

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

Advance Training Centres Limited

Sponsor

16 September 2013

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This **Agreement** is made on

16 September 2013

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

and (2) **Advance Training Centres Limited (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.

It is agreed

Part 1: Design of Agreement and Introductory Matters

1. Design of Agreement

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

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

- (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

- (a) The Agreement will commence when executed by both parties and will continue for a term of six (6) years from 1 January 2014, 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 six (6) months' notice in writing prior to the end of the then current term of the Agreement.

5. Education Circulars

- (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.
- (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

- (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

7.1 Maximum Roll

- (a) The Maximum Roll for the School is 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 minimum or maximum number of students per Class Level that the Sponsor must enrol.
- (c) 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.

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 2014 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 no later than 1 December 2013, prepare and provide to the Minister the School's policies for ensuring a safe physical and emotional environment for Students. This document 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

The Sponsor is required to inform each Student's parent, at least twice per year, in writing and in plain language, of:

- (a) the progress of the Student at the School;
- (b) any barriers to the Student's progress at the School; and
- (c) as applicable, the Student's progress and achievement in relation to National Standards.

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.

8. Student attendance and absences from School

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, Expulsion 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

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.

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

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 or parents of a Student make 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 2014 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 November 2013 prepare and provide to the Minister, a policy setting out how it will engage with parents, family, whānau, iwi and communities of the Students.
- (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

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 fees, 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

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 Registered Teacher, 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

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 registered 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 Teaching Positions held by Registered Teachers and Holders of 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 Registered Teachers and Holders of 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 Schedule 4.

13.4 Percentage of Curriculum time taught by Registered Teachers and Holders of Limited Authority to Teach

- (a) The Sponsor will, during all term times, ensure that the percentage of the Curriculum time taught by Registered Teachers and Holders of 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 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**

14.1 **Buildings**

- (a) The Sponsor will operate the School in the location 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 that is suitable 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

- (a) The Objectives 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 Standards in 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.

16. Minimum Requirements

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 does not exceed the Maximum Roll;
- (e) the Sponsor accepts students in accordance with clauses 7.2 to 7.4 of this Agreement;
- (f) the School hours and term dates never reduce below the minimum levels set out in Schedule 1;
- (g) the stand-down or suspension periods for Students do not exceed the maximum periods set out in the Act;
- (h) the Sponsor complies with the requirements in relation to standing down, suspending, excluding or expelling;
- (i) the Sponsor complies with every direction given under the Act or this Agreement;
- (j) any transport required is provided as described in Schedule 3;
- (k) the Sponsor has a person appointed as the person responsible for teaching and learning at all times;
- (l) the number or percentage of Teaching Positions filled by Registered Teachers and Holders of Limited Authority to Teach does not fall below the minimum number or percentage set out in clause 2 of Schedule 4;
- (m) the percentage of the Curriculum time taught by Registered Teachers and Holders of 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;

- (n) 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;
- (o) the Sponsor reports to the Minister in accordance with clause 18.2 of this Agreement;
- (p) the Sponsor reports to the Ministry in accordance with clause 18.3 of this Agreement;
- (q) the Sponsor reports to parents in accordance with clause 7.8 of this Agreement;
- (r) the Sponsor reports to the public in accordance with clause 18.4 of this Agreement;
- (s) the Sponsor provides audited accounts as required by clause 18.5 of this Agreement; and
- (t) the Sponsor provides all of the required reports to the Minister by the dates or within the timeframes set out in clause 18.2.

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, may be a factor taken into account for the purpose of the intervention regime in Part 4 of the Agreement.

16.3 Declaration as to compliance with Minimum Requirements

- (a) The Minister may, from time to time, require the Sponsor to provide a declaration that it has met all of the Minimum Requirements. The Sponsor agrees to provide such a declaration as and when required by the Minister. The declaration may be required as part of a Quarterly Report or Annual Report.
- (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

17.1 Performance Standards in the Performance Management System

- (a) **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.
- (b) **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.
- (c) **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.

- (d) **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.

