

# **Agreement**

relating to

Partnership Schools/Kura Hourua

**Her Majesty the Queen in right of New Zealand acting by and on  
behalf of the Minister of Education**

**Minister**

**and**

**Te Aratika Charitable Trust**

**Sponsor**

**August 2016**

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This Agreement is made on

24<sup>th</sup> August

2016

between (1) Her Majesty the Queen in right of New Zealand acting by and on behalf of the Minister of Education (Minister)

and (2) Te Aratika Charitable Trust (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, 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 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 operation and management of the Partnership School/Kura Hourua in accordance with this Agreement.
- D. The Crown and the Sponsor 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 provides the means to achieve these outcomes.
- E. Without derogating from or overriding any other provision 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 adhere to principles of 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 agree that the key values of the Partnership School/Kura Hourua model are:
- (a) partnerships with other organisations (such as businesses, philanthropists, iwi, community organisations, faith-based groups, private schools and culture-based education organisations);

- (b) accountability to meet 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 of the School. Although many of the requirements can be found in the Act, reference is made to the key topics which address how the School is expected to run, cross-referencing specific provisions in the Act and the Act generally (where applicable) and setting additional limitations and expectations through the contract where required. Specific details relating to 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 and should not be taken as overriding 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 'minimum requirements' that the Sponsor must meet, which will be measured solely on the basis of compliance or non-compliance with a certain requirement;
  - (ii) the Objectives and Performance Standards in the Performance Management System that the Sponsor will be assessed against as a signal of how well the Sponsor is performing its obligations under the Agreement and the Act;
  - (iii) the Sponsor's reporting requirements, which will enable the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System to be measured and assessed.

The minimum requirements and the components of the performance management system are largely drawn from the requirements described in Part 2 of the Agreement.

- (d) **Part 4:** Part 4 sets out the regime that will apply if the Sponsor is not meeting required performance expectations as assessed against the Objectives and Performance Standards in the Performance Management System described in Part 3, the expected standard in specific areas as assessed under the Performance Management System, or any other term of this Agreement. In these 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 in the circumstances, taking into account the degree of non-performance against the Objectives and Performance Standards in the Performance Management System, the Sponsor's record of previous failures (if any) and the Sponsor's high performance in certain areas, as applicable.

Part 4 also sets out the termination regime 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 terminates (or is about to expire or terminate) 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 the relevant Schedule 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 in the Performance Management System. The Objectives and Performance Standards in the Performance Management System detail the specific level of performance expected of the Sponsor in order to achieve the desired outcomes. The reporting, audit, performance measurement and intervention mechanisms are all elements of the regime designed to ensure that the outcomes contracted for are achieved and, if they are not being achieved, that measures are being taken to address this.

## 1.3 Application of guidelines, standards and tools

It is generally envisaged that when 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):

- (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 or tool would generally only occur following discussion with the Sponsor unless the context requires otherwise.



#### **1.4 Effect of this clause 1 of Part 1**

- (a) Clause 1 provides a guide to the Agreement, explains the nature of the Agreement and sets out 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 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 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 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, Annexes and Operative Documents.
- (b) The following order of precedence will apply in the event of a conflict:
  - (i) Schedules and Annexes to those Schedules;
  - (ii) base agreement (being clauses 1 to 35); and
  - (iii) Operative Documents.
- (c) Operative Documents are certain plans (or other types of documents) that are identified as being Operative Documents in this Agreement that the Sponsor must prepare and submit to the Minister for approval within any reasonable timeframe specified by the Minister. The Minister may request reasonable changes to any draft Operative Document prior to approval which the Sponsor must include in the plan or other document and resubmit to the Minister for approval within ten (10) Business Days of receiving comments from the Minister. Once approved by the Minister, an Operative Document forms part of this Agreement and the Sponsor is required to act in accordance with it. Any failure to comply with an Operative Document will constitute a breach of this Agreement as would failure to comply with any other term of this Agreement.

#### **2.2 Construction**

This Agreement is a 'partnership school contract' for the purpose of the Act.

### **3. Appointment of Sponsor**

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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 the Act and all other applicable laws, regulations, 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 and regulations may mean that a future law or regulation supplements or overrides provisions contained in this Agreement.

- (b) It is the Sponsor's sole responsibility to ensure that it is aware of any laws, regulations, rules or guidelines that apply to 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 of the Act. The Sponsor has all of the rights, duties and responsibilities set out in the Act and otherwise as described in this Agreement.

#### **4. Term of Agreement**

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- (a) The Agreement will commence when executed by both parties and will continue for a term of six (6) years from 1 January 2017, unless terminated earlier in accordance with the terms of the Agreement.
- (b) The Minister in his or her sole and absolute discretion shall have the right to extend this Agreement for up to two further terms of six (6) years each (but extending only by one (1) term at a time) by giving the Sponsor a minimum of twelve (12) months' notice in writing prior to the end of the then current term of the Agreement.

#### **5. Education Circulars**

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- (a) The Minister may at any time give notice to the Sponsor that an Education Circular (or part thereof) that is not already specifically described as applying to the Sponsor elsewhere in this Agreement, shall apply to the Sponsor.
- (b) The Minister will be deemed to have given notice under paragraph (a) of this clause 5 if the Education Circular specifically records that it applies to Partnership Schools/Kura Hourua.
- (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. Any such change will take effect after providing the Sponsor a reasonable timeframe as specified in the notice to comply with the new requirements.
- (d) As at the date of this Agreement, the Education Circulars set out in clause 4 of Schedule 9 apply to the Sponsor to the extent that the Education Circular can be sensibly read to apply to the Sponsor (with any reference to board of trustees, principal or school in the applicable Education Circular being read as a reference to the Sponsor).
- (e) The Minister may decide at any time, by giving written notice to the Sponsor, that any Education Circular described in clause 4 of Schedule 9 or any other Education Circular that has been applied to the Sponsor as contemplated in this Agreement, shall cease to apply to the Sponsor.
- (f) Any reference in any Education Circular applying to the Sponsor to payments that a school is entitled to receive shall not apply to the Sponsor and the payment provisions in this Agreement shall be the only place where the Sponsor's entitlement to receive payment from the Minister is specified, unless the relevant

Education Circular expressly states that a Partnership School/Kura Hourua is eligible to claim a payment.

- (g) Any reference in any Education Circular to regulations made pursuant to the Act that are stated to apply, but which do not ordinarily apply to the Sponsor pursuant to the Act or regulation itself, shall be deemed to apply 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, a final draft of which is attached as Annex A to Schedule 1.
- (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) The students who comprise the Maximum Roll can only be from the Class Levels specified in the *Gazette* Notice for the relevant Year. There is no maximum number of students per Class Level that the Sponsor must enrol.
- (c) The students who comprise the Minimum Roll can only be from the Class Levels specified in the *Gazette* Notice for the relevant Year. There is no minimum number of students per Class Level that the Sponsor must enrol.
- (d) Either party may initiate a review of the Maximum Roll at the second quarter review. If the Minister agrees to adjust the Maximum Roll this must be effected in writing by way of a variation to the Agreement by no later than September in each Year. An adjustment to the Maximum Roll may also be coupled with an adjustment to the Minimum Roll.

#### **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 Sponsor's 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 that the Sponsor is permitted to offer, as specified in the *Gazette* Notice; 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)(i) 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 the Act relating to enrolment and tuition of International Students, as applied by section 158U of the Act and the requirements under Part 18A of the Act, apply to 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 for 2017 this will be set out in Schedule 1. Otherwise, if no number is recorded in Schedule 1 no such cap shall apply.
- (c) The upper limit on International Students for each subsequent Year (if any) will be agreed by the Minister and the Sponsor in writing by way of a variation to this Agreement if and when required, but in any event by no later than 1 September in a Year preceding the Year in which the upper limit is to take effect. If agreement cannot be reached the upper limit on International Students shall remain at its then current set or agreed level.

### **7.4 Students with special education needs**

Sections 158O and 158P of the Act apply in respect of persons seeking to enrol at the Sponsor's School who have special education needs (as that term is defined in the Act).

