



**Charter School
Agency**

CHARTER SCHOOL AGREEMENT: IN CONFIDENCE

Subject to finalisation with the relevant Sponsor

Charter School Agreement

relating to

**[Insert Name of Sponsor] for [Insert Name of School]
Charter School | Kura Hourua**



Guidance Note: To assist with your review of this Charter School Agreement refer to the 'Guide to this Agreement' (Section 2.1) and Guidance Notes throughout.

IN CONFIDENCE

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This **Agreement** is made on the Agreement Date

between (1) **Charter School Agency, acting in the name and on behalf of the Crown (Agency)**

and (2) **[Insert Sponsor name] (Sponsor)**

Introduction

- A. The Charter School model has been established under the Education and Training Amendment Act 2024 (**ETA**). This Agreement is a Charter School Contract for the purpose of the ETA.
- B. The Charter School Authorisation Board was established under the ETA. The Authorisation Board approves new Charter Schools | Kura Hourua (**Charter Schools**) and applies interventions against Sponsors that are not complying with the applicable Charter School Contract or Applicable Law.
- C. The Agency is a departmental agency hosted by the Ministry of Education. A key function of the Agency is implementing and operating the new Charter School model, including negotiating and managing Charter School Contracts, delivering funding and supporting the Authorisation Board. The Agency is authorised under the ETA to enter into this Agreement with the Sponsor.
- D. The Sponsor is the governing body of the Charter School. The Sponsor has been approved by the Authorisation Board to be a Sponsor and operate the Charter School as a Charter School.
- E. This Charter School Agreement records the terms and conditions on which the Sponsor will establish, operate and manage the Charter School.
- F. Following execution of this Agreement, the Minister will, by notification in the *Gazette*, notify the establishment of the Charter School as a Charter School.

Agreement

Each party agrees to the terms and conditions set out or referred to in this Agreement, including the Specific Terms, General Terms, Schedules, and Performance Plan.

Executed as an agreement.

SIGNED by Charter School Agency,
acting for and on behalf of the Crown

SIGNED by [Sponsor name]

Authorised Signatory

Authorised Signatory

[Name], [Title]

[Name], [Title]

Print Name and Position

Print Name and Position

Date: [Date]

Date: [Date]

SECTION 1: SPECIFIC TERMS

Guidance Note:



This section sets out the Specific Terms that are applicable to the Charter School.



These Specific Terms may be updated over the Term of this Agreement, to reflect changes to the Charter School. The process for updates is set out in clause 9. Depending on the Specific Term, this may require notice from one party to the other party and/or approval of the Agency.

Template Guidance Note: All specific terms to be reviewed and updated for each Charter School. All "Template Guidance Notes" (in red boxes) must be removed in final version.

Part A: Details applicable to all Schools	
1. Charter School and Sponsor details	Charter School Name: [name] Charter School Address: [address] Charter School Number: [number / tbc] Sponsor NZBN (or other applicable number for Sponsor legal entity): [numbers]
2. Description of Charter School	Primary ☐ Secondary ☐ Composite ☐ Single-Sex (Female) ☐ Single-Sex (Male) ☐ Co-educational ☐ Year levels: [levels] Details of year levels to be phased in over a specified period (if applicable): [Insert]
3. School Year, Term Dates and School Hours	☐ January – December ☐ Other (specify) [Insert] Term Dates (specify) – Term 1: [Insert] Term 2: [Insert] Term 3: [Insert] Term 4: [Insert] School Hours (specify) [Insert]
4. Establishment Roll	[Insert or Not Applicable] <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> Template Guidance Note: The establishment roll must be based on a realistic, evidence-based forecast of the likely roll in the 5th term of operation. </div>
5. Physical Capacity of School Premises	[Insert] <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> Template Guidance Note: Refer to the Agency's website for further details on how Physical Capacity should be determined. </div>

6. Requirements for teaching positions	Certificated Teachers and LATs													
	Minimum percentage or number of Certificated Teachers	[Insert 75% (or higher) or equivalent number] <div style="border: 2px solid red; padding: 5px; color: red;"> Template Guidance Note: The minimum percentage of Certificated Teachers for all Charter Schools is 75%. </div>												
7. Curriculum and Mode of delivery <i>Clause 4.4</i>	Curriculum (specify): [Insert] Mode of delivery (tick one or both, as applicable): ☐ In-person ☐ Distance learning If the Charter School delivers any of the curriculum by distance learning, provide further detail (including type and scope of distance learning). Also refer to Specific Terms relating to distance learning in Part B below. Specify: [Insert]													
8. Qualifications	<div style="border: 2px solid red; padding: 5px; color: red;"> Template Guidance Note: If Charter School is not a secondary or composite School, replace this section with "Not Applicable". </div> ☐ National Certificate of Educational Achievement (NCEA) ☐ Cambridge International Examinations ☐ International Baccalaureate (IB) ☐ Other (specify) _____													
Part B: Key details and policies														
9. Key Persons – Sponsor <i>Clause 11.3</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Role</th> <th style="width: 50%; text-align: center;">Name</th> </tr> </thead> <tbody> <tr> <td>Chief Executive</td> <td style="text-align: center;">[Insert]</td> </tr> <tr> <td>Person Responsible for Teaching and Learning</td> <td style="text-align: center;">[Insert]</td> </tr> <tr> <td>Relationship Manager</td> <td style="text-align: center;">[Insert]</td> </tr> <tr> <td>Contract Manager</td> <td style="text-align: center;">[Insert]</td> </tr> <tr> <td>Other Key Persons</td> <td style="text-align: center;">[Insert]</td> </tr> </tbody> </table>		Role	Name	Chief Executive	[Insert]	Person Responsible for Teaching and Learning	[Insert]	Relationship Manager	[Insert]	Contract Manager	[Insert]	Other Key Persons	[Insert]
	Role	Name												
	Chief Executive	[Insert]												
	Person Responsible for Teaching and Learning	[Insert]												
	Relationship Manager	[Insert]												
	Contract Manager	[Insert]												
	Other Key Persons	[Insert]												
<div style="border: 2px solid red; padding: 5px; color: red;"> Template Guidance Note: "Other Key Persons" includes any person that has a material role in relation to the management or operation of the Charter School and isn't otherwise specified in this section. This should include any Key Person identified by the Authorisation Board. </div>														