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 2014 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 2017 Year.
- (b) The Minister will, in discussion with the Sponsor and otherwise in accordance with this clause 17.2, set the remaining 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.
- (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;
 - (iii) the Minister will take into account whether the Performance Standards would be in line with the Objectives; and
 - (iv) the Minister will, in discussion with the Sponsor, develop a process to be followed to set Performance Standards for future Years and new Performance Standards.
- (e) If the Minister does not set new Performance Standards for a future Year by the start of the next School Year, the Performance Standards that apply in relation to the previous Year will continue to apply for the intermediary period until such time as the Minister does set new Performance Standards for that Year.
- (f) The process of setting Performance Standards for future Years will be commenced by the Minister at the beginning of the fourth quarter in each Year, following receipt of the Sponsor's Quarterly Report at the end of the third quarter.

18. Records and reporting

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 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 31 January of each year in respect of the previous School Year.
- (c) A report submitted under paragraphs (a) or (b) of this clause 18.2 will only be accepted once approved by the Minister. The Minister may, if he or she is not satisfied with the level of detail contained in the report, require the Sponsor to amend the report and resubmit it to the Minister within any timeframe specified by the Minister.

- (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 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 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, 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, 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 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 and/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) The reporting under paragraph (a) of this clause 18.4 must also include the Sponsor's most recent audited annual financial statements 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 the New Zealand equivalents to International Financial Reporting Standards (NZ IFRS). For this purpose, the Minister may also require (by giving notice in writing) the Sponsor to use templates or guidelines prepared by the Ministry for the purpose of preparing its annual financial statements. It is expected that the Sponsor may be required to use the model annual report prepared as a template by the Ministry for the fictional school known as 'Kiwi Park School'.

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 Teachers Council in accordance with any relevant provision in Part 10A of the Act.

19. Review and audit rights

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, but not more frequently than once in any six (6) month period (except where pursuant to an intervention under clause 24.5), and upon giving reasonable notice to the Sponsor, enter on to the Premises in order to conduct an inspection and to audit the Premises and/or the Sponsor's operation of the School (including talking to any Student, teacher or other contractor or employee at the Premises).

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 intends to create an operating document which describes how the Advisory Group will undertake their statutory role and that this will be provided to the Sponsor in or around 30 November 2013.

20. Measuring performance and good faith obligations

20.1 Good faith obligation

- (a) The parties acknowledge that measurement of the Sponsor's performance against the Objectives and Performance Standards in the Performance Management System (where there is not a specific numerical Performance Standard) involves a degree of qualitative assessment where there is scope for differing views on the degree of performance or non-performance, but where ultimately the Minister must be satisfied

that the relevant measures are being satisfactorily met and that the overall Objectives for which the School was established are being successfully achieved.

- (b) The parties further acknowledge that the qualitative and other elements of the Objectives and Performance Standards in the Performance Management System may be such that a School could appear to be achieving the requisite level of performance by manipulating factors within its control that are not readily evident to the Minister or Ministry officials in order to give that appearance, when the reality is different.
- (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 Objectives and 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 and Performance Standards in the Performance Management System on a quarterly basis or, if an alternative reporting frequency is set out in relation to any Performance Standard in the 'Measurement Frequency' column in clause 2 of Schedule 6, the alternative measurement frequency that is specified in respect of that Performance Standard.
- (b) The Sponsor's performance against an Objective or a Performance Standard will be assessed by the Minister (in the Minister's discretion) and assigned to one of the following categories of performance against the Objective or Performance Standard in the Performance Management System (from highest to lowest):
 - (i) exceeds the Objective/Performance Standard;
 - (ii) meets the Objective/Performance Standard;
 - (iii) almost meets the Objective/Performance Standard;
 - (iv) does not meet the Objective/Performance Standard but is capable of remedy; or
 - (v) does not meet the Objective/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 as 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) If applicable in relation of the Class Levels taught at the School, in respect of the Performance Standard that measures the improvement in Student achievement for Students in Class Levels 9 and 10, the parties will work together to agree on an assessment instrument for measuring improvement in Student achievement for Students in those Class Levels prior to the School opening. Failing agreement between the parties within a reasonable period of time prior to the School opening, the Minister will decide on an appropriate assessment instrument and will notify the Sponsor of the assessment instrument that must be used by the Sponsor.