### **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, 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).

### **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, it ensures that its Students get good guidance and counselling; and
- (b) where relevant for the Class Levels being taught and in any event for any Student in Class Level 7 and above, the Students receive 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**

The Sponsor must provide career education and guidance to Students in Class Levels 7 to 13 having regard to the Ministry's publication "Career Education and Guidance in New Zealand Schools" and Careers New Zealand's publication "Career Education Benchmarks", or any substitute publication notified by the Minister to the Sponsor from time to time.

## **7.8 Reporting to Parents**

- (a) The Sponsor is required to inform each Student's Parent, at least twice per year, in writing and in plain language, of:
  - (i) the progress of the Student at the School;
  - (ii) any 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.
- (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 report is provided to each Student's Parent.

## **7.9 Tuition outside school**

Section 25B of the Act, as applied 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.

# **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 when Students are required to be in attendance at the School, provided that:
  - (i) the 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 caused a closure of the School during ordinary School hours and term dates); and
  - (ii) the Students and Parents of the Students 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 that are stated in the Act (through section 158U of the Act or otherwise) as applying to a Partnership School/Kura Hourua 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 by section 158U of the Act and the provisions in the Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999, as applied by section 158V of the Act, and any rules or regulations made under the Act or the rules or regulations in relation to those provisions, apply in relation to the standing down, suspending, expelling and exclusion of Students.
- (b) The Sponsor is required to comply with any requirements specified under paragraph (a) of this clause 8.3 in relation to standing down, suspending, expelling or exclusion of Students, or specified in any Education Circular or other relevant Ministry guidelines relating to standing down, suspending, expelling or exclusion of Students that the Minister determines and informs the Sponsor shall apply to the School as a Partnership School/Kura Hourua.

# **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, in line with any 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 offered by the Sponsor (as indicated in the *Gazette Notice*) that have been agreed with the Ministry.
- (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.
- (e) This document will constitute an Operative Document once approved by the Minister in accordance with clause 2.1(c).
- (f) The Sponsor must make this document (once approved by the Minister) publicly available either on the Sponsor's website (if available) or an alternative suitable forum.

## **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 take 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 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 visits 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 Ministry guidelines or Education Circular that relates to a Learning Experience Outside the Classroom that the Minister may determine and inform the Sponsor shall apply to the Sponsor as a Partnership School/Kura Hourua.
- (d) When providing any education experience to Students outside the confines of the classroom, in order to ensure the safety of the Students, the Sponsor must comply with chapter's 2 to 8 of the Ministry publication entitled '*EOTC Guidelines*' published in 2009 (and any equivalent updates or replacements to those chapters of that publication from time to time), published on the Ministry's website. Any reference to board of trustees or CEO in that publication shall be read as referring to the Sponsor.
- (e) If a Student is absent from the Premises to attend courses of education, obtain work experience or make visits outside the Premises pursuant to section 158T of the Act, or is otherwise released 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 course of education, work experience or other off-site visit at the required time. 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 provide written evidence of Student 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 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 required 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 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 a Parent or caregiver 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 related to 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 and warrants that it will take 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 of a Student makes a complaint to the Sponsor, the chief executive of the School, a principal, teacher, or other employee of the School about a matter affecting their child, the Sponsor will handle the complaint 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 the 2017 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 resource implications of applying the framework set out in Schedule 8.

#### **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.
- (b) This document will constitute an Operative Document once approved by the Minister in accordance with clause 2.1(c).
- (c) The Sponsor must make this policy (once approved by the Minister) publicly available to Parents, family, whānau, iwi and communities of the Students either on the Sponsor's website (if available) or an alternative suitable forum.

### **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 clause 11 of this Agreement. The Sponsor must also apply any then current Education Circular or guideline issued by the Ministry that relates to payments by Parents of fees in the school context more generally, even if that Education Circular or Ministry guideline does not specifically refer to its application to a Partnership School/Kura Hourua, unless otherwise notified by the Minister in writing.
- (b) The Sponsor must not charge a Domestic Student any fee for receiving tuition at the School. This includes any fee relating to teaching against 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, 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 for uniform and stationery if, in the Minister's opinion, these are imposing an undue burden on Parents or caregivers of Students. The Minister will consult with the Sponsor before setting any upper limit.

### **11.3 Donations**

The Sponsor may (as consistent with the Education Circular described in paragraph (d)(i) of clause 5, or any then current Education Circular or guideline issued by the Ministry that applies in accordance with clause 11.1) seek a donation (monetary or in-kind) from a Student's Parent or caregiver but if a Parent or caregiver does not make a donation, this must not affect the tuition that the Student receives at the School and must not disadvantage that Student compared with any other Student whose Parent(s) or caregiver have made a donation to the School unless an Education Circular or Ministry guideline 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 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.

### **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 its 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**

- (a) The Sponsor will ensure that, as a minimum, the number of full-time teaching equivalents holding Teaching Positions (including persons holding a Practising Certificate or Limited Authority to Teach and unregistered teachers) specified in Schedule 4 are engaged at the School during the hours and terms that the School is open.

- (b) The Sponsor will ensure that it has teachers and staffing 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**

With reference to 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 2 of Schedule 4.

### **13.4 Percentage of Curriculum time 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 vetting**

- (a) Sections 78C to 78CD of the Act (as applied by section 158U of the Act) apply to the School and the Sponsor.
- (b) The Sponsor will not employ or continue to employ any person who will have unsupervised access to Students or allow a contractor to enter on to its Premises during ordinary School hours or otherwise have unsupervised access to Students if a Police vet undertaken in accordance with sections 78C to 78CD of the Act indicates that the person who is the subject of the Police vet should not be on the Premises or otherwise have unsupervised access to the Students and where section 78CD(b)(i) or (ii) of the Act applies.
- (c) If the Sponsor employs or continues to employ a person in breach of clause 13.5(b) or if the Sponsor has employed a person or continues to employ a person without having undertaken a Police vet as required under the Act, the Minister may direct the Sponsor by notice in writing not to allow such person to have contact with any Student or to be present on the Premises.

### **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 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).
- (b) The Sponsor will ensure that during all School hours and term dates, it has and maintains the Premises so that they are 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 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 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 Sponsor's other obligations under this Agreement.
- (e) The Sponsor must notify the Minister and obtain the Minister's approval before using premises other than the Premises described in Schedule 5 for the regular delivery of Courses to Students. The Sponsor may only seek the Minister's approval to use alternative premises under this paragraph (e) if either of the following circumstances apply:
  - (i) the new premises are in addition to the Premises described in Schedule 5; or
  - (ii) the new premises are to replace the Premises described in Schedule 5.
- (f) 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, at all times, 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**

The provisions in section 144B to 144E of the Act (including any regulations made under those provisions) apply to any Hostel that the Sponsor operates.

## **Part 3: Performance Regime**

### **15. Objectives**

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- (a) The Objectives, if any, of the Sponsor in relation to the operation and management of the School are set out in Schedule 6.
- (b) Achievement or progress towards the achievement, of the Objectives will be assessed using the Performance Management System in Schedule 6 as being an indication of whether the Sponsor is meeting immediate Objectives or is on track to meet future Objectives.
- (c) 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 1.3(h)(ii) of Schedule 7 "Payment".

### **16. Minimum Requirements**

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#### **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:

- (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 is discovered to have taken place on the Premises;
- (c) the Sponsor operates the School in accordance with the requirements set out in the *Gazette Notice*;
- (d) the Sponsor ensures that at all time it maintains enrolments at the School at a number that is at or above the Minimum Roll;
- (e) the Sponsor 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 standing down, suspending, excluding or expelling, including as set out in the Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999;
- (j) the Sponsor complies with every direction given under the Act or this Agreement;
- (k) any transport required is provided as described in Schedule 3;

- (l) the Sponsor has a person appointed as the person responsible for teaching and learning 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 has complied with all requirements in relation to Police vetting under clauses 78C to 78CD of the Act (as applied by section 158U of the Act) and reporting on Police vetting 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 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; 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 for the purpose of the intervention regime in Part 4 of the Agreement.