10. Relationship Manager – Agency	<table border="1"> <tr> <th data-bbox="581 170 992 233">Role</th><th data-bbox="1000 170 1421 233">Name</th></tr> <tr> <td data-bbox="581 243 992 306">[Title]</td><td data-bbox="1000 243 1421 306">[Name]</td></tr> </table>	Role	Name	[Title]	[Name]												
Role	Name																
[Title]	[Name]																
11. Details for Notices	<table border="1"> <tr> <th data-bbox="581 363 776 426"></th><th data-bbox="784 363 1101 426">Charter School</th><th data-bbox="1109 363 1421 426">Agency</th></tr> <tr> <td data-bbox="581 436 776 489">Contact Name</td><td data-bbox="784 436 1101 489">[Insert]</td><td data-bbox="1109 436 1421 489">[Insert]</td></tr> <tr> <td data-bbox="581 499 776 552">Position</td><td data-bbox="784 499 1101 552">[Insert]</td><td data-bbox="1109 499 1421 552">[Insert]</td></tr> <tr> <td data-bbox="581 562 776 615">Email</td><td data-bbox="784 562 1101 615">[Insert]</td><td data-bbox="1109 562 1421 615">[Insert]</td></tr> </table>		Charter School	Agency	Contact Name	[Insert]	[Insert]	Position	[Insert]	[Insert]	Email	[Insert]	[Insert]				
	Charter School	Agency															
Contact Name	[Insert]	[Insert]															
Position	[Insert]	[Insert]															
Email	[Insert]	[Insert]															
12. Insurance <i>Clause 0</i>	<div style="border: 2px solid red; padding: 5px; margin-bottom: 10px;"> <p>Template Guidance Note: Table below to be completed following discussion with each Sponsor. Alternatively, a Sponsor has the option of joining the Ministry's contents and liability insurance scheme, subject to acceptance by the re-insurer. If they have joined this scheme, delete the table in this box and the Sponsor must tick the confirmation at the end of this box.</p> </div> <table border="1"> <tr> <th data-bbox="581 884 1036 947">Cover</th><th data-bbox="1044 884 1421 947">Minimum level</th></tr> <tr> <td data-bbox="581 957 1036 1010">Professional indemnity</td><td data-bbox="1044 957 1421 1010">[\$2,000,000]</td></tr> <tr> <td data-bbox="581 1020 1036 1136">Professional indemnity for the person responsible for teaching and learning at the Charter School</td><td data-bbox="1044 1020 1421 1136">[\$1,000,000]</td></tr> <tr> <td data-bbox="581 1146 1036 1199">Professional liability</td><td data-bbox="1044 1146 1421 1199">[\$2,000,000]</td></tr> <tr> <td data-bbox="581 1209 1036 1262">Public liability</td><td data-bbox="1044 1209 1421 1262">[\$10,000,000]</td></tr> <tr> <td data-bbox="581 1272 1036 1325">Contents</td><td data-bbox="1044 1272 1421 1325">[\$Replacement Value]</td></tr> <tr> <td data-bbox="581 1335 1036 1388">Vehicle (if applicable)</td><td data-bbox="1044 1335 1421 1388">[\$Replacement Value]</td></tr> <tr> <td data-bbox="581 1398 1036 1451">Building Insurance</td><td data-bbox="1044 1398 1421 1451">[\$Replacement Value]</td></tr> </table> <p>☐ Sponsor has confirmed that it will participate in the Ministry's risk management scheme (and has obtained the Ministry's consent to do so), in accordance with clause 0.</p>	Cover	Minimum level	Professional indemnity	[\$2,000,000]	Professional indemnity for the person responsible for teaching and learning at the Charter School	[\$1,000,000]	Professional liability	[\$2,000,000]	Public liability	[\$10,000,000]	Contents	[\$Replacement Value]	Vehicle (if applicable)	[\$Replacement Value]	Building Insurance	[\$Replacement Value]
Cover	Minimum level																
Professional indemnity	[\$2,000,000]																
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Public liability	[\$10,000,000]																
Contents	[\$Replacement Value]																
Vehicle (if applicable)	[\$Replacement Value]																
Building Insurance	[\$Replacement Value]																
13. Charter School Policies	<p>Sponsor confirms that the Charter School has adopted, and agrees that it will ensure that the Charter School will maintain and comply with, the following policies:</p> <ul style="list-style-type: none"> ✓ Complaints Policy that incorporates a procedure for the independent review of complaints ✓ Internal Disputes Management Policy ✓ Engagement with Charter School Community Policy 																

Part C: Key dates	
14. Establishment Completion Declaration deadline <i>Clause 3.2</i> or Conversion Declaration deadline <i>Schedule 3</i>	<div style="border: 2px solid red; padding: 5px;"> Template Guidance Note: Add specific date, or number of days before the Commencement Date, on which the Sponsor must confirm the Charter School is ready for opening or conversion, by providing to the Agency: (i) the Establishment Completion Declaration (referred to in clause 3.2); or (ii) the Conversion Declaration (referred to in Schedule 3, if the Charter School is a Converting School) </div> Specify Date: [Insert]
15. Commencement Date	<div style="border: 2px solid red; padding: 5px;"> Template Guidance Note: The Commencement Date of the Charter School is the date on which the Sponsor may open the Charter School for Students to participate in tuition and/or other activities. It can be updated in accordance with clause 9. If the Charter School is a Converting School, insert "Refer to Conversion Date in Special Term #17" </div> Specify: [Insert]
16. Frequency of Student reports	A Responsible Person must be informed of the progress of their children, and any barriers to progress, at no less than the following intervals: Specify: [Insert] <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> Template Guidance Note: The ETA requires the Sponsor to inform parents and other Responsible Persons of the progress of their children at school, and any barriers to progress, at intervals specified in the Charter School Contract. Frequency for each School will be agreed with the Agency e.g., Twice per School Year. </div>
Part D: Details applicable to some Schools	
17. Is the Charter School a Converting School? <i>Schedule 3</i>	Yes ☐ No ☐ Conversion Date: [Insert] Name of Converting School: [Insert] Other Details: [Insert] <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> Template Guidance Note: In "Other Details" insert any additional details (if applicable) e.g., "The Charter School was a State [Integrated] School" or if property of a Converting School is held in a Trust. </div>
18. Does the Converting School have any Inter-School Arrangements? <i>Schedule 3</i>	<div style="border: 2px solid red; padding: 5px;"> Template Guidance Note: If the Charter School is not a Converting School, replace this section with "Not Applicable". </div> If the Charter School is a Converting School, did the board have an arrangement with any other school board regarding the sharing of education services, employees or students? Yes ☐ No ☐ Relevant Schools (specify): [Insert] <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> Template Guidance Note: Refer to the ETA Guidance Note in Schedule 3 regarding the continuation of Inter-School Arrangements for the sharing of education services, employees or students. </div>

<p>19. School lease and other arrangements</p>	<p><i>[Tick or insert "N/A"]</i></p> <p>Charter School that is not a Converting School</p> <p>☐ Private landowner: If the Sponsor has entered into, or will (prior to the Commencement Date) enter into, a lease, licence or other occupation arrangement with a private landowner in respect of the Charter School, the Sponsor confirms that that document contains a permitted transfer clause which enables the Sponsor to assign the lease, licence or other occupation arrangement for the Charter School at any time to either the Crown or to a newly appointed or replacement sponsor (the entity to be determined at the Agency's discretion) without the consent of the landlord/licensor/counterparty.</p> <p>☐ Crown property: If the Charter School will be located on, and/or comprise, any Ministry Property, the Sponsor confirms that it has entered into, or will (prior to the Commencement Date or other date agreed with the Agency) enter into, a School Lease or other property agreement(s) with the Crown in respect of the Charter School.</p> <p>Charter School that is a Converting School</p> <p>☐ Crown property: If the Converted School will be located on, and/or comprise, any Ministry Property, the Sponsor confirms that it has complied with its obligations under Schedule 3 relating to the School Lease and/or other property agreement(s).</p> <p>☐ Private landowner: If the Sponsor has entered into, or will (prior to the Commencement Date) enter into, a lease, licence or other occupation arrangement with a private landowner in respect of any part of the Converted School, the Sponsor confirms that that document contains a permitted transfer clause which enables the Sponsor to assign the lease, licence or other occupation arrangement for the Charter School at any time to either the Crown or to a newly appointed or replacement sponsor (the entity to be determined at the Agency's discretion) without the consent of the landlord/licensor/counterparty.</p>
<p>20. Is the Charter School intended to be operated for profit?</p> <p><i>Clause 4.2(d)</i></p>	<p>Yes ☐ No ☐</p>
<p>21. Do Approval Conditions apply?</p>	<p>Yes ☐ No ☐</p> <p>Specify Approval Conditions: [Insert]</p> <p>Sponsor must satisfy and comply with any Approval Conditions set out in this section (as updated by the Authorisation Board from time to time in accordance with the ETA).</p> <div style="border: 2px solid red; padding: 10px; margin-top: 10px;"> <p>Template Guidance Note: Insert any Approval Condition specified by the Authorisation Board and identify any Approval Condition that is a pre-condition to the Charter School opening. If a Converting School include:</p> <p>Under Section 212K of the Education and Training Act 2020, if the school to which an approval relates is a converting school, the following conditions apply to the approval:</p> <ul style="list-style-type: none"> (a) all students currently enrolled at the State school who wish to attend the charter school must be allowed to do so: (b) if the State school is a designated character school, a Kura Kaupapa Māori, or a State integrated school, the character of the school must be maintained: (c) if the State school is an ordinary State school, it must not provide education with a special character or that is different from the character of ordinary State schools. </div>