Part 4: Interventions for Poor Performance and in certain risk situations and Termination

21. Consequences of failing to meet Objectives and Performance Standards

- (a) 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 Objective(s) or 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.
- (b) It is expected that the greater the severity or non-performance against the Objective(s) or Performance Standard(s), the more serious the intervention selected by the Minister would be.

22. General ability to intervene

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

23. Escalation of interventions

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

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 draft Remedial Plan, the Minister may either approve it or require the Sponsor to make amendments and resubmit the draft Remedial Plan to the Minister for approval.
- (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) Failure by the Sponsor to prepare a draft Remedial Plan by the due date or to make satisfactory amendments to a draft Remedial Plan, or to satisfactorily implement a Remedial Plan that the Minister has approved under this clause 24.3, shall entitle the Minister to 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.

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.

25. Termination

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 Objectives or Performance Standards in the Performance Management System or in accordance with the Minister's general ability to intervene as set out in clause 22;
 - (ii) the Sponsor has breached any term in the Agreement or is repeatedly breaching a term or terms in the Agreement (including any Minimum

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

- (iii) the Sponsor has breached or is breaching its statutory duties in relation to the School under the Act or any other enactment;
 - (iv) the Minister has reasonable grounds to believe that serious criminal activity (as defined in section 2 of the Act) is occurring at the School;
 - (v) the Sponsor becomes bankrupt or insolvent;
 - (vi) the Sponsor has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of external administration;
 - (vii) the Sponsor ceases to continue in business or to operate the School;
 - (viii) failure of the Sponsor to comply with clause 34.4 (Sub-contracting) or 34.5 (Assignment);
 - (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; or
 - (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.
- (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 reason for the proposed termination and the date from which termination will take effect;
 - (ii) the Sponsor shall have ten (10) Business Days to advise the Minister in writing as to any reasons why the Sponsor does not consider that the Agreement should be terminated;
 - (iii) if the Minister is not satisfied with the reasons provided by the Sponsor under sub-clause (ii) above, the Minister shall issue a written notice to the Sponsor terminating the Agreement and confirming the date from which the Agreement shall be terminated;
 - (iv) the date of termination must be, at a minimum, twenty (20) School Days from the date of the notice under sub-clause (iii). If no date is provided in a notice given under sub-clause (iii), the default is twenty (20) School Days from the date of that notice.

- (c) A notice of termination under paragraph (b) of this clause 25.1 may only be given by the Minister within three months of the termination event in paragraph (a) of this clause 25.1 occurring.
- (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.

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 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 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 from which the Agreement shall be terminated;
 - (iv) the date of termination must be, at a minimum, six (6) months from the date of the notice under sub-clause (iii) above and in addition, can only take effect at the end of a School Year. If no date is provided in a notice given under sub-clause (iii) above, the default is six (6) months from the date of that notice but in any event can only take effect from the end of a School Year.
- (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.

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

- (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

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

The Sponsor will be paid in accordance with the provisions in Schedule 7.

29. Invoicing

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

Part 7: General

30. Representations, warranties and undertakings

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

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.

- (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

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

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

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.

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

Sponsor:

PO Box 303-360
North Harbour
Auckland

nick@advancetraining.co.nz

- (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 LEADR New Zealand Incorporated. 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

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:

- (iii) by its nature is confidential;
- (iv) is marked by either party as 'confidential' or 'in confidence' (or any similar description);
- (v) is provided by either party, or third party 'in confidence'; or
- (vi) 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;

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, lightening 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;

Holders of Limited Authority to Teach means a person who has been authorised under section 130B of the Act as having a limited authority to teach, whose authorisation has not been suspended under section 139AU or 139AW(1)(d) of the Act;

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;

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;

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;

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;

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 Objectives and Performance Standards;

Performance Notice means a notice that warns the Sponsor that its performance against any or all of the Objectives or 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 2 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);

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;

Registered Teacher means:

- (v) a person listed on the register (kept by the Teachers Council pursuant to section 128 of the Act) whose registration has not been cancelled and who has not subsequently been re-registered;
- (vi) a person holding a practising certificate as defined in section 120 of the Act which has not been suspended under section 139AU or 139AW(1)(d) of the Act;
- (vii) any person who has an authorisation which has not been cancelled unless that person has been authorised again or has been registered as a teacher (register, registration, authorised and authorisation having the meanings set out in section 120 of the Act);

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 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 of 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;

Teachers Council has the meaning given to that term in section 120 of the Act;

Teaching Position has the meaning given to that term in section 120 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 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.

