MINISTRY OF EDUCATION
TE TĀHUHU O TE MĀTAURANGA

Funding Agreement

The Ministry of Education

National Office
33 Bowen Street, Thorndon
PO Box 1666
Wellington 6011

and

The Education Council of Aotearoa New Zealand

Level 12, 80 Boulcott Street,
P O Box 5326,
Wellington 6140

Date 26 October 2016

PARTIES

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

The Education Council of Aotearoa New Zealand (the *Council*)

BACKGROUND

A. The Ministry and the Council have agreed that the Ministry will provide funding to the Council to support it in becoming self-sufficient in carrying out its leadership and other statutory functions for the teaching profession and the education system.

B. The parties wish to record this arrangement in this Funding Agreement.

THE PARTIES AGREE AS FOLLOWS:

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Defined terms**

In this Agreement, unless the context requires otherwise:

Agreement means this Funding Agreement and its Schedules;

Transitional funding means the sum of $21,340,000.00 + GST paid in accordance with clause 4 of this Agreement;

Start Date means the date this Agreement is executed by the parties;

Term means the term of this Agreement specified in clause 2; and

Self sufficient means that the Council will generate non-government revenue to cover all of the costs of performing its statutory functions, [redacted]

1.2 **Interpretation**

In this Agreement, unless the context requires otherwise:

(a) headings are for convenience only and have no legal effect unless otherwise specified;

(b) references to the singular include the plural and vice versa;

(c) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);

(i) references to clauses and Schedules are to the clauses and Schedules in this Agreement;

(ii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(iii) references to a person include:

1.1.c.iii.. an individual, firm, company, corporation or unincorporated body of persons;

1.1.c.iii.. any public, territorial or regional authority;

1.1.c.iii.. any government; and

1.1.c.iii.. any agency of any government or authority;

(iv) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

(v) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;

(vi) wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation"; and

(vii) except as otherwise expressly stated, monetary references are references to New Zealand currency.

2 TERM

2.1 This Agreement starts on the Start Date and continues until 30 June 2019 unless terminated earlier in accordance with this Agreement or at law.

3 PURPOSE OF THE TRANSITIONAL FUNDING

3.1 The parties agree that the purpose of the transitional funding to the Council is to support the Council to become self-sufficient in performing its statutory functions, including raising the status of teaching, leading the teaching profession and setting and maintaining high professional standards for teachers and education leaders.

3.2 The transitional funding is required to enable the Council to fulfil its functions while taking steps to become self-sufficient and financially stable.

4 PAYMENT OF THE TRANSITIONAL FUNDING

4.1 The Ministry will pay the Transitional Funding as set out in the Third Schedule to this Agreement.

5 CONDITIONS

5.1 The Council must:

(a) Undertake the services set out in Schedule 1 to this Agreement.

(b) Meet the performance measures specified in Schedule 2 to this Agreement.

(c) Provide quarterly reports to the Ministry on how it is meeting the performance measures as set out in Schedule 2 and 3 to this Agreement.

5.2 For the avoidance of doubt, nothing in this Agreement obliges the Council to act inconsistently with any of its obligations under the Education Act 1989.

6 MUTUAL OBLIGATIONS

6.1 The parties agree as follows:

(a) to use all reasonable endeavours to ensure that matters under their respective control do not cause any breach or delay in carrying out the services unless it is a significant matter;

(b) to report any significant matter having a direct bearing on the services to the other party within a reasonable time of learning of the significant matter; and

(c) to take all reasonable steps through discussions or negotiations to amend or vary the services, such as the duration of the term and timelines, in the case of a significant matter.

6.2 For the purposes of this section, a "significant matter" includes any event beyond the reasonable control of a party that results in non-performance of the obligations of that party under this Agreement,

7 VARIATION

7.1 The parties may vary this Agreement in writing by agreement between the parties. Such variation shall be read together with, and form part of, this Agreement.

8 TERMINATION

8.1 The Ministry may terminate this Agreement at any time by giving at least 20 business days written notice to the Council.

8.2 This Agreement may be terminated by the Ministry if the Council:

(a) has not complied with clause 5 of this Agreement; or

(b) ceases to continue in business, becomes bankrupt or insolvent, or is in receivership or liquidation; or

(c) is the subject of a conviction for fraud; or

(d) is in debt to the Ministry and is unable or unwilling to repay that debt within the timeframes prescribed by the Ministry; or

(e) is in breach of this Agreement and the breach has not been remedied by the Council within 10 business days of the Ministry notifying the Council of the breach, or the breach is not capable of being remedied; or

(f) repeatedly fails to perform or comply with the terms of this Agreement.

Consequences of termination

8.3 If the Agreement is terminated under clause 8.2:

(a) the Ministry may require the Council to repay all or part of the Transitional Funding to the Ministry. The amount of the Transitional Funding to be repaid will be determined by the Ministry calculated on a pro-rata basis over the remaining period of the Term;

(b) the amount to be repaid shall include any interest earned by the Council on the Transitional Funding;

(c) if the Transitional Funding or part of the Transitional Funding becomes payable to the Ministry by the Council pursuant to this clause, the Council must repay the Transitional Funding (or the amount determined by the Ministry that is repayable) within 28 days of a demand made in writing by the Ministry to the Council.