22. International students	<p>Sponsor must ensure that the enrolment of international students at the Charter School does not exceed the following upper limit on the number of international students that may be enrolled (if applicable):</p> <p>Specify (or insert Not Applicable): [Insert]</p>
23. Character of Charter School <i>Clause 4.3</i>	<p>Does the Charter School have a special or designated character including any religious, philosophical, or other distinguishing characteristics?</p> <p>Yes ☐ No ☐ Specify: [Insert]</p> <hr/> <p>Is religious instruction and observance permitted?</p> <p>Yes ☐ No ☐</p>
24. Can Sponsor require a Responsible Person to pay a property maintenance fee? <i>Clause 4.5(b)</i>	<p>Yes ☐ No ☐</p> <p>The following rate and conditions apply: [Insert]</p> <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> <p>Template Guidance Note: A Sponsor can charge a property maintenance fee (in accordance with the ETA) if the Charter School is a Converting State Integrated School which, immediately before converting, had an integration agreement which allowed the proprietor to charge attendance dues. If applicable, this section must specify the rate and any conditions for charging that fee. Revenue received from the property maintenance fee must solely be used in accordance with the requirements set out in section 212W(4) and (5) of the ETA.</p> </div>
25. Who is responsible for providing transport assistance to eligible Students (if applicable)?	<p>Sponsor ☐ Ministry ☐</p> <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> <p>Template Guidance Note: Sponsor can elect whether the Ministry or the Sponsor holds responsibility for providing transport assistance to eligible Students (and associated funding). If the Sponsor elects to hold responsibility for providing transport, engagement with the Ministry will be required to document this arrangement.</p> </div>
26. Will Sponsor operate Hostel accommodation?	<p>Yes ☐ No ☐</p>
27. Will the Charter School offer distance learning? <i>Clause 4.4</i>	<p>Yes ☐ No ☐</p> <p>If yes, will distance learning be the main mode of curriculum delivery?</p> <p>Yes ☐ No ☐</p>

28. Distance Learning Practices*Clause 4.4*

Template Guidance Note: If the Charter School offers distance learning, the Sponsor must ensure that the matters in the table below are addressed to the satisfaction of the Agency. Sponsor must tick each box and specify additional information provided to the Agency by the Sponsor on relevant practices adopted by the Sponsor (e.g., a distance learning policy). If the Charter School does not offer distance learning, replace the table below with "Not Applicable".

Distance Learning Practices	
If the Charter School offers distance learning, Sponsor confirms that it has provided details of the following Distance Learning Practices to the Agency (to the satisfaction of the Agency):	
How Charter School will measure and ensure student engagement and attendance	☐
How Charter School will manage pastoral care including the online safety of students	☐
How Charter School will address adequate supervision arrangements for students aged under 16 years	☐
Further detail is set out in (specify): _____	

Part E: Special Terms

Template Guidance Note: Variations or additional terms (if any) must be included in this section as Special Terms (rather than amending the General Terms or Schedules).

If there are no variations, delete this Part E.

If the Sponsor (or any Related Sponsor) has entered into any other Charter School Agreements insert: *"Related Charter Schools: The Sponsor (or a Related Sponsor) is also the Sponsor of the following Charter School(s): [Insert]"*.

[Until NZSPA established include:

1. New Zealand School Property Agency (clause 1.4)

- (a) NZSPA is the Crown agent to be established (expected to be by no later than 1 November 2026), to manage certain school property in New Zealand.
- (b) The Sponsor acknowledges that:
 - (i) clause 1.4 and this Special Term reflect the fact that, as at the date of this Agreement, NZSPA has not been established; and
 - (ii) all or some of the roles of the Ministry under and in connection with this Agreement may be within the scope of NZSPA's role, following NZSPA's establishment.
- (c) Accordingly:
 - (i) the Charter School Agency may amend this Agreement (including clause 1.4 and this Special Term), on notice to the Sponsor, to reflect the establishment of NZSPA;
 - (ii) the Charter School Agency, Ministry or NZSPA may notify the Sponsor from time to time that any reference to the Ministry in this Agreement is deemed to be a reference to NZSPA and/or the Ministry; and/or
 - (iii) NZSPA may exercise any rights of the Ministry under this Agreement, on behalf of the Ministry.]

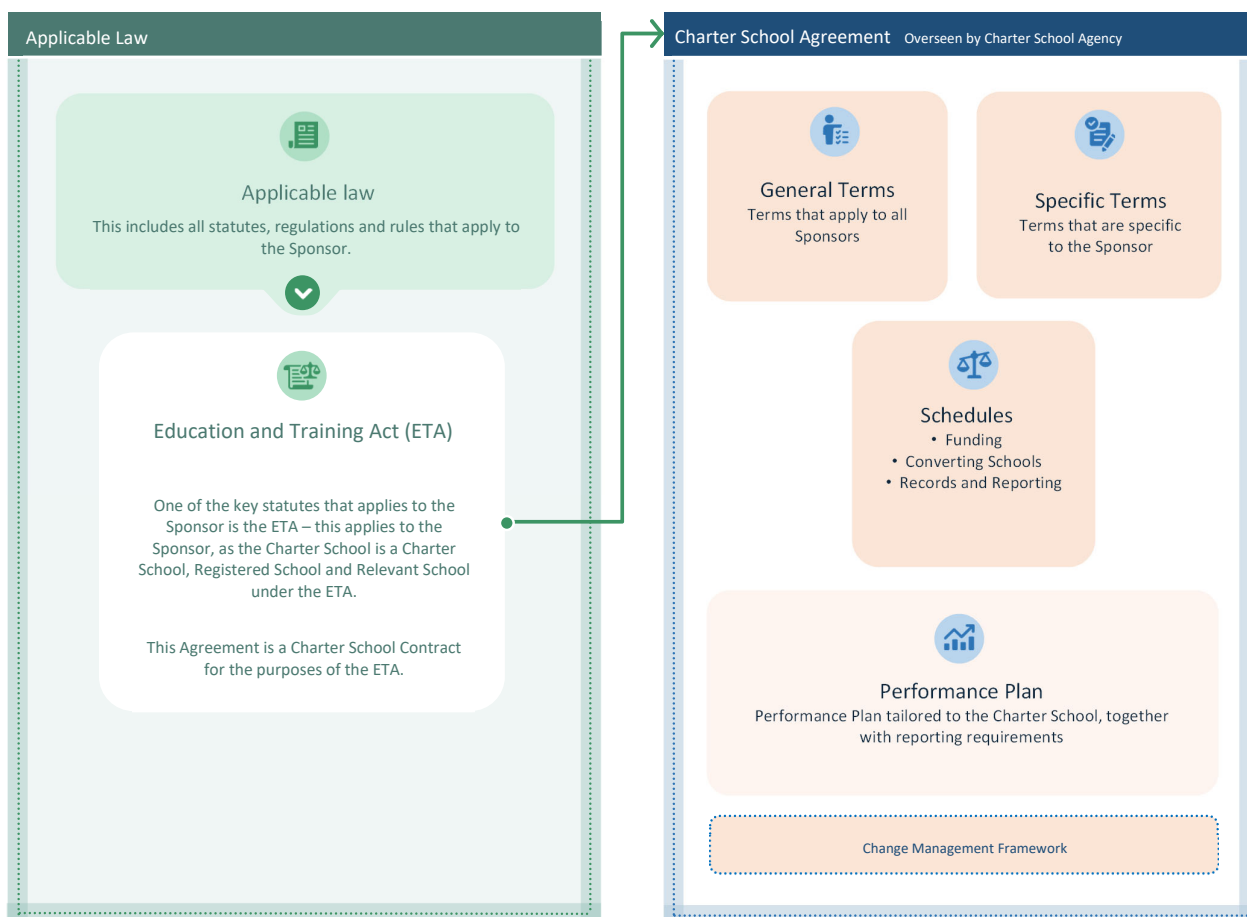
SECTION 2: GENERAL TERMS

Part 1: Overview and establishment

1. Guide to this Agreement

1.1 Agreement diagram

The diagram set out in this clause 1.1 provides an outline of this Agreement and summarises the application of this Agreement and Applicable Law to the Charter School. It has been included for convenience only and does not affect the interpretation of this Agreement.