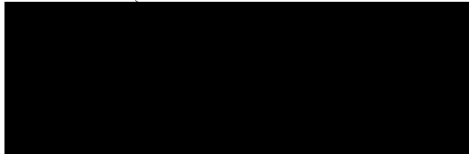
Execution

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 :)

Hekia Parata

s 9(2)(a) OIA



Print Name

PRIVATE SECRETARY

Witness Occupation

WELLINGTON

Place of residence

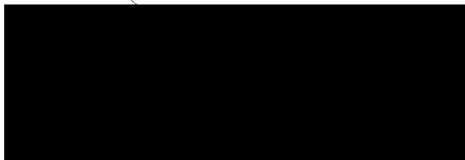
s 9(2)(a) OIA



SIGNED by Advance Training)
Centres Limited in the presence of :)
)

NICK HYDE - GENERAL MANAGER

s 9(2)(a) OIA



Print Name

PA

Witness Occupation

Auckland, NZ

Place of residence

Schedule 1: Student Enrolment and Absences

1. Maximum Roll

The Maximum Roll for the School is 192

2. International Student vacant place upper limit

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

Year	International Student Cap
2014	Nil
2015	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2016	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2017	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2018	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2019	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.

3. School hours and terms

3.1 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	0845 – 1500
Tuesday	0845 – 1500
Wednesday	0845 – 1500
Thursday	0845 – 1500
Friday	0845 – 1500

Saturday	Closed
Sunday	Closed
Public Holidays	Closed

3.2 School terms

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

Year	Term Dates			
2014	Term 1	3 February	until	24 April
	Term 2	5 May	until	4 July
	Term 3	21 July	until	3 October
	Term 4	13 October	until	12 December
	Total = 398 half days			
2015	Term 1	2 February	until	10 April
	Term 2	20 April	until	3 July
	Term 3	20 July	until	2 October
	Term 4	12 October	until	11 December
	Total = 396 half days			
2016	Term 1	1 February	until	22 April
	Term 2	2 May	until	8 July
	Term 3	25 July	until	30 September
	Term 4	10 October	until	9 December
	Total = 402 half days			
2017	Term 1	1 February	until	21 April
	Term 2	1 May	until	7 July
	Term 3	24 July	until	6 October
	Term 4	16 October	until	15 December
	Total = 406 half days			

2018	To be determined as a variation to this Agreement in accordance with clause 34.12 of this Agreement.
2019	To be determined as a variation to this Agreement accordance with clause 34.12 of this Agreement.

4. Ability to provide religious instruction

The Sponsor is not permitted to provide religious education to the Students during School hours.

Annex A: Gazette Notice

New Zealand Gazette Notice

Education Act 1989

Approval of Advance Training Centres Limited as Sponsor of the Vanguard Military School establishment notice

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

1. I hereby approve Advance Training Centres Limited to be a Sponsor of a partnership school | kura hourua.
2. The name of the Sponsor's school is Vanguard Military School.
3. The Sponsor's school will be located in Albany.
4. The Vanguard Military School will be a co-educational secondary school.
5. Education at the Vanguard Military School may be given for class levels 11 to 13.
6. The establishment of the Vanguard Military School is to be phased in over two years. For the 2014 year, the Vanguard Military School will enrol students in class levels 11 to 12. From the 2015 year, the Vanguard Military School will enrol students in class levels 11 to 13. None of the class levels at the Vanguard Military School will be single-sex.
7. Vanguard Military School will operate with the following aims, purposes and objectives:

The school utilises the ethos and training methodology of the military in order to achieve, especially for students/recruits from disadvantaged backgrounds, attitudinal and academic excellence that facilitates multiple exit points into a broad range of further training or employment options.
8. This notice shall come into force the day after its publication in the *New Zealand Gazette*.