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

- (a) The Minister may, from time to time, require the Sponsor to produce evidence that it has met all of the Minimum Requirements. The Sponsor agrees to produce such evidence and provide this evidence to the Minister as and when required by the Minister. Failure to provide such evidence to the Minister within the time required by the Minister entitles the Minister to use any of the interventions described in clause 24 of this Agreement.
- (b) As required by clause 18.4, the Sponsor must also report publicly as part of its annual reporting to the public on its compliance with the Minimum Requirements during the previous Year.

## 17. Performance Management System

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### 17.1 Performance Standards in the Performance Management System

- (a) The following performance standards are used to assess the release of any quarterly payment held under Clause 1.3(h)(ii) of Schedule 7 "Payment".
  - (i) **Student achievement:** The Sponsor's performance in relation to Student achievement will be measured against the Performance Standards specified in the Performance Management System set out in clause 2.1 of Schedule 6 of this Agreement.
  - (ii) **Student engagement:** The Sponsor's performance in relation to Student engagement will be measured against the Performance Standards specified in the Performance Management System set out in clause 2.2 of Schedule 6 of this Agreement.
  - (iii) **Targeting priority learners:** The Sponsor's performance in relation to targeting priority learners will be measured against the Performance Standards specified in the Performance Management System set out in clause 2.4 of Schedule 6 of this Agreement.
- (b) The following performance standard is not used to assess the release of any quarterly payment held under Clause 1.3(h)(ii) of Schedule 7 "Payment", provided the School remains financially viable.
  - (i) **Financial performance:** The Sponsor's financial performance will be measured against the Performance Standards specified in the Performance Management System set out in clause 2.3 of Schedule 6 of this Agreement.

### 17.2 Setting future Performance Standards for use in the Performance Management System

- (a) The Performance Standards set out in Schedule 6 (and relevant Annexes) are Performance Standards for the 2017 Year and in the case of some Performance Standards, where indicated in the relevant tables in Schedule 6, are Performance Standards for Years up to and including the 2020 Year.
- (b) The Minister will, in discussion with the Sponsor and otherwise in accordance with this clause 17.2, set the values for existing Performance Standards for future Years by providing the Sponsor with updated and supplementary tables in the form set out in clauses 2.1 to 2.4 of Schedule 6 (and relevant Annexes) prior to the start of the next School Year. The Minister and the Sponsor may update the values for Performance Standards for future years if already set. New values for Performance Standards should be set before the start of the applicable year. If the Minister does not set updated values for Performance Standards for a future year by the start of that School Year, and these remain unset as at 30 April of that year, the values of the Performance Standard that applied in relation to the previous year will apply.
- (c) The Minister may, in discussion with the Sponsor and otherwise in accordance with this clause 17.2, set new (and reasonable) Performance Standards in respect of measures that are not already set out in clauses 2.1 to 2.4 of Schedule 6 (and Relevant Annexes) (as replaced from time to time under paragraph (b) of this clause 17.2) as the measurement of additional Performance Standards becomes possible. This can, if the Minister reasonably considers necessary, include Performance Standards under entirely new performance categories (other



than those set out in clause 17.1). Any additional Performance Standard will only be set after the Minister has reviewed a full School Year's worth of baseline data collected and reported on by the Sponsor.

- (d) In setting Performance Standards for future Years and new Performance Standards:
  - (i) the Minister will, if applicable, take into account the School's individual circumstances and the characteristics of the Students enrolled;
  - (ii) the Minister will take into account whether the Performance Standard is in line with the Government's objectives in relation to the establishment of the Partnership School/Kura Hourua; and
  - (iii) the Minister will, in discussion with the Sponsor, develop a process to be followed to set revised values for existing Performance Standards for future Years and new Performance Standards.

## **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, which must be complied with.
- (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 by the Minister for use by the Sponsor which the Minister notifies the Sponsor of in 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 business practice and sufficient to enable the Sponsor to complete its reporting obligations under this Agreement, the Act or 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 and must handle and deal with such records in accordance with any current 'Schools Retention and Disposal Schedule' publication issued by the Ministry and Archives New Zealand and 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 that the Ministry requires about the Students that it also collects from State schools, must be provided to the Ministry, in the form requested by the Ministry, as and when required by the Ministry.

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

- (a) The Sponsor must complete any report templates and/or approved reporting systems provided by the Minister for assessing the Sponsor's performance against the Minimum Requirements, Objectives and Performance Standards. The

report templates provided by the Minister will seek the provision of information from the Sponsor that the Minister reasonably requires to assess the Sponsor's performance under this Agreement. Report templates for reporting the Sponsor's performance against the Minimum Requirements, Objectives and Performance Standards may be included within the reporting templates that are required to be completed for Quarterly Reports and Annual Reports.

- (b) In addition, the Sponsor will complete and submit the following reports to the Minister:
  - (i) Quarterly Reports, to be submitted to the Minister by 30 April, 31 July and 31 October of each School Year in relation to the previous three (3) months of that School Year; and
  - (ii) Annual Reports, to be submitted to the Minister by 17 February of each year in respect of the previous School Year.
- (c) The Minister may, if he or she is not satisfied with the level of detail contained in the 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 timeframe specified by the Minister.
- (d) The Sponsor's appointed contract manager must attend contract review meetings with the Minister's appointed contract manager on a quarterly basis, following submission of the Quarterly Reports. The dates and times for those meetings will be as agreed between the parties' appointed contract managers.
- (e) The Sponsor must report to the Minister as soon as the Sponsor has defaulted on any of its debt obligations or as soon as the Sponsor can reasonably anticipate that it may soon default on any of its debt obligations.
- (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 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.

### 18.3 Reporting to Ministry

- (a) The Sponsor must report 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 achieved by each Student.
- (b) The Sponsor will also report to the Ministry at intervals requested by the Ministry on any other matter on which the Ministry gathers data from all State schools or a particular category of State school, in a form 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 Minister.
- (c) The Sponsor must comply with 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. 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 breach an individual's privacy); and
- (ii) how Students are progressing against National Standards and/or Ngā Whanaketanga Rumaki Māori and/or NCEA as well as how they are achieving; and
- (iii) the reporting of information required under paragraphs (c)(i) and (ii) of this clause 18.3 shall be in the format provided by the Secretary,

however, any reporting required may vary from any of these guidelines, tools, standards or templates if the Ministry considers this to be appropriate.

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

- (a) By no later than 31 May in each 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 against the Minimum Requirements, Objectives and Performance Standards set out in Schedule 6 (or as updated by the Minister).
- (b) Each Year, the Sponsor must notify the Ministry where the information in paragraph (a) of this clause 18.4 can be located, as soon as this has been published.
- (c) The reporting under paragraph (a) of this clause 18.4 must also include the Sponsor's most recent audited annual financial statements, to the extent these relate to the operation of the School, or should provide information about how a copy can be made available by the Sponsor (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 the date specified in Schedule 9 of this Agreement in each Year (being the end of the Sponsor's financial year), the Sponsor must provide the Secretary with audited annual financial statements relating to the School for the prior financial year.
- (b) The audited annual financial statements must be prepared in accordance with Generally Accepted Accounting Practice.

#### **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.

#### **18.7 Reporting generally**

Nothing in clause 18 of this Agreement 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 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 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.

### **19.3 Minister's audit rights**

The Sponsor agrees that the Minister (or the Minister's delegate) may at any time, upon giving reasonable notice to the Sponsor, enter on to the Premises in order to conduct an inspection and to audit the Premises and/or the Sponsor's operation of the School (including talking to any Student, teacher or other contractor or employee at the Premises). The costs of undertaking this audit are to be shared between the Minister and the Sponsor where the results of the audit disclose that there have been performance failures or breaches of this Agreement by the Sponsor (for this purpose, the Minister will invoice the Sponsor for its share of the costs, such invoice to be paid by the Sponsor within 20 Business Days of receipt of such invoice).