1.2 Application of Applicable Law

- (a) This Agreement is a Charter School Contract for the purpose of the ETA. It does not seek to repeat the requirements of Applicable Law applicable to the Charter School, as summarised in the Agreement diagram above. The Sponsor is solely responsible for ensuring that it has read and understood this Agreement, and its obligations under Applicable Law.
- (b) Nothing in this Agreement overrides any Applicable Law, including the functions and the exercise of rights, powers and discretions of Relevant Persons. If there is any inconsistency between this Agreement and the mandatory requirements of Applicable Law, the Applicable Law (as applicable) will apply to the extent of the inconsistency.

- (c) Except as expressly set out in this Agreement, no right or obligation of a party under the ETA will give rise to a separate contractual right or obligation under this Agreement.

1.3 Interpretation

- (a) Unless the context otherwise requires, the definitions and rules of construction set out or referred to in Schedule 1 apply to this Agreement.
- (b) This Agreement comprises the documents set out in this clause 1.3(b). The following order of precedence will apply (in descending order) in the event of a conflict or inconsistency between any of the documents forming part of this Agreement:
 - (i) Specific Terms;
 - (ii) General Terms;
 - (iii) Performance Plan;
 - (iv) Schedules; and

except to the extent that the Performance Plan or a Schedule expressly states that it overrides any other provision of this Agreement.

- (c) In this Agreement, "Guidance Notes" and references to sections of the ETA reflect the ETA at the date of this Agreement. They are included for convenience only, do not affect the interpretation of this Agreement and are without prejudice to clause 1.2.

1.4 New Zealand School Property Agency

NZSPA is the Crown agent that has been or will be established to manage certain school property in New Zealand. Notwithstanding clause 9.4, the Charter School Agency may amend this Agreement, on notice to the Sponsor, to reflect the establishment of NZSPA (including to reflect the extent to which NZSPA will exercise the rights of the Ministry under this Agreement).

2. Term

2.1 Initial Term

- (a) This Agreement will be effective from the Agreement Date and continue until the expiry of ten years from the Commencement Date, unless terminated earlier in accordance with this Agreement or the ETA (**Initial Term**).
- (b) The Sponsor may open the Charter School, for Students to participate in tuition and/or any other activities offered by the Charter School, on and from the Commencement Date, subject to the Sponsor's satisfaction of any Conditions that are expressly identified as pre-conditions to opening the Charter School.

2.2 Renewal terms

- (a) The Agency may extend the Term, for two renewal terms of up to ten years each, from the expiry of the Initial Term and the first renewal term (if applicable), on written notice to the Sponsor.
- (b) If the Agency does not extend the Term in accordance with clause 2.2(a), this Agreement will automatically expire at the end of the Initial Term or then-current renewal term (as applicable).

3. Establishment of Charter School

3.1 Establishment Plan

Subject to clause 3.3, upon request from the Agency, the Sponsor must:

- (a) prepare an establishment plan that sets out information requested by the Agency relating to the establishment of the Charter School (**Establishment Plan**) (for example, key activities with target completion dates and milestones to be satisfied before opening the Charter School);
- (b) provide a copy of the Establishment Plan to the Agency;
- (c) submit an Establishment Plan progress report to the Agency at times and/or intervals requested by the Agency; and
- (d) provide the Agency with any other information reasonably requested by the Agency relating to the Sponsor's progress against its Establishment Plan and relevant steps for establishment of the Charter School.

3.2 Establishment Completion Declaration

Subject to clause 3.3, the Sponsor must sign and deliver an Establishment Completion Declaration to the Agency, in the form provided to the Sponsor by the Agency, (**Establishment Completion Declaration**) by the Establishment Completion Declaration deadline specified in the Specific Terms (or a date otherwise approved by the Agency).

3.3 Converting Schools

If the Charter School is a Converting School, clauses 3.1 and 3.2 do not apply and the Sponsor must instead complete a Conversion Plan and Conversion Declaration in accordance with Schedule 3.

4. Operation of Charter School

4.1 Compliance with Applicable Law

The Sponsor undertakes that it will operate the Charter School:

- (a) in accordance with this Agreement and Applicable Law; and
- (b) in a manner that does not cause the Agency or Authorisation Board to breach any Applicable Law.

ETA Guidance Note: Each Sponsor must operate its Charter School in accordance with Applicable Law, including the ETA and relevant regulations and rules. For example, each Sponsor must:



provide a **safe physical and emotional environment** for Students and staff (section 212O(c));



comply with your obligations under the Children's Act 2014;



deliver a **curriculum** that meets tuition standards that are equivalent to or better than those at State Schools of the same year levels (section 212O(f));



govern the Charter School so as to ensure that every Student is able to attain the highest possible standard of **educational achievement** (section 212O(a));



enrol any **Domestic Student** entitled to free education under the ETA. Limited **exceptions** and priority rules apply. For example, a Sponsor may decline to enrol a Domestic Student if their enrolment would exceed your Physical Capacity (section 212U).

4.2 General obligations

The Sponsor undertakes that it will:

- (a) operate the Charter School with appropriately trained, knowledgeable and experienced Personnel;
- (b) operate (and ensure that its Personnel operate) the Charter School:
 - (i) to a standard, and in a manner, that supports the objectives and relationship principles of Charter Schools as set out on the Agency's website; and
 - (ii) with due care, skill and diligence, and in a professional manner;
- (c) adopt financial management practices and procedures for the Charter School that are consistent with prudent business and accounting practice, including ensuring that:
 - (i) all financial information provides a full record of the nature, source and application of funds; and
 - (ii) no person with any prior conviction for an offence involving dishonesty will be permitted to handle money on behalf of the Charter School or access bank accounts;
- (d) not operate the Charter School for profit unless the Specific Terms specify that the Sponsor intends to do so; and
- (e) ensure that it does not (and its Personnel do not) engage in any activity, or permit any circumstances to occur, that could reasonably be expected to result in adverse publicity or reputational damage for the Agency, Ministry or Charter School or be contrary to the public interest.



Guidance Note - Donations: The application of the Ministry's donations scheme to Charter Schools is addressed in Schedule 2 (Funding). Subject to Schedule 2, there are no restrictions on Charter Schools receiving donations.

4.3 Special or designated character

The Sponsor must ensure that the Charter School:

- (a) maintains any special or designated character specified in the Specific Terms; and
- (b) only provides religious instruction and observance as part of the general school programme if permitted in to do so in the Specific Terms.