Dated at Wellington this XX day of XXX 2013.

Hon Hekia Parata
Minister of Education

Schedule 2: Curriculum & Qualifications

1. Curriculum

- (a) Vanguard Military School will offer the New Zealand Curriculum (NZC) offering NCEA Level 1 and Level 2 initially before expanding to Level 3.
- (b) The curriculum is set to encourage priority learners to raise their expectations and address their weaknesses, particularly in English and Maths. There is a combination of compulsory subjects and elective subjects so that recruits can choose their own pathway to meet their needs whilst also following the key school requirements.
- (c) The curriculum is designed to be able to offer a pathway through Level 1, Level 2 and Level 3 with knowledge gained the previous year assisting the student's development and confidence to attain the next level.

2. Curriculum Framework:

2.1 The Sponsor's vision for the School is:

To develop young men and women to become productive, responsible citizens of New Zealand. We will strive for excellence in all tasks, will unlock the potential of each individual and create a positive pathway for their future. This vision includes:

- (i) Academic Excellence;
- (ii) School Culture;
- (iii) Outcomes;
- (iv) Community Involvement;
- (v) Staffing;
- (vi) Resources;
- (vii) Facilities and Infrastructure;
- (viii) A culture of success;
- (ix) Co-curricular excellence; and
- (x) Participation in School Activities.

2.2 The Sponsor shall apply the following principles to the operation of the school:

The principles set out in the NZC embody beliefs about what is important and desirable in school curriculum, nationally and locally, and will underpin all school decision making.

2.3 The school shall operate with the following values:

- (a) High Expectations to achieve excellence;
- (b) Honour and Integrity;
- (c) School Pride;
- (d) Embrace Diversity; and
- (e) Discipline and Respect.

2.4 The following key competencies will be utilised within the school:

- (a) Thinking;
- (b) Using language, symbols, and texts;
- (c) Managing self;
- (d) Relating to others; and
- (e) Participating and contributing.

2.5 Learning Areas

- (a) The following 5 subjects have been chosen for the School curriculum and allow recruits to take these subjects to Year 13 with the purpose of allowing them to undertake University Entrance:

Learning Area	Description
Mathematics	<p>The study of mathematics assists students to develop the ability to think creatively, critically, strategically, and logically. They learn to structure and organise, to carry out procedures flexibly and accurately, to process and communicate information, and to enjoy intellectual challenge.</p> <ul style="list-style-type: none">• Compulsory in Years 11 and 12.• Many priority students have poor numeracy skills.• It allows students to move into Year 13 and use Maths as a UE subject or;• Provides a solid foundation for other exit points like engineering, building, the New Zealand Defence Force, employment or higher level studies at another education provider.
English	<ul style="list-style-type: none">• Compulsory in Years 11 and 12.• Many priority students have poor literacy skills.• It allows students to move into Year 13 and use English as a UE subject

	<p>or;</p> <ul style="list-style-type: none"> Provides a solid foundation for other exit points like engineering, building, the New Zealand Defence Force, employment or higher level studies at another education provider.
Physical Education	<ul style="list-style-type: none"> Compulsory in Years 11 and 12. Can be taken in Year 13 for UE.
Māori	<ul style="list-style-type: none"> Elective subject that can be taken through Years 11, 12 & 13 to become a UE subject. It is estimated that around half of our recruits are likely to be of Māori descent. The school wishes to embrace this and provide for increased learning of Māori. This will allow for a stronger connection with the school and learning.
Science	<ul style="list-style-type: none"> Elective subject that can be taken through Years 11, 12 & 13 to become a UE subject. In our experience many priority learners enjoy science due to the more experimental nature of working things out.