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

- (a) The Sponsor acknowledges that the Secretary 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 Secretary's contracted external research group with reasonable access to the Premises, the chief

executive of the School, the teachers, the Students and any other personnel employed or contracted by the Sponsor in order to enable the review 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 School/Kura Hourua. The Sponsor further acknowledges that the Minister may define terms of reference for the Advisory Group which the Advisory Group must comply with.
- (b) The Sponsor agrees to provide all reasonable assistance to the Advisory Group to enable the Advisory Group to undertake its role advising the Minister in respect of the educational performance of the School.
- (c) The Sponsor acknowledges that the Minister has created an operating document which describes how the Advisory Group will undertake their statutory role and that this will be provided to the Sponsor.

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

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#### **20.1 Good faith obligation**

- (a) The parties acknowledge that measurement and/or reporting of the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System (where there is not a specific numerical Performance Standard) involves a degree of qualitative assessment where there is scope for differing views on the degree of performance or non-performance, but where ultimately the Minister must be satisfied that the relevant measures are being satisfactorily met and that the overall 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 Standards in the Performance Management System may be such that a School could appear to be achieving the requisite level of performance by manipulating factors within its control that are not readily evident to the Minister or Ministry officials in order to give that appearance, when the reality is different.
- (c) Accordingly the parties acknowledge and agree that good faith is required both from the Sponsor in performing and reporting, and from the Minister in assessing performance, against the Performance Standards in the Performance Management System. 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 of the Agreement.

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

- (a) The Sponsor acknowledges that the Minister may assess the Sponsor's performance against the Objectives set under Clause 15 and Performance Standards in the Performance Management System on a quarterly basis or, if an alternative reporting frequency is set out in relation to any Performance Standard in the 'Measurement Frequency' column in clause 1(a)(i) of Schedule 6, the alternative measurement frequency that is specified in respect of that Performance Standard.
- (b) The Sponsor's performance against a Performance Standard, but not against any Objective set under Clause 15, will be assessed by the Minister (in the Minister's discretion) and assigned to one of the following categories of performance against the Performance Standard in the Performance Management System (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 Objectives and Performance Standards in the Performance Management System 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 (or delegate);
  - (iii) any information that the Minister or Secretary 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 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 the Act or from any government department, Crown or Crown-owned entity; and
  - (vi) any information that is publicly available, is supplied by the Sponsor to the Minister or Ministry other than as required under this Agreement or is provided to the Minister or Ministry by a Parent of a Student or by a member of the community, that the Minister or Ministry has determined as being 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. Further, the Minister is entitled to rely on his or her own assessment of the Sponsor's performance taking into account the items in paragraph (c) of this clause 20.2, including conducting a review of the reports provided by the Sponsor. The Minister's assessment of the Sponsor's performance will, as a consequence, be based on the Minister's view, having regard to information taken from any of the sources in paragraph (c) of this clause 20.2.

- (e) The following rules shall describe how a Performance Standard will be used to determine how the Sponsor's performance compares with the Performance Standard:
  - (i) if the Performance Standard is expressed as a percentage, number or ratio, the Sponsor's actual performance will be directly compared with the Performance Standard over the relevant period; and
  - (ii) if the Performance Standard is expressed as "collect baseline data", the results from the Sponsor's reporting in relation to the 'metric' will be used to create baseline data which the Minister can use to set a Performance Standard in a future Year.

### **20.3 Guidance on measuring performance against the 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 PACT and Te Waharoa Ararau ā Kura, where appropriate to manage and report the achievement of its students. The parties will work together to agree on assessment instruments and approaches appropriate to each learning area for measuring improvement in Student achievement for Students in all Class Levels for which the school provides instruction prior to the School opening. Failing agreement between the parties within a reasonable period of time prior to the School opening, or at any time after the school opens the Minister may decide on an appropriate assessment instrument and will notify the Sponsor of the assessment instrument(s) that must be used by the Sponsor.

## **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**

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- (a) The Minister may give written notice to the Sponsor if the Sponsor fails to carry out any of its obligations under this Agreement or it becomes apparent through an audit, monitoring, investigation or otherwise that the Sponsor has breached this Agreement. The written notice must set out the obligation that the Sponsor has failed to perform or the breach that has been identified and require the Sponsor to remedy the non-performance or breach within a specified but reasonable timeframe (as determined by the Minister).
- (b) Failure of the Sponsor to remedy the non-performance or breach within the timeframe specified in the Minister's notice entitles the Minister to use any of the interventions described in clause 24 of this Agreement.
- (c) If the Minister has reasonable grounds to believe that:
  - (i) the Sponsor is likely to breach the Agreement; or
  - (ii) the Sponsor's current level of performance is such that its future performance is likely to be below that expected of the Sponsor under this Agreement,

the Minister may give written notice to the Sponsor setting out the steps that the Sponsor is required to take to ensure that it does not end up being in breach of the Agreement, or end up performing at a level below the level of performance required of the Sponsor under this Agreement.

- (d) In addition to the Minister's rights under paragraphs (a) and (c) of this clause 21, clauses 24 and 25.1 set out the range of possible interventions available to be used by the Minister (or the Secretary where applicable) if the Sponsor is not meeting the Performance Standard(s) in the Performance Management System, ranging from the provision of a Performance Notice to termination of the Agreement. More than one such intervention may be used at a time.
- (e) It is expected that the greater the severity of non-performance against the Performance Standard(s), the more serious the intervention selected by the Minister would be.



## **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.

## **23. Escalation of interventions**

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If the Minister is not satisfied that the Sponsor's performance against the Performance Management System is improving to the Minister's satisfaction or the Minister has reasonable grounds to believe that there continues to be a risk to the operation of the School or to the welfare or educational performance of the Students, despite the use of one of the interventions, the Minister may utilise an alternative intervention if the Minister considers that to be appropriate in the circumstances.

## **24. Interventions**

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### **24.1 Utilisation of interventions**

The interventions in this clause 24 and clause 25.1 can only be used in the circumstances described in clauses 21 and 22.

### **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) and the actions the Minister expects of the Sponsor to address the performance failure(s).
- (b) This notice may or may not (at the Minister's discretion) include a direction given by the Minister to comply with particular terms of the Agreement or Act.

### **24.3 Remedial Plan**

- (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 or in relation to the Sponsor's performance generally. The Minister will set out in the notice described in paragraph (a) above what the Remedial Plan must contain and when a draft Remedial Plan must be prepared and submitted to the Minister for approval by the Minister.
- (c) When the Minister receives a Remedial Plan, the Minister may either approve it, require the Sponsor to make amendments and resubmit the Remedial Plan to the Minister for approval, or reject it.

- (d) The Sponsor must comply with any Remedial Plan approved by the Minister until such time as the Minister may determine in writing that the Remedial Plan is no longer required.
- (e) Where:
  - (i) the Sponsor has failed to prepare a Remedial Plan by the due date;
  - (ii) the Sponsor has failed to make satisfactory amendments to a 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 Remedial Plan,

the Minister may invoke any other intervention that the Minister considers is appropriate.

#### **24.4 Increased reporting**

The Minister may require the Sponsor to report more frequently than the timeframes set out in clause 18.2 of this Agreement, and at such frequency as the Minister determines is appropriate, by giving notice in writing to the Sponsor.

#### **24.5 Specialist audit**

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

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

If agreed by ERO, the Minister may organise for an early or special review of the School to be undertaken by ERO, either in relation to a particular area of the Sponsor's or the School's performance or in relation to multiple areas of the Sponsor's or the School's performance.