ETA Guidance Note:



If a Charter School is a [Converting School from an ordinary State school](#), it must not provide education with a special character or that is different from the character of an ordinary State school (section 212K(1)(c)). In that context, the Specific Terms will not specify a special character or a character that is different from the character of an ordinary State school.



If the Specific Terms permit the Charter School to provide [religious instruction and observance](#), the relevant provisions of the ETA will also apply.



If the Specific Terms do not permit the Charter School to provide religious instruction and observance, this does not limit the Charter School providing education about religious beliefs as part of the [general school programme](#).

4.4 Curriculum and mode of delivery

- (a) The Sponsor must ensure that the Charter School delivers the curriculum specified in the Specific Terms in accordance with the mode of delivery specified in the Specific Terms.
- (b) If the Charter School offers distance learning, the Sponsor must:
 - (i) comply with the Distance Learning Practices notified to the Agency prior to the date of this Agreement; and
 - (ii) notify the Agency if it updates a Distance Learning Practice in any material respect (and comply with any directions or requirements of the Agency in respect of any such updates).
- (c) For clarity, the Charter School may update the Specific Terms relating to the curriculum and mode of delivery (including to commence or cease offering distance learning, as applicable) from time to time in accordance with clause 9.

4.5 Property

- (a) The Sponsor must take full responsibility for Sponsor and third-party property without any recourse to the Ministry or any Relevant Person. For clarity, this does not override any obligation the Ministry or any Relevant Person may have to the Sponsor under a School Lease.
- (b) If the Sponsor is entitled to require payment of a property maintenance fee (in accordance with the Specific Terms) and a Responsible Person does not pay the property maintenance fee when it is validly due and payable to the Sponsor, the Sponsor may apply any step set out in section 212X of the ETA.

4.6 Financial probity

The Sponsor must:

- (a) comply with the financial performance and viability reporting obligations set out in Schedule 4 and the Performance Plan, including reporting on the expected use of funds through financial plans and forecasts;
- (b) adopt and comply with an appropriate policy for sensitive expenditure (for example, expenditure that is beneficial to individuals or groups of individuals and/or considered unusual for the Charter School's purpose and/or functions); and
- (c) ensure that all contractual obligations are discharged before profit or dividends can be used at the Sponsor's direction (if the Charter School is being operated for profit).

4.7 Records and reporting

The Sponsor must comply with its obligations under Schedule 4 relating to records, reporting, notification and audit.

Part 2: Performance Management Framework

5. Performance Plan

5.1 Performance Plan

- (a) The Performance Plan is incorporated into and forms part of this Agreement.
- (b) The Sponsor must comply with any requirements provided by the Agency from time to time to supplement the Performance Plan.

5.2 Updates to Performance Plan

- (a) The Agency will review and update the Performance Plan, in accordance with this clause 5.2:
 - (i) for each School Year; or
 - (ii) at any other interval that the Agency notifies the Sponsor.

If the Agency does not update the Performance Plan for a School Year, the Performance Plan for the previous School Year will continue to apply.
- (b) The Agency will consult with the Sponsor on updates to the Performance Plan (subject to clause 5.2(d)) and will advise the Sponsor of any significant issues it identifies.
- (c) In setting and updating the Performance Plan the Agency will take into account:
 - (i) the Charter School's individual circumstances and the characteristics of the Students enrolled;
 - (ii) the Government's then current objectives in relation to the establishment and operation of the Charter School; and
 - (iii) applicable broader education sector measures, objectives, priorities and/or targets.

- (d) In addition to clause 5.2(a), the Agency may update the performance outcome measures set out in the Performance Plan on notice to the Sponsor from time to time (without consulting with the Sponsor in accordance with clause 5.2(b)), including to reflect any change in the Equity Index (EQI index) applicable to the Charter School.

5.3 Monitoring

- (a) The Agency will monitor and assess the Sponsor's performance against the Performance Plan from the Commencement Date.
- (b) If the Agency identifies underperformance or non-compliance by the Sponsor with the Performance Plan in the first 12 months following the Commencement Date, the Agency and/or the Authorisation Board:
 - (i) may take pro-active engagement steps; and
 - (ii) will only apply an Intervention if serious concerns are raised by the Agency or the Authorisation Board, including any such concerns that are based on the nature or extent of underperformance or non-compliance with the Performance Plan.
- (c) For the purposes of the Agency's monitoring and assessment of the Sponsor's performance against the Performance Plan:
 - (i) the Sponsor must promptly provide the Agency with any information reasonably requested by the Agency; and
 - (ii) the Agency may take into account any relevant information available to the Agency and make relevant enquiries.

5.4 Access to School data

The Sponsor consents to the Agency accessing school-level data from:

- (a) the Integrated Data Infrastructure (IDI) database;
- (b) the New Zealand Council for Educational Research (**NZCER**);
- (c) ERO;
- (d) e-asTTle, Te Waharoa Ararau and any other tools referred to in the Performance Plan; and
- (e) any other Ministry systems for monitoring purposes,

in accordance with Applicable Law.

5.5 Participation in Research

- (a) Upon request from the Agency, the Sponsor must participate (and procure that its Personnel participate) in any domestic or international study, research, review or evaluation that involves or relates to the Charter School and/or Charter Schools model (**Charter Schools Study**), including (upon request from the Agency):
 - (i) co-operating with requests from the Agency, researchers and other relevant third parties;
 - (ii) providing access to Charter School premises, Students and Personnel (including the Chief Executive of the Charter School); and

- (iii) using reasonable endeavours to engage Responsible Persons in the relevant Charter Schools Study.
- (b) If the Charter School receives any request to participate in any domestic or international study, research, review or evaluation (**Proposed Study**) (other than a Charter Schools Study identified in clause 5.5(c) below), the Charter School must immediately notify the Charter School Agency and comply with any directions from the Charter School Agency relating to the Proposed Study.
- (c) Without limiting clause 5.5(a), a Charter Schools Study may include:
 - (i) Curriculum Insights and Progress Studies;
 - (ii) OECD's Programme for International Student Assessment (PISA);
 - (iii) Progress in International Reading Literacy Study (PIRLS);
 - (iv) Trends in International Mathematics and Science (TIMSS);
 - (v) Teaching and Learning International Survey (TALIS); and
 - (vi) any other Charter Schools Study undertaken by an external research group or expert appointed or approved by the Agency or the Ministry.

6. Interventions

ETA Guidance Note: The ETA (section 212ZF) sets out a framework for Interventions, including the types of Interventions that the Authorisation Board can apply. These are summarised below for ease of reference. This clause 6 sets out further detail on the grounds and process that the Authorisation Board will follow if it applies an Intervention.



Performance Interventions: The Authorisation Board may apply the following 'lower-level' Interventions:

- **Reporting:** require the Sponsor to provide the Authorisation Board with specified information and/or analysis of that information (at a given time and/or at specified intervals).
- **Action:** require the Sponsor to carry out a specified action and/or provide the Chief Executive with a report on the action taken (at a given time and/or at specified intervals). By way of example, this could include developing and agreeing to a Remedial Plan, providing a progress report and a final report on action taken or requiring the Sponsor to engage an expert to undertake an audit or to appoint an advisor to assist the Sponsor to improve performance (at the Sponsor's cost).
- **Review:** require the ERO Chief Review Officer to review the Sponsor's governance and management of the Charter School.



Termination Interventions: The Authorisation Board may terminate this Agreement or terminate this Agreement and replace the Sponsor with another Sponsor. The grounds and process for Termination Interventions are set out under the ETA (section 212ZF(3),(5) and (6)).



Sponsor's obligations:

If a Sponsor is subject to an Intervention, it must comply with the obligations set out in the ETA (section 212ZG).