- (b) Vanguard Military School will have a compulsory Recruit Development Course for Year 11 & 12 students and this will be available for selected recruits in Year 13 to help them meet their NCEA Level 3 requirements.
- (c) Financial Literacy
- In association with Westpac Bank, we will teach unit standards that teach our recruits about budgeting, bank services and how to use money properly.
- (d) Computing
- Basic computing skills will be taught to the recruits.
- (e) Driver's Licenses
- With the assistance of Pass Rite Driving Academy we will be educating the recruits to sit and pass their driving tests. This will lead on to doing training for their Heavy Transport, wheels, tracks and rollers and forklift licences as employment focused opportunities.
- (f) Work Skills
- Teaching how to prepare a CV and the training and testing for interview skills.
- (g) Numeracy/Literacy

- Additional classes for numeracy and literacy (on top of the compulsory English and Mathematics) to complete US26622 - 26627 and NZQA's numeracy and literacy requirements.
- (h) Adventure Based Learning activities
- To promote teamwork and problem solving skills.
- (i) Other subjects that will be offered as part of the curriculum to allow recruits to focus on areas that may lead to employment or further study after gaining their NCEA Level 2.
- Defence Force Studies - An elective subject in Year 12 for recruits who think they may wish to pursue this career opportunity.
- (j) Engineering
- Working in partnership with Competenz, engineering will be offered as an elective subject in both Year 11 and Year 12. Students may exit after they gain their NCEA Level 2 directly into engineering apprenticeships, other trades or enrol in trade related education.

2.6 The Sponsor will develop the School's curriculum handbook to a standard consistent with best practice guidelines prior to the schools readiness review (refer clause 19.2(e)).

3. Curriculum Delivery

3.1 **The Sponsor will use the following instructional methods to deliver their curriculum:**

Instructional Method/Approach	Description
Direct Instructional Strategy	Routine of a daily review of what is to be taught, the teaching of new material, practice and discussion on that material, teacher feedback and corrections, review of the lesson. This is mixed in with drill and practice sessions, lectures, guest speakers and demonstrations.
Indirect Instructional Strategy	Discussion orientated approach where techniques like problem solving in groups, discussion after a learning event and concept attainment are used.
Interactive Instructional Strategy	Using problem solving examples to give the recruits realistic problems that relate to the curriculum to solve.
Experimental Instruction Strategy	The use of experiments and games in teaching to reinforce the memory of what has been learnt.
Independent Study Strategy	This is where the recruit has to go away from the classroom environment to produce their own work in the form of homework, reports, essays and research.

4. Qualifications

4.1 The following qualifications will be offered by the school:

- (a) NCEA Level 1
- (b) NCEA Level 2
- (c) NCEA Level 3
- (d) University Entrance

	Level 1	Level 2	Level 3
University Entrance	Maori Science	Maori Earth and Space	Maori Earth and Space Science Maths English Physical Education
Compulsory	Maths English Physical Education Recruit Development Course	Maths English Physical Education Recruit Development Course	
Vocational Pathway Electives	Engineering	Engineering Defence Force Studies	Recruit Development Course

5. Curriculum Policy and Curriculum Handbook Documents

The Sponsor will develop curriculum policy documents and the schools curriculum handbook to a standard consistent with best practice guidelines prior to the schools readiness review (refer clause 19.2(e)).

Schedule 3: Additional Student Services Offered

1. Student transport

The Sponsor is required to provide the following transport services for Students:

- (a) None.

Schedule 4: Governance and Teachers

1. Teaching Positions

The number of full time teaching equivalent Teaching Positions for the School is as follows:

Year	Position	No
2014	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Section Leaders – Level 1	4
	Section Leaders – Level 2	3
	Total	10
2015	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	4
	Section Leaders – Level 2	4
	Section Leaders – Level 3	1
	Total	13
2016	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	4
	Section Leaders – Level 2	4
	Section Leaders – Level 3	2
	Total	14
2016	Principal	1

	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	4
	Section Leaders – Level 2	4
	Section Leaders – Level 3	2
	Total	14
2017	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	5
	Section Leaders – Level 2	5
	Section Leaders – Level 3	2
	Total	16
2018	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	5
	Section Leaders – Level 2	5
	Section Leaders – Level 3	3
	Total	17
2019	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	5
	Section Leaders – Level 2	5

	Section Leaders – Level 3	3
	Total	17

2. Number or percentage of Registered Teachers and Holders of Limited Authority to Teach

- (a) The number or percentage of Registered Teachers and Holders of Limited Authority to Teach is as follows:

Year	Registered	Limited Authority to Teach	Non Registered
2014	7	0	3.5
2015	10	0	4
2016	11	0	4
2017	12	0	5
2018	13	0	5

- (b) Registered Teachers will be expected to cover the following subjects in our curriculum.