#### **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 specify the type of person or organisation, whom the Sponsor must engage and the term 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) 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;
  - (iii) the Sponsor has breached or is breaching its statutory duties in relation to the School under the Act or any other enactment;
  - (iv) the Minister has reasonable grounds to believe that serious criminal activity (as defined in section 2 of the Act) is occurring at the School;
  - (v) the Sponsor becomes bankrupt or insolvent;
  - (vi) the Sponsor has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of external administration;
  - (vii) the Sponsor ceases to continue in business or to operate the School;
  - (viii) failure of the Sponsor to comply with clause 34.4 (Sub-contracting) or 34.5 (Assignment);
  - (ix) the Sponsor provides information to the Minister that is misleading or deliberately inaccurate in any material respect;
  - (x) the Sponsor has a conflict of interest that adversely impacts on the operation of the School, the Minister, the Minister or the Crown more broadly which cannot be managed or eliminated to the Minister's satisfaction;
  - (xi) any shareholder, trustee, member, director or other owner or board member (or equivalent) of the Sponsor is an Unsuitable Person;
  - (xii) the ownership or control of the Sponsor changes from that represented to the Minister prior to this Agreement being entered into, without the prior consent of the Minister to such change of ownership or control having been sought and given; or
  - (xiii) the Sponsor does not 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) A notice of termination under paragraph (b) of this clause 25.1 shall be given by the Minister:
  - (i) within a reasonable period of time of the Minister becoming aware of the event or events giving rise to the right to terminate; or
  - (ii) if the Minister has used interventions, with a view to attempting to resolve the issue(s) that has led to the right to terminate the Agreement, but such intervention measures have not resolved such issues within a reasonable period of time of such intervention measures being invoked and such measures failing to resolve the issue.
- (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) School Days of the Sponsor receiving the notice of termination.
- (e) 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.
- (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 the Agreement as at the date of termination. Any such sum will be repayable by the Sponsor as a debt due to the Minister.
- (g) 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 (f) 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.

## 25.2 Termination for Minister's convenience

- (a) The Minister may terminate this Agreement at any time for the Minister's convenience in accordance with the process set out in paragraph (b) of this clause 25.2.
- (b) If the Minister wishes to terminate the 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 setting out the reason for the proposed termination and the date from which termination will take effect;
  - (ii) the date of termination must be, at a minimum, six (6) months from the date of the notice under sub-clause (i) above and, in addition, termination can only take effect at the end of a School Year. If no date is provided in a notice given under sub-clause (i) above, the default is six (6) months from the date of that notice but in any event termination can only take effect from the end of a School Year;
  - (iii) 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; and
  - (iv) if the Minister is not satisfied with the reasons provided by the Sponsor under sub-clause (iii) above or wishes to proceed with termination regardless of the reasons provided by the Sponsor, the Minister shall issue a written notice to the Sponsor terminating the Agreement and confirming the date the Agreement shall be terminated, being the date specified in the notice in sub-clause (i) above and which must comply with sub-clause (ii) above.
- (c) If the Sponsor receives a notice given by the Minister pursuant to paragraph (b)(iii) of this clause 25.2, the Sponsor must inform the school community within three (3) School Days of the Sponsor receiving the notice of termination.
- (d) If the Minister terminates the Agreement under paragraph (a) of this clause 25.2 the Minister 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 agrees that the parties will negotiate in good faith to reach agreement as to an additional payment that the Minister will make to the Sponsor in respect of any Committed Costs.

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

- (a) The Sponsor may terminate this Agreement for convenience by giving the Minister a minimum of six (6) months' written notice of this but in any event such termination can only take effect from the end of a School Year.
- (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) School 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 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 25.3 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 25.3, 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.

### **25.4 Force majeure**

- (a) Either party may immediately terminate this Agreement if that party is unable to fulfil its obligations under this Agreement for a period of 20 Business Days or more due to the occurrence of a Force Majeure Event by giving the other party written notice.

- (b) 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 management of the School, to the same extent that the Sponsor has access to those 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 expense in relation to stepping in and where the Minister elects to withhold or set off such costs and expenses against any amounts otherwise payable to the Sponsor under the Agreement. 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 other 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 instructions issued by the Minister in order to ensure the orderly and efficient transfer of the operation of the School and to comply with any disengagement plan that the Minister may issue for the purpose of such transfer of operations.



## **Part 6: Payment**

### **28. Payment**

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- (a) The Sponsor will be paid in accordance with the provisions in Schedule 7.
- (b) 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 first three years of this Agreement, continue to own those assets in its own name and must not dispose of, or grant any security interest over, those assets to any other person during that period without the Minister's prior written consent.

### **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:

- (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) as at the date of this Agreement, it does not have any conflict of interests (including any actual, potential, or perceived conflict of interests) 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 that the Sponsor has already disclosed to the Minister, and will immediately inform the Minister if a conflict of interest arises during the term of this Agreement.

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

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#### **31.1 Confidentiality**

- (a) Each party confirms that it has adequate security measures 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;
  - (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 remain the property of their current owner. Any pre-existing intellectual property, if any, applicable to this agreement is specified in Schedule 9.
- (b) 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 or other information prepared by the Sponsor that are required to be provided to the Minister or Ministry in accordance with this Agreement, 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 by the Sponsor) that the Minister requires access to. Access shall be granted by the Sponsor in the form of a licence to the Minister and Ministry, the terms of which are to be agreed between the parties.
- (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 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 that are expressly set out in this Agreement.

## **33. Insurance**

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The Sponsor will be required to maintain all necessary insurances needed for the ongoing operation 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). It is expected that the Ministry will assist the Minister in the administration this Agreement.

- (b) In accordance with section 28 of the State Sector Act 1988, the Minister may also delegate to the Secretary the ability to enter into any variation to this Agreement on the Minister's behalf and to execute any written agreement required to be executed to enter into such variation. The Minister's ability to delegate may include the ability of the Secretary to sub-delegate pursuant to section 41 of the State Sector Act 1988.
- (c) Any change to the person holding office as the Minister will not affect any appointment previously made, unless such appointment is subsequently revoked.

#### **34.2 Public statements**

- (a) The Sponsor must not make any public announcements or statement about the Minister or the Ministry 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 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 as set out in Part Four of this agreement.

#### **34.3 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 Supplier's business or the engagement of its personnel.

#### **34.4 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, given consent to the persons listed in Schedule 9 being sub-contractors to the Sponsor in respect of the tasks described in Schedule 9 next to the relevant sub-contractor.

#### **34.5 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.

## 34.6 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  
  
[h.parata@ministers.govt.nz](mailto:h.parata@ministers.govt.nz)  
  
**Sponsor:**  
  
Ronwyn Rochel  
  
PO Box 12-183  
Ahuriri  
Napier 4144  
  
[ronnie@tearatikadrilling.com](mailto:ronnie@tearatikadrilling.com)
  - (ii) 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.

## 34.7 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 34.7 and undertake negotiations with a view to resolving the dispute or difference.
- (c) If the parties cannot reach agreement under paragraph (b) of this clause 34.7 within ten (10) Business Days of first meeting (or such other period of time that the parties may agree), the dispute or difference will be referred to mediation.
- (d) Mediation will take place in a location to be agreed between the parties, and failing agreement 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 Resolution Institute. 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, after 20 Business Days of referring a dispute or difference to mediation in accordance with paragraph (c) of this clause 34.7, the dispute or difference remains unresolved, either party will be free to start any Court proceedings.
- (f) This clause 34.7 does not affect either party's right to seek urgent interlocutory and/or injunctive relief from any Court of competent jurisdiction.

#### **34.8 Counterparts**

The 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.

#### **34.9 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.

#### **34.10 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 any provisions 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.

#### **34.11 Entire agreement**

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

#### **34.12 Variations**

No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

### 34.13 Survival

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

### 34.14 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 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 Annexes to this Agreement;

**Annual Reports** means the reports to be provided by the Sponsor under paragraph (b)(ii) of clause 18.2 of the 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) may include future costs that the Sponsor has a 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 reasonably endeavoured 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, 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 the Agreement (which, for the avoidance of doubt, shall not include any further renewal period unless the Minister has given notice of the Minister's decision to extend the Agreement for a further term 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 until the end of the then current term of the Agreement as set out in Schedule 7 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;

**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;

**Extra-curricular Activity** means an activity outside of the Curriculum, which is offered to Students outside of ordinary School hours and/or terms;



**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. 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* that, as at the date of this Agreement, is shortly intended to be published by the Minister in accordance with section 158B of the Act in respect of the Sponsor, 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;

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

**IRP or Independent Review Process** 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;

**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 on an open market in New Zealand on an arm's length basis, such value to be agreed between the Sponsor and the Minister with reference to evidence of similar recent sales of such goods, or failing agreement within a reasonable period, to be determined by an appropriately qualified independent valuer appointed by the Ministry, 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 and, if the maximum roll specified in Schedule 1 for the School has been reached, can also

include any additional Student whom the Secretary has directed the Sponsor to enrol in accordance with the Act;

**Minimum Requirements** means the minimum requirements described in clause 16.1 of the Agreement;

**Minimum Roll** means the minimum roll specified in 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;

**Operative Document** has the meaning given to that term in paragraph (c) of clause 2.1;

**Parent** means parent, parents, primary caregiver or legal guardian of a Student.

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

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

**Performance Notice** means a notice that warns the Sponsor that its performance against any or all of the Performance Standards in the Performance Management System is not completely meeting the performance expected of the Sponsor under this Agreement;

**Performance Standards** means the performance standards for a given Year as set out in clause (i) 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);

**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 as described in 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 the Agreement;

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

**School Day** means a day on which the School is open for Students to attend and receive tuition under the Curriculum or undertake assessments related to the Curriculum or Qualifications;

**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, 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 28(b));

**School Year** means the total period of time in a year from 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 in the:

- (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; and

**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 and 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 annexure is a reference to a clause, schedule or annexure 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.