6.1 Grounds for Performance Interventions

The Authorisation Board may apply a Performance Intervention if the Authorisation Board has reasonable grounds to believe that:

- (a) the Sponsor has breached;
 - (i) this Agreement (including any warranty set out in this Agreement); or
 - (ii) any Applicable Law or any other contractual obligations in the respect of the Charter School (in each case, whether or not the relevant breach also constitutes a breach of this Agreement or is likely to do so); and/or
- (b) any other grounds for an Intervention set out in the ETA

Guidance Note: The following are illustrative examples of grounds for a Performance Intervention:



Failure to satisfy any aspect of the **Performance Plan**



Failure to appoint and maintain a **person responsible for teaching** and learning or a persistent failure of that person to perform their function

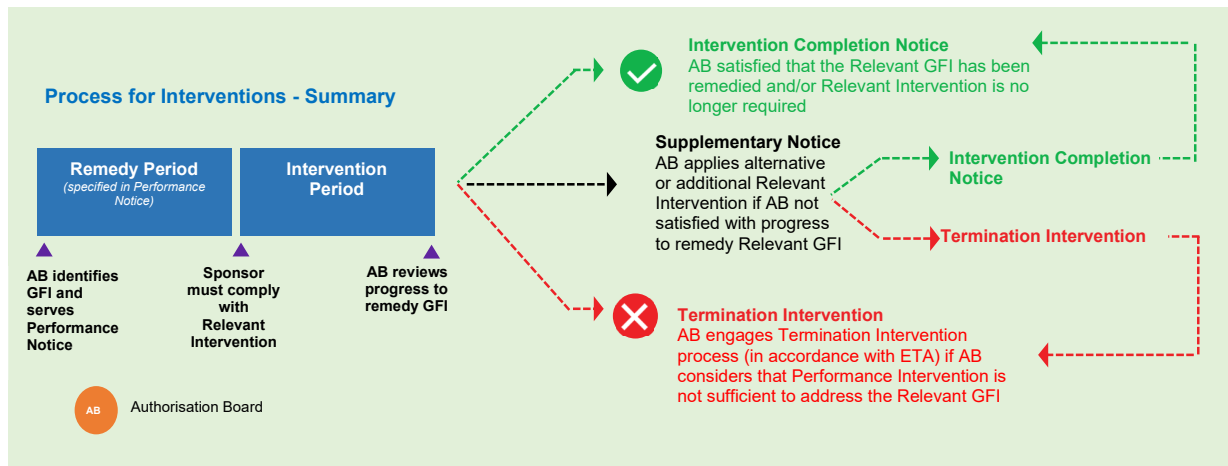


Provision of **information** to the Authorisation Board or Agency that is misleading or inaccurate in any material respect



Non-compliance with an **Approval Condition**

6.2 Process for Performance Interventions



- (a) If the Authorisation Board intends to apply a Performance Intervention, the Authorisation Board must give a written notice to the Sponsor (**Performance Notice**), which sets out:
 - (i) the relevant grounds for the Performance Intervention (**Relevant GFI**), including (if applicable to the Relevant GFI):
 - (A) the obligation the Sponsor has failed to comply with under Applicable Law or any other contractual obligations in respect of the Charter School (in each case, whether or not the relevant breach also constitutes a breach of this Agreement or is likely to do so); and
 - (B) the grounds for the Authorisation Board's belief that the Relevant GFI has occurred;
 - (ii) the Authorisation Board's intention to apply a Performance Intervention;
 - (iii) the applicable type of Performance Intervention (**Relevant Intervention**) and any other details reasonably required by the Sponsor to comply with the Relevant Intervention (subject to clause 6.2(b)); and
 - (iv) whether the Relevant GFI is capable of remedy and, if so, the actions the Sponsor must take to remedy the Relevant GFI and a reasonable deadline for such actions to be completed (**Remedy Period**).
- (b) The Authorisation Board may follow up with a supplementary notice to a Performance Notice from time to time (**Supplementary Notice**):
 - (i) to confirm the type and details of the Relevant Intervention, if they have not been determined at the date of the Performance Notice; and/or
 - (ii) to apply a replacement and/or additional Performance Intervention in connection with the Relevant GFI.
- (c) The Authorisation Board may consult with the Sponsor (acting reasonably) on any response to the Performance Notice or any Supplementary Notice from the Sponsor, including:
 - (i) the Remedy Period; and/or
 - (ii) the type and details of the Relevant Intervention.
- (d) The Sponsor must comply with the Relevant Intervention if:
 - (i) the Relevant GFI is not capable of remedy; or
 - (ii) the Sponsor has not remedied the Relevant GFI within the Remedy Period.
- (e) The Sponsor must provide the Authorisation Board with any reporting, updates and/or information, as well as access to the Charter School, reasonably requested by the Authorisation Board to enable the Authorisation Board to monitor the Sponsor's compliance with the Relevant Intervention and progress towards remedying the Relevant GFI (for clarity, without limiting the Sponsor's obligations in relation to interventions set out in the ETA).
- (f) The Authorisation Board must notify the Sponsor when the Authorisation Board is satisfied that the Relevant GFI has been remedied and/or a Relevant Intervention is no longer required (**Intervention Completion Notice**).

ETA Guidance Note: Under the ETA (clause 3 of Schedule 6A), the Authorisation Board may delegate any of its functions, duties, or powers under the ETA to the chief executive of the Agency (among others).

If the Authorisation Board delegates any of its functions, duties, or powers under the ETA to the chief executive of the Agency, the Sponsor must comply with any requirements or directions of the Agency pursuant to that delegation, including in relation to:



applying an Intervention; and



requirements for Intervention reporting, updates or information.

7. Termination

7.1 Termination Intervention

The Authorisation Board may apply a Termination Intervention in accordance with the ETA, only if the Authorisation Board considers that a Performance Intervention is not sufficient to address the Relevant GFI following the process set out in clause 6.

7.2 Termination for convenience by Sponsor

- (a) Subject to clause 7.2(b), the Sponsor may terminate this Agreement at any time for convenience by giving the Agency no less than six months' written notice (unless otherwise agreed with the Agency).
- (b) If required by the Agency (acting reasonably, taking into account the Sponsor's obligations under clause 6), the effective date of termination pursuant to clause 7.2(a) must be through to the end of the then-current School Year.

7.3 Mutual agreement

The parties may terminate this Agreement by mutual agreement in writing signed by both parties.

7.4 Force Majeure Event

- (a) If a Force Majeure Event affects the Sponsor, the Sponsor must promptly notify the Agency giving full particulars of the Force Majeure Event and the anticipated impact of the Force Majeure Event on the Charter School.
- (b) During the occurrence of a Force Majeure Event:
 - (i) on request from the Agency, the parties must meet to discuss and agree any actions reasonably required to avoid or mitigate the impact of the Force Majeure Event (if applicable, this may include other schools in the same region that are adversely impacted by the Force Majeure Event); and
 - (ii) the Sponsor will use reasonable endeavours to avoid or mitigate the impact of the Force Majeure Event.
- (c) If a Force Majeure Event impacts, or is likely to impact, the Charter School for a material period, the Authorisation Board may apply an appropriate Intervention in accordance with clause 6 and the ETA (including, if applicable, a Termination Intervention).

7.5 **Converting School**

If the Charter School is a Converting School, the Sponsor or Agency (if directed to do so by the Authorisation Board) may terminate this Agreement in accordance with Schedule 3.

8. **Consequences of termination or expiry**

8.1 **Notice to Charter School community**

The Sponsor must inform the Charter School community of the termination or expiry of this Agreement (as applicable) within three Business Days of the relevant notice of termination or, if applicable, a decision that the Agreement will expire at the end of the then-current Term.