9 DISPUTES

9.1 If a dispute, disagreement, question, difference or claim arises between the parties in connection to this Agreement or its subject matter (*Dispute*), either party may give the other written notice (*Dispute Notice*) requiring that the Dispute be determined in accordance with the dispute resolution process set out in Schedule 4 to this Agreement.

10 GENERAL

10.1 The parties agree:

(a) that they will perform their obligations under this Agreement as independent contractors to each other.

(b) this Agreement will not create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, unless it expressly states otherwise. Neither party may make or allow anyone to represent that any such relationship exists between the parties.

(c) Neither party will have the authority to act for, or incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.

10.2 The Council shall not sell, transfer or assign any rights or obligations under this Agreement without the Ministry's prior written agreement.

10.3 This Agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

11 CONTACT PERSON

11.1 The parties agree as follows:

a. that the Ministry's contact person will be:

Karl Le Quesne
Ministry of Education
33 Bowen Street, Thorndon, Wellington 6011
PO Box 1666
Telephone: 04 463 8090
Email: Karl.LeQuesne@education.govt.nz

b. that the Council's contact person will be:

Graham Stoop
Education Council of Aotearoa New Zealand
80 Boulcott Street, Wellington 6145
PO Box 5326
Telephone: 470-9055
Email: graham.stoop@educationcouncil.org.nz

SIGNATURES

For **The Sovereign in right of the Government of New Zealand** acting by and through the **Secretary for Education** or her delegate:	
Signature:	K Casey
Name:	Katrina Casey
Position:	Acting Secretary of Education
Date:	17/11/2016

Witnessed by:	
Name:	Sarah Barrell
Date:	17/11/16

For **The Education Council of Aotearoa New Zealand:**	
Signature:	B Alaalatoa
Name:	Barbara Alaalatoa
Position:	Chair
Date:	26/10/16

Witnessed by:	Smacesmith
Name:	Sally Macesmith
Date:	26/10/16

SCHEDULE 1

Summary of services

Education Council of Aotearoa New Zealand

1. Transitional funding has been provided to enable the Council to:

   - Develop, consult on and implement a plan to become self-sufficient in performing its statutory functions, [redacted] by 30 June 2019. For the purposes of this agreement, self-sufficient means that the Council will generate non-government revenue to cover all of the costs of performing its statutory functions, [redacted]

   - Effectively deliver its statutory functions during the 3 financial years from 1 July 2016 to 30 June 2019 (during the period in which the financial sustainability plan is being developed and implemented). These statutory functions include effective professional leadership, strengthening teachers' professional capability, support and administration of the education profession across the early childhood and school sectors, and support for activities to raise the status of the teaching profession.

Services to be delivered through this MOU

2. The Council will:

   a. Engage and work with an experienced financial advisor, mutually agreed between the Council and the Ministry, to develop, by 30 April 2017, a robust business plan to deliver the Council's functions in a financially sustainable way.

   b. The business plan will set out the costs of each function set out in the Education Act 1989, and how the Council will become self-sufficient in meeting each of those costs by 1 July 2019.

   c. Develop and implement a process to generate revenue sources such as fees and other charges to recover the costs set out in the business plan, that meets the requirements of the Education Act 1989, with consultation on fees in 2017 and promulgation of revenue sources such as fees prior to May 2018.

   d. Develop and implement the processes, staff structure, internal policies and internal resources to deliver the roles and functions set out in the Education Act 1989 by 30 November 2018.

   e. Deliver the roles and functions set out in the Education Act 1989 to a high standard that meets the expectations of teachers and the Minister of Education over the period from the date this agreement is signed until 30 June 2019.

Duration

3. Transitional funding is provided for the period until 30 June 2019 when the Council will become self-sufficient.

SCHEDULE 2

PERFORMANCE MEASURES

The Council will meet the following performance measures, which it will report on through its quarterly reports to the Ministry:

Measure	Deadline
(a) agreement with the Ministry on a mutually acceptable financial advisor, and the terms on which that person will be engaged by the Council;	by 30 November 2016
(b) completion of a draft business plan for achieving self-sufficiency and financial sustainability, approved by the financial advisor;	by 28 February 2017
(c) completion of a final business plan to achieve self-sufficiency and financial sustainability from 30 June 2019, including providing the Ministry with a detailed communications and implementation plan on the processes required for implementation;	by 28 April 2017
(d) undertake any required processes on the proposed revenue sources, including sector and any other consultation required by the Education Act and the Regulations Review Committee Guidelines for raising and/or introducing any new fees;	by 30 June 2017
(e) confirmation of any proposed revenue sources (including fees) that are sufficient to achieve self-sufficiency and financial sustainability;	By 1 November 2017
(f) promulgate any revenue sources, including fees, decided on by the Council following any required consultation;	By 1 December 2017