SIGNED by Her Majesty the Queen  
in right of New Zealand acting by  
and on behalf of the Minister  
of Education in the presence of :

)  
)  
)  
)  
Hekie Parake

[Redacted]

s 9(2)(a) OIA

Print Name

ADVISOR

Witness Occupation

WELLINGTON

Place of residence

SIGNED by Te Aratika Charitable Trust

s 9(2)(a) OIA

[Redacted]

Trustee

Trustee

RONWYN JOYCE KOCHER

Name

CASEY TAAPARA

Name

In the presence of

[Redacted]

s 9(2)(a) OIA

Print Name

OPERATIONS MANAGER

Witness Occupation

AUCKLAND

Place of residence

## Schedule 1: Student Enrolment and Absences

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### 1. Maximum Roll

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The Maximum Roll for the School is 200.

### 2. Minimum Roll

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The Minimum Roll for the 2017 School Year is 50. The Minimum Roll must be met during the Year and by no later than the end of the School Year.

### 3. International Student vacant place upper limit

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The International Student vacant place upper limit for each Year is as follows:

Year	International Student Cap
2017	Nil
2018 and beyond	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.

### 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	Hours
Monday	09:00 am – 3:30 pm
Tuesday	09:00 am – 3:30 pm
Wednesday	09:00 am – 3:30 pm
Thursday	09:00 am – 3:30 pm
Friday	09:00 am – 3:30 pm
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
2017	Term 1 – 7 February – 13 April 2017
	Term 2 – 1 May – 7 July 2017
	Term 3 – 24 July – 29 September 2017
	Term 4 – 16 October – 14 December 2017
	Total = 362 half days
2018	To be determined as a variation to this Agreement.

## 5. Religion and Curriculum

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

## **Annex A: Gazette Notice**

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### **New Zealand Gazette Notice**

#### **Education Act 1989**

#### **Approval of Te Aratika Charitable Trust as Sponsor of Te Aratika Academy establishment notice**

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

1. I hereby approve Te Aratika Charitable Trust to be a Sponsor of a Partnership School/Kura Hourua.
2. The name of the Sponsor's school is Te Aratika Academy
3. The Sponsor's school will be located in the Hawkes Bay area.
4. Te Aratika Academy will be a male only Senior Secondary school.
5. Education at Te Aratika Academy may be given for class levels 11 to 13.
6. The establishment of Te Aratika Academy is to be phased in over three years. For the 2017 year, the school will enrol students in class level 11. From the 2018 year, Te Aratika Academy will enrol students in class levels 11 to 12 and in the 2019 year will enrol students in class levels 11 to 13. All of the class levels at Te Aratika Academy will be single-sex.
7. Te Aratika Academy will operate with the following aims, purposes and objectives:
  - a. A Māori/Pasifika philosophy designed to serve the unique, cultural, academic, physical, social and emotional needs of Māori/Pasifika youth.
  - b. Collaborative partnerships with Iwi, hapu, whanau, industry partners, schools, and tertiary institutions.
  - c. Innovative, learning hub that provides foundation education, construction and infrastructure vocational pathways to employment opportunities.
  - d. To be a responsive 21<sup>st</sup> Century learning hub for Māori/Pasifika youth.
8. This notice shall come into force the day after its publication in the *New Zealand Gazette*.

Dated at Wellington this XX day of August 2016.

Hon Hekia Parata  
Minister of Education



## Schedule 2: Curriculum & Qualifications

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### 1. Curriculum

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Te Aratika Academy will align to the New Zealand Curriculum.

### 2. Curriculum Framework:

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- (a) Our vision is to create a platform for change that is globally recognised, positively supports and encourages one person, one family, one community at a time to find their path and journey to success.
- (b) The Sponsor shall apply the following principles to the operation of the School:
  - (i) Te Aratika Academy will be a secondary school for Māori/Pasifika, by Māori/Pasifika and determined by Māori/Pasifika focused on the integration of STEM based programmes through its vocational and NCEA Level 1-3 pathways.
  - (ii) 21st century secondary education aligned to an appropriate cultural context, inspiring educational success in Māori/Pasifika youth, providing them with the foundations for navigating resiliently through education and training with links to employment opportunities.
  - (iii) A school for Māori/Pasifika males aged 15-19 who may be disengaged with New Zealand's mainstream secondary school system, and who are at risk of becoming unemployed, or not staying in education or training.
  - (iv) To provide a well planned and staffed residency option for students which is a critical element of being able to offer a safe and supportive culture and climate 24 hours a day.
  - (v) A school designed to serve the unique cultural, academic, physical, social, and emotional needs of the target students.
  - (vi) It will provide compulsory courses in literacy and numeracy, study, work and life skills at level 1; provide workplace training and experience in the construction and infrastructure vocational pathway; and provide vocational courses and qualifications on the New Zealand Qualifications Framework.
  - (vii) It will provide students with workplace learning in construction and infrastructure, while they continue to study towards their NCEA levels 1, 2 and 3.
  - (viii) It will include distinctive features of Māori learning preferences and behaviours such as ako, whakapapa, whanaungatanga, whānau, tuākana-tēina, and kanohi-kī-te-kanohi, an approach to learning that works for the target students within the school, training and workplace learning environments..
  - (ix) It will personalise education programmes and learning support to the needs of individual students.

- (x) It will provide a student mentoring programme.
- (xi) It will provide Academic Counselling and Target Setting (ACTS), an evidence-based approach to track and monitor student progress towards their education and vocational pathway goals.
- (xii) It will be a partnership between Te Aratika Academy, Te Aratika Drilling Ltd, Connexis – Infrastructure ITO, and WBB Chartered Accountants, to provide a cohesive, pathway-focused programme to students.

- (c) The School shall operate with the following values:

*Ko te whakapono, ko te tumanako me te aroha – Faith, hope and love”*

*(We embrace the whakatauhākī,)*

*Uī māi koe ki ahau he aha te mea nui o te ao,*

*Māku e kī atu, he tangata, he tangata, he tangata!*

*(Ask me, ‘What is the greatest thing in the world?’*

*I will reply, ‘It is people, it is people, it is people!’)*

- (d) The following key competencies will be utilised within the School:

Competency	Te Aratika Academy students will:
Thinking	<ul style="list-style-type: none"> <li>• Demonstrate effective problem-solving.</li> <li>• Reflect on learning.</li> <li>• Draw on personal knowledge and intuition for effective decision making.</li> <li>• Be confident to ask questions and challenge the basis of assumptions and perceptions.</li> <li>• Develop metacognition, or thinking about thinking, and to apply those thinking skills to other contexts and experiences.</li> <li>• Demonstrate curiosity.</li> </ul>
Using language, symbols, and texts	<ul style="list-style-type: none"> <li>• Confidently use ICT to access and provide information and communicate with others.</li> <li>• Use language, symbols and text in a range of contexts.</li> <li>• Interpret and use words, number, images, movement, metaphor, and technologies in a range of contexts.</li> <li>• Recognise how choices of language, symbol, or text affect people's understanding and the ways in which they respond to communications.</li> </ul>
Managing self	<ul style="list-style-type: none"> <li>• Be confident to pursue goals and capable of making plans to achieve them.</li> <li>• Develop and improve personal behaviours and attitudes.</li> <li>• Develop resilience and strategies for meeting challenges.</li> </ul>