8.2 **Preservation of rights and remedies**

Except as expressly set out in this Agreement, termination or expiry of this Agreement will not affect any:

- (a) rights and remedies available to a party under this Agreement which have accrued up to and including the date of termination or expiry; or
- (b) terms of this Agreement which expressly, or by implication are intended to, survive termination or expiry.

8.3 **Disengagement**

On expiry or termination of this Agreement, the Sponsor must:

- (a) use reasonable endeavours to ensure that the transfer or closure of the Charter School (as applicable) is orderly and efficient and minimises any impact on Students and staff (and, if requested by the Agency, prepare a Disengagement Plan that sets out information requested by the Agency relating to transfer or closure of the Charter School);
- (b) co-operate with the Agency and each Relevant Person and comply with all instructions from the Agency, including any such instructions set out in the termination notice or otherwise notified to the Sponsor in writing;
- (c) comply with its obligations set out in Schedule 2 (Funding); and
- (d) cease using any Confidential Information of the Agency and, if requested by the Agency, return or destroy (at the Agency's direction) all Confidential Information and other Charter School materials provided to the Sponsor by the Agency.

- 8.4 If the Agreement is terminated for any reason, then, where the Sponsor (or a Related Sponsor) owns the school property for the Charter School, the Sponsor will (or will procure that the Related Sponsor will), at the Agency's request, enter into a lease with the Crown or a newly appointed or replacement sponsor on reasonable market terms, including as to rent (for a period of up to 10 years). If there is a dispute as to what constitutes reasonable market terms, those terms shall be determined by an independent expert (appointed by the Agency).

Part 3: General

9. Change management

9.1 The Sponsor acknowledges that this Agreement is based on the Agency's model Charter School Agreement. The Agency may amend this Agreement, on notice to the Sponsor if:

- (a) required or permitted by Applicable Law; or
- (b) permitted under this Agreement.

Guidance Note:

This Agreement includes operational information, set out in the Performance Plan and Specific Terms, which may be updated over the Term (in accordance with the relevant part of this Agreement). For example:



Performance Plan may be updated by the Agency, in consultation with the Sponsor, in accordance with clause 5.2



Specific Terms may be updated by the Sponsor or the Agency in accordance with clause 9

9.2 Each Specific Term may be updated in accordance with the process set out next to the relevant Specific Term in the table below.

Process for updating Specific Term	Relevant Specific Term
Category 1: Agency notice to Sponsor	Commencement Date for Charter School Conversion Date for Charter School Approval Conditions (if directed by Authorisation Board) Requirements for teaching positions Agency Relationship Manager Agency details for notices
Category 2: Sponsor notice to Agency <i>Subject to Sponsor complying with any requirements from the Agency relating to the relevant update</i>	Charter School and Sponsor details (including Charter School address) Key Persons Sponsor details for notices School Year, Term Dates and School Hours
Category 3: Sponsor request to Agency <i>Subject to written approval of the Agency and/or any process notified to Sponsor by Agency for the relevant update</i>	Specific Terms in Category 1 Any other Specific Terms not otherwise specified in this table (for clarity, any Specific Terms not otherwise specified in this table can only be amended following a written request from the Sponsor to the Agency).

- 9.3 Without limiting clause 9.2 and any applicable Approval Condition, the Sponsor:
- (a) must notify the Agency as soon as practicable of any proposed change to the Charter School address (and such notification must include express confirmation that the proposed new premises and all associated equipment are suitable to be used for the Charter School in accordance with this Agreement) and comply with any directions from or requirements of the Agency in relation to such change; and
 - (b) acknowledges that it is solely responsible for managing any potential impact of a change to the Charter School address, including any impact on students, enrolment and the Schooling Equity Index (EQI index) applicable to the Charter School.
- 9.4 Any other amendment to this Agreement will not be effective unless it is documented as an express amendment to this Agreement in writing and signed by both parties.

10. Personnel and Subcontractors

10.1 Relationship of the parties

- (a) Except as provided for in this Agreement, nothing in this Agreement constitutes a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.
- (b) The Sponsor is responsible for obligations and liabilities relating to its employees, contractors and suppliers including salary, wages, superannuation entitlements, holiday and other leave entitlements, redundancy payments, ACC premiums, GST and any other levies and taxes attributable to the Sponsor's business or the engagement of its Personnel, whether relating to the Charter School or otherwise.

10.2 Personnel and Subcontractors

- (a) The Sponsor must:
 - (i) ensure that its Personnel and each Subcontractor are aware of, and comply with, the terms of this Agreement and Applicable Law that are relevant to their role and/or services;
 - (ii) not subcontract any obligation that the Authorisation Board has advised the Sponsor cannot subcontract or delegate (or, if applicable, comply with any requirements for subcontracting imposed by the Authorisation Board);
 - (iii) notify the Agency in advance if the Sponsor appoints a Subcontractor that is material to the Sponsor's compliance with and/or satisfaction of its obligations under this Agreement (including the Performance Plan) and, if required by the Agency, consult with the Agency and/or not appoint the Subcontractor without the Agency's approval; and
 - (iv) comply with any applicable processes or requirements or directions of the Agency (acting reasonably) relating to Personnel and Subcontractors and/or the Sponsor's obligations under this Agreement relating to Personnel and/or Subcontractors.
- (b) The Sponsor remains responsible for all acts and omissions and any misconduct of its Personnel and Subcontractors as if they were acts, omissions and/or misconduct of the Sponsor. Any act, omission or misconduct of any Personnel or Subcontractor of the Sponsor is deemed to be the act, omission or misconduct of the Sponsor.

- (c) For clarity, the Sponsor must comply with the ETA (section 212Q) in respect of any subcontract that includes the delegation of any of the Sponsor's functions, duties, or powers under the ETA or this Agreement.

11. Warranties and Governing Members

11.1 General warranties

Each party represents, warrants, and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Agreement; and
- (b) once executed, this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

11.2 Sponsor's warranties

The Sponsor represents, warrants, and undertakes that:

- (a) there are no existing agreements, undertakings or arrangements, the terms of which prevent it from entering into this Agreement, or which would impede the performance of its obligations under this Agreement;
- (b) it has not violated any Applicable Law regarding the offering of unlawful inducements in connection with the entering into or negotiation of this Agreement;
- (c) the Sponsor has not (and any applicable Related Sponsor has not) breached any Related Charter School Agreement or any requirement of the ETA relating to Governing Members;
- (d) no Insolvency Event has occurred in relation to the Sponsor;
- (e) it is not (and nor is any Key Person identified in the Specific Terms or any Governing Member) a party to any litigation, proceedings or disputes which will adversely affect the Sponsor's compliance with this Agreement;
- (f) it will not engage in any activity, or permit any circumstance to occur, that is likely to compromise its ability to perform its obligations under this Agreement or that constitutes or that may constitute a Conflict of Interest in the performance of those obligations; and
- (g) the Sponsor's Proposal at the time it was provided to the Agency and/or Authorisation Board, to the best of the Sponsor's knowledge, is accurate and complete and suitable for the purpose for which the Sponsor provided it to the Agency and/or Authorisation Board.

The warranties, representations and undertakings set out in clause 11.2 (other than clause 11.2(g)), will be deemed to be given each day throughout the Term.

11.3 Governing Members and Key Persons

- (a) The Sponsor undertakes that it will promptly notify the Agency if:
 - (i) there is any change (or proposed change) to the Sponsor's legal structure, Governing Members and/or Key Persons; and/or
 - (ii) any breach of clause 11.2 occurs.