(g) Gazetting of new revenue sources, including fees: • for fees pursuant to section 383(1)(a – g), to commence on 2 July 2018 • for fees pursuant to sections 364 and 372, to commence on 1 July 2019	For fees pursuant to section 383(1)(a – g) by May 2018 For fees pursuant to sections 364 and 372, by February 2019
(h) Develop and implement the processes, staff structure, internal policies and internal resources to deliver the roles and functions set out in the Education Act 1989;	By 30 November 2018
(i) Six-monthly reporting, throughout the period of this Agreement, on the Council's performance on: i. The development and implementation of the processes, staff structure, internal policies and internal resources to deliver the roles and functions set out in the Education Act 1989; ii. Delivering the roles and functions that it is responsible for under the Education Act 1989: 1. The issuing of practising certificates and limited authorities to teach within a reasonable timeframe; 2. The maintenance of the register of teachers, including processing times for adding and removing people from the register; 3. The progress of work to implement online teacher registration and certification; 4. The timeliness and outcomes of complaints regarding the conduct and competence of teachers; 5. The progress of the Centre of Leadership Expertise in building the quality of leadership in the education profession; 6. The results of the Council's work to lift the quality of practising certificate portfolios and of teacher appraisal; 7. Progress on the development of differentiated standards for different roles in the teaching profession; and 8. Progress on strengthening the quality of initial teacher education.	Ongoing (dates to be set from date agreement signed)

SCHEDULE 3

PAYMENTS

The total funding contribution is $21,340,000.00 + GST.

The Ministry, at its discretion, can provide an advanced payment from Payment One prior to 1 February 2017, to cover all or part of the salary costs of a Chief Financial Officer employed by the Council to, inter alia, work on the business plan with the Financial Adviser referenced in Schedule 2(a).

The Council must meet the performance measures described in the Second Schedule of this MoU.

The Council will provide quarterly reports ahead of payment dates as scheduled below, beginning on 1 December 2016. The Council will provide a final report on 1 May 2019.

Payment 1: **1 February 2017** **$4,934,000**

Based on the Council's progress in engaging a mutually acceptable financial adviser and developing a high quality, detailed business plan to meet the Council's functions under the Education Act 1989, including scope, timing and implementation steps. Delivery of first six-monthly report (Schedule 2(i))

Payment 2: **1 July 2017** **$4,000,000**

Based on the Council's provision of a business plan that sets out the costs of each function set out in the Education Act 1989, and how the Council will become self-sufficient in meeting each of those costs by 1 July 2019. Also based on the Council having informed the sector of its intention to propose raising fees in two parts and associated timeframes.

Payment 3: **1 November 2017** **$2,946,000**

Based on completion of a final business plan by 28 April 2017, to achieve financial sustainability from 30 June 2019. Also the provision of a plan to recover the current and forecast costs incurred by the Council in performing each of the powers outlined in s383(1)(a–g) of the Education Act 1989, the completion of any required processes on the proposed revenue source, including sector and other consultation required by the Education Act and the Regulations Review Committee Guidelines. Also based on confirmation that revenue sources including fees and other charges prescribed to ensure financial sustainability will be promulgated by the Council. Delivery of second six-monthly report (Schedule 2(i)).

Payment 4: **1 July 2018** **$4,458,000**

Based on Gazetting of any new fees prior to May 2018. Delivery of third six-monthly report (Schedule 2(i))

Payment 5: **1 February 2019** **$5,000,000**

Based on a confirmed strategic plan and associated budget for maintaining ongoing sustainability. Delivery of fourth and fifth six-monthly reports (Schedule 2(i))

SCHEDULE 4

DISPUTE RESOLUTION PROCESS

1 **Negotiation**

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

2 **Mediation**

The Dispute may be referred to mediation by one party giving written notice to the other (*Mediation Notice*) if:

(a) the parties agree; and

(b) the Dispute is not resolved by negotiation within 10 business days of receipt of the Dispute Notice.

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

3 **Arbitration**

Either party may issue a notice (*Arbitration Notice*) referring the Dispute to arbitration if the Dispute:

(a) has not been resolved within a period of 10 business days (or such longer period as the parties may agree) in accordance with paragraph 1 of this Schedule; or

(b) in accordance paragraph 2 of this Schedule.

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

(c) the place of arbitration will be Wellington, New Zealand;

(d) the tribunal will consist of a sole arbitrator, to be appointed by agreement of the parties, but if the parties fail to reach such agreement within 10 business days of the date of the Arbitration Notice, then the arbitrator will be appointed by the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc;

(e) the arbitration will be conducted as quickly as possible and, as far as is practicable, the arbitrator will issue his or her award within four months of his or her appointment. When determining the procedure and scheduling of the arbitration, the arbitrator will take this time period into consideration;

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

4 **Interlocutory relief**

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

5 **Continuity**

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

6 **Without prejudice**

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