Competency	Te Aratika Academy students will:
	<ul style="list-style-type: none"> <li>• Develop physical and mental strength.</li> <li>• Develop appreciation and gratitude.</li> <li>• Know when to lead, when to follow, and when and how to act independently.</li> </ul>
Relating to others	<ul style="list-style-type: none"> <li>• Listen and speak with intent.</li> <li>• Demonstrate an openness to learning.</li> <li>• Be able to take different roles in different situations.</li> <li>• Be aware of how their words and actions affect others.</li> <li>• Know when it is appropriate to compete and when it is appropriate to cooperate.</li> <li>• Acknowledge the efforts of others.</li> <li>• Work effectively together.</li> </ul>
Participating and contributing	<ul style="list-style-type: none"> <li>• Have a sense of belonging.</li> <li>• Be confident to participate within new contexts.</li> <li>• Understand the importance of balancing rights, roles, and responsibilities.</li> <li>• Understand the importance of contributing to the quality and sustainability of social, cultural, physical, and economic environments.</li> </ul>

By combining key competencies and embedding them in the curriculum and across the programme, Te Aratika Academy will ensure a strong focus on leadership development, engaging students in their study and preparing students for employment and higher learning.

(e) The learning areas for the School are:

- (i) The curriculum aligns to vocational pathways of Te Aratika Academy, which are inclusive of all vocational pathways; and
- (ii) The School will provide the following Focus Areas:

Learning Area	Subjects
Creative Industries	Performing Arts Music Dance Media Studies
Manufacturing and Technology	Engineering General Food Technology Graphic Design Information Technology Building and Construction Carpentry
Service Industry	Management Leadership Financial literacy Business development Marketing Social entrepreneurship
Social and Community Services	Te Reo Māori / Culture Health Sport Nutrition Community service and Development
Construction and Infrastructure	Civil Telecommunications Electrical
Primary Industries	Agriculture & Forestry Environmental & Marine Science

### 3. Curriculum Delivery

The Sponsor will use the following instructional methods to deliver their Curriculum:

Approach	Description
The approach includes a diagnostic assessment, student survey and Learning Contract	<ul style="list-style-type: none"> <li>A diagnostic assessment prior to study establishes pre-existing literacy and numeracy skills.</li> <li>An individual student survey determines learner's educational, employment, social and personal aspirations</li> <li>A clear, progressed Personal Education Plan (PEP) is developed, and monitored and reviewed regularly. It will reflect student personal interests, needs and abilities. Whanau will be</li> </ul>

Approach	Description
	<p>involved in the PEP development process. This Personal Education Plan will be factored into the timetable and involve an increasing component of self-directed learning. It will signed by the student, teacher, parent / carer and mentor.</p> <ul style="list-style-type: none"> <li>• Project Based learning (PBL) will also be used to engage students. PBL time will also be factored into the timetable.</li> <li>• A Kaitiaki/Coach will be assigned to all students to provide advice, assistance and guidance throughout the learning journey and to monitor and report on progress.</li> </ul>
The approach involves strong relationships between stakeholders and within communities	<ul style="list-style-type: none"> <li>• Te Aratika Charitable Trust and its overarching governance body.</li> <li>• Community organisations who raise interest and encourage enrolments; provide mentors for pastoral support; and maintain relationships with local businesses for work placements.</li> <li>▪ Tertiary Education Institutes contracted to provide interim accreditation and programme approval; develop and maintain learning materials; support information systems, technology infrastructure and e-learning devices; develop and moderate assessments.</li> <li>• Youth who enrol through their community, work at their own pace and are supported by their whānau, local community, wider community and the School as a whole.</li> </ul>
The educational approach involves a progressive learning experience	<p>All students will have sessions in their timetables for Health &amp; Well-being, Sport and Recreation.</p> <p>As a student moves from Year 11 to Year 13 they will experience a progression in:</p> <ul style="list-style-type: none"> <li>• The degree of structure and formality</li> <li>• The focus of the learning</li> <li>• Relationships with teachers and coaches</li> </ul>

Approach	Description
	<ul style="list-style-type: none"> <li>• Māori/Pasifika mentoring and community engagement will remain constant elements throughout.</li> </ul>
The instructional approach is proven for lower levels of learning in New Zealand	<ul style="list-style-type: none"> <li>• Flexible learning arrangements within a structured framework – a student can enrol at any time and fit learning in with other life commitments while having structured goals and learning commitments.</li> <li>• Organising programmes around meaningful themes with clear pieces of learning that embed unit standards</li> <li>• Content and assessments that relate to aspects of students' own lives, and are culturally-relevant</li> <li>• Learning that occurs within the student's own context, in a workplace or community environment.</li> <li>• Effective embedding of literacy and numeracy.</li> <li>• Blended learning, support and motivation that is community-based and involves one-on-one contact.</li> </ul>
The approach is proven globally and applied internationally	Decentralised student support systems are a common feature in open schools, and provide a less threatening and more supportive service to students. The teacher becomes an advisor and facilitator, able to advise the student on study technique and assist the student as a gradually empowered individual.

#### 4. Qualifications

The following Qualifications will be offered by the School:

- (a) National Certificate in Employment Skills, Level 1
- (b) National Certificate in Educational Achievement, Level 1
- (c) National Certificate in Infrastructure Works, Level 2
- (d) National Certificate in Educational Achievement, Level 2
- (e) National Certificate in Educational Achievement, Level 3
- (f) National Certificate in Infrastructure Works, Level 3

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

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The Sponsor will develop curriculum policy documents and the School's curriculum handbook to a standard consistent with best practice guidelines prior to the schools readiness review (refer clause 19.2(e)). This document will constitute an Operative Document once approved by the Minister in accordance with clause 2.1(c).

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

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

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The Sponsor is not required to provide transport services for Students.



## **Schedule 4: Governance and Teachers**

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### **1. Teaching Positions**

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The minimum number of full time teaching equivalent Teaching Positions for the School for 2017 is four.

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

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The minimum percentage of people holding a Practising Certificate or Limited Authority to Teach for 2017 is 50%.

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

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The percentage of the Curriculum taught by people holding a Practising Certificate or Limited Authority to Teach is 50%.

## **Schedule 5: Property**

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### **1. Premises**

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The initial Premises from which the School must be operated are those premises that the Sponsor:

- (a) 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
- (b) 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 storeys); and
- (c) 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.

## Schedule 6: Performance Management System

### 1. Objectives

- (a) The following are the objectives for the School:
- (i) Strong Māori and Pasifika student engagement.
  - (ii) Inspiring and well informed, culturally competent staff.
  - (iii) Engaging Māori and Pasifika whānau and communities.

### 2. Performance Standards

#### 2.1 Student achievement

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

Measure	Metric	Performance Standard	Measurement Frequency
Students achieving National Standards and/or Ngā Whanaketanga Rumaki Māori or NCEA	National Standards or and/or Ngā Whanaketanga Rumaki Māori or NZQA reporting	See Annex A of this Schedule for separate Performance Standards for each Class Level (and where appropriate course)	Annually at the end of each year
Improvement in Students achieving National Standards and/or Ngā Whanaketanga Rumaki Māori or NCEA	National Standards and/or Ngā Whanaketanga Rumaki Māori (Class Levels 7 and 8) Results from tools to be determined (Class Levels 9 and 10) NCEA data	See Annex B of this Schedule for separate Performance Standards for each Class Level (and where appropriate course)	To be determined once baseline data has been collected
Progression from Term One baseline testing	Improvement in maths, reading and writing measured using tools to be determined in accordance with clause 20.3		Quarterly, at the end of each term.

