>
18.2(b)(ii)	Annual reports	<ul style="list-style-type: none"> <li>Moved from 31 January to 17 February, to allow for receipt of reporting from NZQA.</li> </ul>
18.3	Reporting to Ministry	<ul style="list-style-type: none"> <li>Addition of Ngā Whanaketanga Rumaki Māori and/or NCEA to reporting requirements.</li> </ul>
20.2	Measuring performance against the Objectives and Performance Standards	<ul style="list-style-type: none"> <li>Whilst objectives have been removed from assessment of performance, have added a right for</li> </ul>

Clause	Subject	Change
		the Minister to raise any matters arising through the Sponsor failing to meet their own objectives.
20.3	Guidance on measuring performance against the Performance Standards	<ul style="list-style-type: none"> <li>Addition of need to use at a minimum PAT and/or e-asTTle and/or Te Waharoa Ararau and PaCT assessment instruments as appropriate for the learning area.</li> </ul>
25.1	Termination	<ul style="list-style-type: none"> <li>"The Sponsor becomes bankrupt or insolvent" – addition of "and is not underwritten by the Sponsor's board"</li> <li>Addition of a new ground to terminate the agreement "the Sponsor fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan."</li> <li>Addition of clause to remove ambiguity of how an asset will be valued if termination under this clause occurs. "For the avoidance of doubt, where the School is or is contemplated to be used for multiple purposes, the value of the School's Assets is considered to be 100% of the value of the asset, irrespective of the portion of its use designated for schooling activity."</li> <li><b>Note - School's Assets</b> 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, have not been used as security for the repayment of any debt (except where security has been granted without the Minister's prior written consent in breach of clause x</li> </ul>
31.2	Intellectual Property	<ul style="list-style-type: none"> <li>Addition of reference to schedule 9 as place to record pre-existing IP being used in the Partnership School.</li> </ul>
Schedule 1	Student Enrolment and Absences	<ul style="list-style-type: none"> <li>Addition of a Minimum Roll "The Minimum Roll for the 2017 School Year is xx (set at 75% of the target</li> </ul>



Clause	Subject	Change
		roll). The Minimum Roll must be met during the Year and by no later than the end of the School Year."
Schedule 4	Governance and Teachers – Teaching Positions	<ul style="list-style-type: none"> <li>Removal of tables and replacing with a statement setting out the minimum number of FTE teaching positions for the school.</li> </ul>
Schedule 4	Governance and Teachers – Percentage of people holding a Practising Certificate or Limited Authority to Teach	<ul style="list-style-type: none"> <li>Removal of tables and replacing with a statement setting out the minimum percentage of teaching positions that hold a Practising Certificate or Limited Authority to Teach at the school.</li> </ul>
Schedule 4	Percentage of Curriculum time taught by people holding a Practising Certificate or Limited Authority to Teach	<ul style="list-style-type: none"> <li>Removal of tables and replacing with a statement setting out the minimum percentage of curriculum time to be taught by Teachers holding a Practising Certificate or Limited Authority to Teach at the school.</li> </ul>
Schedule 6 Performance Standards	Student Achievement	<ul style="list-style-type: none"> <li>Addition of Ngā Whanaketanga Rumaki Māori</li> <li>Addition of NCEA measure - Roll based pass rates as defined and reported by NZQA</li> </ul>
Schedule 6 Performance Standards	Financial Performance	<ul style="list-style-type: none"> <li>Removal of enrolment variance performance standard</li> <li>Addition of a performance standard covering solvency, through provision of a quarterly solvency certificate</li> </ul>
Schedule 6 Performance Standards	Student Engagement	<ul style="list-style-type: none"> <li>Correction to the stand down, suspension measures from days to instances</li> </ul>
Schedule 7	Payment	<ul style="list-style-type: none"> <li>Removal of option to request a decile review</li> </ul>

## **Appendix 2 – Extract of relevant clauses from R3 Draft agreement**

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

- (b) The Sponsor must, by 1 November 2016, prepare and provide to the Minister the School's policies for ensuring a safe physical and emotional environment for Students. This document will constitute an Operative Document once approved by the Minister in accordance with clause 2.1(c).

### **9.1 Curriculum**

- (d) The Sponsor must, by no later than 1 November 2016 prepare and provide to the Minister, a curriculum handbook, setting out the academic programme available to its students.

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

- (a) The Sponsor must, by no later than 1 October 2016 prepare and provide to the Minister, a policy setting out how it will engage with Parents, family, whānau, iwi and communities of the Students.