- (i) Maths
- (ii) English
- (iii) Physical Education
- (iv) Maori
- (v) Science
- (vi) Earth and Space Science

- (c) Non registered teachers will be expected to cover the following subjects in our curriculum.

- (i) Engineering
- (ii) Defence Force Studies
- (iii) Recruit Development Course

3. Percentage of Curriculum time taught by Registered Teachers and Holders of Limited Authority to Teach

The percentage of the Curriculum taught by Registered Teachers and Holders of Limited Authority to Teach is as follows:

Year	% Curriculum time taught by Registered Teachers or holders of Limited Authority to Teach
2014	67%
2015	71%
2016	73%
2017	71%
2018	TBC
Average	71%

Schedule 5: Property

1. Premises

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 stories); and
- (c) which, following the written approval of the Minister or the Minister's delegate under paragraph (i), 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) Participation;
- (ii) Engagement;
- (iii) Retention; and
- (iv) Student Achievement.

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 NCEA	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 NCEA	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

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
		2014	2015	2016	2017	
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
Enrolment variance	Measured through information provided to the Ministry	108	TBD	TBD	TBD	Quarterly

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
		2014	2015	2016	2017	
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 NCEA

1. Secondary (Class Levels 11 to 13)

1.1 Class Levels 11 to 13 (NCEA)

NCEA level/ University Entrance	Performance Standard			
	2014	2015	2016	2017
School leavers with NCEA level 1	80.9%	86.8%	88.4%	90%
School leavers with NCEA level 2	66.9%	77.8%	81.4%	85%
School leavers with NCEA level 3	N/A			
School leavers with University Entrance	N/A			

Annex B: Performance Standards for Student achievement - improvement against NCEA

1. Secondary (Class Levels 11 to 13)

1.1 Class Levels 11 to 13 (NCEA)

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

Annex C: Performance Standards for Student engagement

1. Secondary (Class Levels 11 to 13)

Measure	Performance Standard			
	2014	2015	2016	2017
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 days per year per 100 Students	2.1 days per year per 100 Students	2.1 days per year per 100 Students	To be determined
Suspensions	0.42 days per year per 100 Students	0.42 days per year per 100 Students	0.42 days per year per 100 Students	To be determined
Exclusions	0.15 days per year per 100 Students	0.15 days per year per 100 Students	0.15 days per year per 100 Students	To be determined
Expulsions	0	0	0	To be determined

Schedule 7: Payment

1. Payment

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 1.3 of this Schedule 7;

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

Guaranteed Minimum Roll means the number set out in paragraph (a) of clause 1.2 of this Schedule 7 in respect of the 2014 Year and, in respect of any subsequent Year, the number as determined in accordance with paragraph (b) of clause 1.2 of this Schedule 7; and

Quarterly Operational Payment means a payment calculated by the Ministry on behalf of the Minister in accordance with clause 1.4 of this Schedule 7.

1.2 Guaranteed Minimum Roll

- (a) Where this Schedule 7 refers to the Guaranteed Minimum Roll, this is 108 for the 2014 Year.
- (b) The Guaranteed Minimum Roll for each subsequent Year will be agreed by the Minister and the Sponsor in writing by way of a variation to this Agreement, by the end of the then current Year. If agreement cannot be reached between the parties, the Minister shall make the final decision. The process for reviewing and discussing the Guaranteed Minimum Roll for the following School Year may be initiated by the Minister or the Sponsor following the submission of the third Quarterly Report in the then current Year.
- (c) The Guaranteed Minimum Roll is used for the purpose of calculating certain payments during the first three years of this Agreement.

1.3 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 for the 2014 Year. The Establishment Payment includes a component for set-up and property funding.
- (b) The Establishment Payment is \$1,611,534.00 (exclusive of GST).
- (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.