## 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	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly
Stand downs	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	As they occur
Suspensions	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	As they occur
Exclusions	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	As they occur
School culture	wellbeing@school annual student survey	Collect baseline data	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
		2017	2018	2019	2020	
Operating surplus	Measured through information provided to the Ministry	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	Quarterly
Debt/equity ratio	Measured through information provided to the Ministry	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	Quarterly
Solvency	Measured through information provided to the Ministry	Quarterly statement certifying solvency				

## 2.4 Targeting priority learners

The Sponsor will be periodically assessed against the following Performance Standards in relation to targeting priority learners:

Measure	Metric	Performance Standard				Measurement Frequency
		2017	2018	2019	2020	
Enrolment of priority groups	Number of Students who are Māori, Pasifika, students with special education needs and students from low socio-economic backgrounds	75%	75%	75%	To determine at a later date	Quarterly

## **Annex A: Performance Standards for Student achievement against National Standards and/or Ngā Whanaketanga Rumaki Māori and NCEA**

### **1. Secondary (Class Levels 9 to 13)**

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#### **1.1 Class Levels 11 to 13 (NCEA)**

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<b>NCEA level/ University Entrance</b>	<b>Performance Standard</b>			
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Roll based pass rate as defined and reported by NZQA – Level 1	85%	85%	85%	TBD
Roll based pass rate as defined and reported by NZQA – Level 2	N/A	85%	85%	TBD
School Leavers with NCEA level 2 or above	N/A	55%	85%	TBD

**Annex B: Performance Standards for Student achievement - improvement against National Standards and/or Ngā Whanaketanga Rumaki Māori or NCEA**

**1. Secondary (Class Levels 9 to 13)**

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**1.1 Class Levels 11 to 13 (NCEA)**

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NCEA level	Performance Standard
1	Collect baseline data
2	Collect baseline data



## Annex C: Performance Standards for Student engagement

### 1. Secondary (Class Levels 7 to 13)

Measure	Performance Standard			
	2017	2018	2019	2020
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*	To be determined
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	To be determined
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.	To be determined
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.	To be determined
Expulsions	0	0	0	To be determined

\* where the formula produces a number other than a whole number, the number should be rounded up to the nearest whole number

## 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 in recognition of the costs that the Sponsor will need to incur to ensure the School is operational in time for the commencement of the 2017 Year. The Establishment Payment includes a component for set-up and property funding.
- (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;
- P means the equivalent of six months property funding, being \$88,388.16; and
- Sal means the equivalent of six months of a principal's salary, being \$65,000.00.

- (c) 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 2017 Year, the Sponsor will receive Quarterly Operational Payments from the Minister which are to be calculated by the Ministry and 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 and insurance funding	25% of the annual cashed up per student property and insurance rate applicable to the Maximum Roll divided by the Maximum Roll and multiplied by the number of Students enrolled at the school at the time of payment calculation.	Reviewed every three years
Teaching and Operating Rate	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.  Secondary <ul style="list-style-type: none"> <li>100 and below \$12,585.00</li> <li>101+ and above \$7,046.00</li> </ul>	Consumers price index and labour cost index
Centrally funded support	25% of the annual cashed up centrally funded support amount per Student (being 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

- (b) The Quarterly Operational Payment for any Year from 2018 onwards will be calculated by the Ministry on behalf of the Minister in accordance with the framework described in paragraphs (a) and (d) to (h) of this clause 1.3.
- (c) 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.
- (d) 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%.
- (e) As indicated in the third column of the table in paragraph (a) of this clause 1.3, in respect of the "property and 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.

- (f) For the first Quarter of the 2017 Year, for the purpose of determining any funding component described in the table in paragraph (a) of this clause 1.4 where the School's roll is used to calculate a payment, the School's roll will be deemed to be 67 that applies as at the payment date or the actual roll submitted through relevant roll returns (whichever number is greater).
- (g) From the second quarter of the 2017 to the conclusion of the fourth quarter of the 2022 Year, 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 the actual roll submitted through relevant roll returns.
- (h) Quarterly Operational Payments will be made on the following basis:
  - (i) 99% of each Quarterly Operational Payment will be payable during the term of this Agreement in accordance with clause 2 of this Schedule 7 (Payment Notice);
  - (ii) 1% of each Quarterly Operational Payment will be retained by the Minister and, following the Minister's receipt and consideration of the Sponsor's Annual Report, will be paid to the Sponsor provided that the Minister is satisfied, in the Minister's sole discretion, that the Sponsor has met the relevant Performance Standards for the School Year to which the Annual Report relates by the end of that School Year; and

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

- (a) The Sponsor may be entitled to apply to the Minister to receive variable operational payments. The eligibility criteria that apply to State schools in relation to these variable operational payments will also apply to the School. The Minister will provide the Sponsor with an operational guide detailing the various variable operational payments that the Sponsor may be able to apply for, which the Minister may update and re-issue from time to time.
- (b) Variable operational payments will be paid by the Minister to the Sponsor either as part of the Quarterly Operational Payment or, depending on the type of payment, on an alternative basis, in either case as advised by the Minister.

#### **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 as at the date of this Agreement is the following bank account:

Te Aratika Charitable Trust (Kiwibank) 38-9017-0498627-00

- (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

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- (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
Quarter 1	15 December	1 January	January to March
Quarter 2	15 March	1 April	April to June
Quarter 3	15 June	1 July	July to September
Quarter 4	15 September	1 October	October to December

## 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 an instalment 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 instalment notice;
  - (vi) states the date the invoice was issued; and
  - (vii) states the total payment due, as specified by the Minister in the corresponding instalment notice.

## **Schedule 8: Independent Review Process Framework**

### **1. Independent Review Process (IRP)**

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- (a) The IRP should be used to offer Students and families and whānau of Students an avenue to challenge decisions, actions or omissions of the Partnership School/Kura Hourua.
- (b) The IRP should be based around 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 made that may affect them (such as where a complaint 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 and culturally responsive 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 is about violence, harassment or bullying, the overriding concern is to provide a safe physical and emotional environment for 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. Where appropriate, the School's management should render support to the complainant in drafting their request accurately reflect the scope of the grievance.
- (h) The Sponsor must call a meeting with the complainant in a timely manner to discuss the options for resolution. The Sponsor should define what "timely" means in order to give flexibility with respect to the complainant's work and 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. 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 (n) 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 the appropriate body and bound by a code of practice.
- (l) A number of organisations offer disputes resolution services. Organisations include the following:
  - (i) Arbitrators' and Mediators Association of New Zealand (AMINZ); and
  - (ii) the Association of Disputes Resolvers.
- (m) The Sponsor bears the costs of the IRP.
- (n) Where the Sponsor considers a complaint to be unreasonable or vexatious in nature, 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 will be handled. The independent reviewer or mediator, may, where they consider a complaint to be unreasonable or vexatious in nature, vary any aspect of the IRP in order to deal with the complaint 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 to discuss the next actions (if required).
- (c) The investigator'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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In accordance with clause 18.5(a) of this Agreement, the end of the Sponsor's financial year is 30 June.

### **2. Approved sub-contractors**

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The following are persons that the Minister has consented to being sub-contractors of the Sponsor as at the date of this Agreement:

- (a) Connexis Infrastructure ITO. Sub-contracted to the Sponsor to provide industry appropriate training and/or certification to Te Aratika Academy.
- (b) Te Aratika Drilling Ltd. Sub-contracted to the Sponsor to provide industry appropriate mentoring services to Te Aratika Academy.

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

### **4. Education Circulars**

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For the purpose of paragraph (d) of clause 5, the Education Circulars are:

- (a) 2013/06 "Payments by Parents of students in state and state-integrated schools";
- (b) 2013/07 "Auditing Roll returns";
- (c) 2012/01 "Eligibility to Enrol in NZ Schools";
- (d) 2010/07 "Dual tuition through the Correspondence school/Te Kura";
- (e) 2010/09 "Changes to Police Vetting";



- (f) 2010/19 "Electronic Attendance Registers";
- (g) 2007/12 "Student enrolments";
- (h) 2006/19 "School records retention and disposal";
- (i) 2004/07 "Adult student enrolment";
- (j) 1999/21 "HIV/ AIDS and other blood-borne diseases";
- (k) 1997/24 "Register of daily attendance of all students"; and
- (l) 2014/33 Mandatory Reporting to the Teachers Council (and any future update to this circular as a result of the Teachers Council being replaced by the Education Council).