### **14.1 Buildings**

- (a) The Sponsor will operate the School in the geographical area described in the Gazette Notice and from the Premises described in Schedule 5 (or any other premises that the Minister approves pursuant to paragraph (e) of this clause 14.1).

## **Schedule 5: Property**

### **1. Premises**

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- (a) The initial Premises from which the School must be operated are those premises that the Sponsor:
  - (i) proposes to the Minister as being the premises for the School by giving notice in writing (by providing sufficient detail of the description of the premises) following the date of this Agreement but prior to 90 Business Days (or such other period of time as agreed by the Minister or the Minister's delegate) before the planned start date of the School; and
  - (ii) which the Minister or the Minister's delegate approves, in the Minister's or the Minister's delegate's sole discretion, to be the premises for the School, by giving written notice to the Sponsor outlining the location of the premises and other key features of the premises (which could include the number of rooms, the outside areas, whether the building is one story or multiple stories); and

- (iii) which, following the written approval of the Minister or the Minister's delegate will be deemed to be the Premises listed in this Schedule 5.

#### 16.1 Minimum Requirements

The Minimum Requirements which must be complied with by the Sponsor at all times during the term of this Agreement include, but are not limited to, the following:

- (j) the Sponsor complies with every direction given under the Act or this Agreement;

#### 19.2 ERO review

- (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 review after six (6) months from the School opening, a review after eighteen (18) months of the School opening and thereafter a review every three years, unless ERO considers more frequent reviews to be necessary.

#### 22. General ability to intervene

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In addition to assessing the Sponsor's performance against the Performance Standards in the Performance Management System, if the Minister has any reason to believe that the Sponsor, the chief executive of the School, a principal, a teacher or any other person employed by the Sponsor is failing to discharge their duties under the Act or is otherwise not acting in accordance with the Act (or any other applicable laws) or this Agreement such that the Minister has reasonable grounds to believe that there is a risk to the operation of the School or to the welfare or educational performance of the Students, the Minister (or the Secretary where applicable) may use any of the range of possible interventions set out in clauses 24 and 25.1 that the Minister reasonably considers to be appropriate in the circumstances. For the avoidance of doubt, the Minister is not required to follow the procedure under paragraph (a) of clause 21 first where the circumstances in this clause 22 apply.

#### 25.1 Minister's right to terminate

- (a) The Minister may terminate this Agreement immediately upon the occurrence of any of the following events:
  - (i) where the Minister considers that termination is warranted by the Sponsor's level of non-performance against the Performance Standards in the Performance Management System or in accordance with the Minister's general ability to intervene as set out in clause 22;
  - (ii) the Sponsor has breached any term in the Agreement or is repeatedly breaching a term or terms in the Agreement (including



any Minimum Requirements) or is failing in the Minister's opinion to take action in response to the Minister's use of another Intervention, to such an extent that the Minister (acting reasonably) considers that termination is warranted in the circumstances;

- (xiii) the Sponsor fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan.
- (b) If the Minister wishes to terminate the Agreement due to the occurrence of one of the events listed in paragraph (a) of this clause 25.1, 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 the Agreement and the reason for the proposed termination;
  - (ii) the Sponsor shall have ten (10) Business Days to advise the Minister in writing as to any reasons why the Sponsor does not consider that the Agreement should be terminated;
  - (iii) if the Minister is not satisfied with the reasons provided by the Sponsor under sub-clause (ii) above, the Minister shall issue a written notice to the Sponsor terminating the Agreement and specifying the date from which the Agreement shall be terminated;
  - (iv) the date of termination must be, at a minimum, twenty (20) Business Days from the date of the notice under sub-clause (iii). If no date is provided in a notice given under sub-clause (iii), the default is twenty (20) Business Days from the date of that notice.
- (c) The Minister will not be liable for any costs incurred by the Sponsor as a result of termination under 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.
- (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 25.1, 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 the Agreement as at the date of termination. Any such sum will be repayable by the Sponsor as a debt due to the Minister.
- (e) Where this Agreement is terminated in accordance with this clause 25.1 during the first three (3) years of this Agreement, in addition to any amount to be repaid by the Sponsor in accordance with paragraph (d) of this clause 25.1, the Sponsor is also required to repay, to the Minister, a

dollar amount to be calculated as follows, such sum being repayable 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 repay a dollar 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 repay a dollar 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 the School's Assets is considered to be 100% of the value of the asset, irrespective of the portion of its use designated for schooling activity.