1.4 Quarterly Operational Payments

- (a) From the 2014 Year, the Sponsor will receive Quarterly Operational Payments from the Minister which will be calculated by the Ministry and will be comprised of sums relating to the various payment types set out in the following table:

Type of payment	Description of payment	Payment adjustment mechanism
Property and insurance funding	25% of the annual cashed up property and insurance funding amount.	Reviewed every three years
Base funding	25% of the annual cashed up base funding amount.	Consumers price index and labour cost index
Centrally funded support	25% of the annual cashed up centrally funded support amount per Student multiplied by the number of Students enrolled at the school at the time of payment calculation.	Reviewed every three years
Per student funding	25% of the annual per student funding amount multiplied by the number of Students enrolled at the school at the time of payment calculation.	Consumers price index and labour cost index

- (b) The Quarterly Operational Payment for the 2014 Year is \$530,951.00 (exclusive of GST).
- (c) The Quarterly Operational Payment for any Year from 2015 onwards will be determined by the Ministry on behalf of the Minister in accordance with the framework described in paragraphs (a) and (e) to (i) of this clause 1.4.
- (d) 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.
- (e) As indicated in the third column of the table in paragraph (a) of this clause 1.4, in respect of the "base funding" and "per student funding" components 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 base funding and per student funding 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%
- (f) As indicated in the third column of the table in paragraph (a) of this clause 1.4, 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.
- (g) For the purpose of any calculations that are relevant to determining a Quarterly Operational Payment where the School's decile rating is a factor in the calculation, the School's decile will be deemed to be three. Any new decile rating that is provided by the Ministry (either following a request for a decile review from the Sponsor, or otherwise) will be deemed to be the new decile rating that applies to the School for the purpose of this clause.
- (h) For the 2014 to 2016 Years, 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 the Guaranteed Minimum Roll that applies as at the payment date or the actual roll submitted through relevant roll returns (whatever number is greater).
- (i) 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 on the 20th Business Day of the month following receipt of an invoice from the Sponsor provided in accordance with clause 2 of this Schedule 7 (Invoicing); and
 - (ii) the remaining 1% of each Quarterly Operational Payment will be retained by the Minister and, following the Minister's receipt and consideration of the Sponsor's Annual Report, will be paid to the Sponsor provided that the Minister is satisfied, in the Minister's sole discretion, that the Sponsor has met all of the Performance Standards for the relevant School Year to which the Annual Report relates by the end of the relevant School Year.

1.5 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.

1.6 Sponsor's bank account

- (a) Any Operational Payment, Variable Operational Payment 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:


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- (b) The Sponsor may change its nominated bank account by giving the Minister written notice of the Sponsor's new bank account.

2. Invoicing

- (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) The Minister shall provide to the Sponsor an instalment notice setting out the amount payable for the next quarter taking into account any adjustments from the previous quarter(s).
- (c) Unless otherwise agreed, Quarterly Operational Payment valid tax invoices are to be submitted by the Sponsor to the Minister in accordance with the following schedule:

Quarter	Instalment notice due	Submit valid tax invoice by date (no later than)	Period Covered
Quarter 1	1 November	30 November	January to March of the following Year
Quarter 2	1 February	28 February	April to June of the then current Year
Quarter 3	1 May	31 May	July to September of the then current Year
Quarter 4	1 August	31 August	October to December of the then current Year

- (d) 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)

- (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 2 of this Schedule 8 below); or
 - (ii) mediation (described further in clause 3 of this Schedule 8 below).

- (k) The IRP should be presided over by an appropriate individual or group that is trained in the relevant field, accredited and registered with 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

- (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

- (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

1. Sponsor's financial year

In accordance with clause 18.5(a) of this Agreement, the end of the Sponsor's financial year is 31 December.

2. Approved sub-contractors

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

- (a) Westpac NZ Limited: Sub-contracted to the Sponsor to provide financial literacy training
- (b) Passrite Driving Academy Limited: Sub-contracted to the Sponsor to deliver transport and logistics industry training.
- (c) Competenz Industry Training Organisation: Sub-contracted to the Sponsor to deliver trades related training to students.

3. Required insurances

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 \$ 2,000,000;
- (e) contents \$ Replacement Value;
- (f) vehicle (if applicable) \$ Replacement Value; and
- (g) building insurance (if applicable) \$ Replacement Value.

4. Education Circulars

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"; and
- (k) 1997/24 "Register of daily attendance of all students".