- (b) The Sponsor must provide any further information or declarations requested by the Agency from time to time in relation to the Sponsor's legal structure, Governing Members and/or Key Persons, including in relation to any such change. This may include any information reasonably required to satisfy the Agency or the Authorisation Board at any time that:
 - (i) the Sponsor and each Governing Member, including any new Governing Member, is a fit and proper person by reference to the criteria set out in section 212J(2) of the ETA (**Fit and Proper Person**); and/or
 - (ii) the Governing Members overall have sufficient capacity and capability (including an appropriate balance of skills and experience) to govern the Charter School effectively.
- (c) If, at any time, the Agency is not satisfied (acting reasonably) as to any matter set out in clause 11.3(b), the Agency may require the Sponsor to promptly replace a Governing Member and/or appoint a new Governing Member, on notice to the Sponsor (**Governing Member Notice**). A Governing Member Notice must:
 - (i) include sufficient detail of the basis for the Agency's concerns; and
 - (ii) specify a reasonable period within which the Sponsor may respond with any information that it considers relevant to the Agency's concerns.
- (d) If the Sponsor responds to a Governing Member Notice in accordance with clause 11.3(c)(ii), the Agency must consider the information provided by the Sponsor in good faith and, following that consideration, confirm, withdraw or amend the Governing Member Notice on notice to the Sponsor.
- (e) The Sponsor must comply with the Governing Member Notice no later than the date specified in such notice, or if applicable, any later date specified by the Agency in a confirmation or amendment notified in accordance with clause 11.3(d).
- (f) A breach of this clause 11.3 will constitute a breach of this Agreement for which the Authorisation Board may apply an Intervention in accordance with clause 6.

12. Confidentiality and Intellectual Property

Guidance Note:

This Agreement is confidential and disclosure of any terms of this Agreement must comply with this clause 12. In particular:



this Agreement (as a whole) is Confidential Information of the Agency; and



the Specific Terms (and any other details in the Schedules that are specific to the Charter School) are also Confidential Information of the Sponsor.

If the Charter School discloses any details in this Agreement (including disclosure to the Charter School community), it must ensure that the disclosure is limited to information that is required for a purpose outlined in clause 12.2. For example, the Sponsor may disclose the existence of this Agreement and relevant details in accordance with the reporting requirements under the Performance Plan.

12.1 Confidentiality

Each party undertakes that it will not use or disclose the other party's Confidential Information except as permitted in this clause 12.

12.2 Information sharing and use by either party

- (a) Either party and any Relevant Person may use and disclose the other party's Confidential Information:
 - (i) for the sole purpose of enabling that party to perform its obligations or exercise its rights under, or otherwise comply with, this Agreement and Applicable Law;
 - (ii) with the other party's prior written approval; and
 - (iii) in accordance with Applicable Law (upon notice to the other party, to the extent permitted by the relevant Applicable Law).
- (b) Each party and any Relevant Person must ensure that all Personnel and any third party that has access to the other party's Confidential information are subject to confidentiality obligations that are no less stringent than the confidentiality obligations set out in clauses 0 to 12.3.

12.3 Information sharing and use by the Agency and Relevant Persons

The Agency and any Relevant Person may disclose Confidential Information of the Sponsor:

- (a) in accordance with Applicable Law (including the Official Information Act 1982 (if applicable) and other reporting requirements);

Guidance Note:



The Official Information Act only applies to a Sponsor which is an institution as defined in the ETA, but does not apply if that institution is performing its functions as a sponsor under the ETA or this Agreement (section 212ZJ)

- (b) to any Relevant Person and ERO;
- (c) to any third party for the purpose of evaluating, reporting on or overseeing the operation of the Charter School, this Agreement and/or the Charter Schools model more generally; and
- (d) in connection with the discharge by the Agency or any Relevant Person of its statutory responsibilities and/or accountabilities under any applicable public sector reporting and accountability frameworks.

12.4 Public statements

The Sponsor must not make any public announcements in relation to this Agreement or statement about any Relevant Person in connection with the matters contemplated by this Agreement. However, the Sponsor may disclose the existence of this Agreement without the written consent of the Agency.

12.5 Intellectual Property Rights

- (a) As between the parties, each party owns all pre-existing Intellectual Property Rights and all Intellectual Property Rights developed independently of this Agreement (**Pre-existing Intellectual Property Rights**).

- (b) Subject to clause 12.5(a), as between the parties, the Agency (or its nominee) owns all Intellectual Property Rights in materials developed by the Sponsor for the purposes of this Agreement and/or operating or managing the Charter School (**Charter School Materials**).
- (c) The Agency hereby grants the Sponsor a royalty-free licence to use and develop the Charter School Materials, during the Term, for the purposes of operating or managing the Charter School. Upon request from the Sponsor, the Agency agrees to grant any Related Sponsor a royalty-free licence to use and develop the Charter School Materials for the purposes of operating or managing any other Charter School.
- (d) Upon request from the Agency, the Sponsor agrees to licence the Agency (and any third parties requested by the Agency) to use any Pre-existing Intellectual Property Rights that are incorporated in, or relate to, Charter School Materials, to enable the Agency and any other Sponsors to fully utilise Charter School Materials for the purposes of Charter Schools. The terms of any such licence will be negotiated between the parties (acting reasonably).
- (e) Without limiting this clause 12.5, the Agency owns all Intellectual Property Rights in:
 - (i) reports, data and other information provided to the Agency or a Relevant Person by or on behalf of the Sponsor pursuant to this Agreement; and
 - (ii) reports, data, materials and other information provided to the Sponsor (including its Personnel) by or on behalf of the Sponsor pursuant to this Agreement.

13. Liability and dispute resolution

13.1 Sponsor indemnity

The Sponsor must indemnify each Relevant Person against any loss, damage, cost or expense suffered or incurred by that Relevant Person arising directly or indirectly from the Sponsor's breach of this Agreement. The Agency must mitigate (and take reasonable steps to procure that any applicable Relevant Person mitigates) any such loss.

13.2 Maximum liability of the Agency

To the extent permitted by law, the Agency's liability under or in connection with this Agreement is limited to its obligation to pay the amounts due and payable to the Sponsor under and in accordance with Schedule 2 (Funding).

13.3 No liability of Relevant Persons

To the extent permitted by law, no Relevant Person (excluding the Agency) shall be liable to the Sponsor or any of its Personnel in any way whatsoever under or in connection with this Agreement.

13.4 Source of liability

The limitations of liability in this clause 13 will apply irrespective of how liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.

13.5 Insurance

- (a) Subject to clause 13.5(b):
 - (i) the Sponsor must maintain, or cause to be maintained, all insurances that are necessary, desirable or customary in connection with the operation or management of the Charter School in accordance with this Agreement and Applicable Law, including at a minimum, the insurance specified in the Specific Terms; and
 - (ii) on request from the Agency, the Sponsor must provide a certificate confirming the nature and details of the insurance cover that it holds in accordance with clause 13.5(a)(i).
- (b) Clause 13.5(a) does not apply if the Sponsor has:
 - (i) confirmed in the Specific Terms (or otherwise in writing to the Agency) that, with the consent of the Ministry, the Sponsor is participating in a school risk management scheme pursuant to section 212T of the ETA; and
 - (ii) provided any information requested by the Agency in respect of the Sponsor's participation in that scheme.

13.6 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 it believes to be correct.
- (b) Representatives of each of the parties shall meet within five Business Days of receipt of the notice given under clause 13.6(a) above and undertake discussions with a view to resolving the dispute or difference.
- (c) If the parties cannot reach agreement under clause 13.6(b) within ten Business Days of first meeting (or such other period of time that the parties may agree), the dispute or difference may be referred to mediation by either party.
- (d) Mediation will take place in a location to be agreed between the parties. If the parties do not agree on the location within ten Business Days, either party may require that mediation will take place in Wellington, and will be conducted by a single mediator agreed between the parties, or if they cannot agree, appointed by the Chair of the Arbitrators' and Mediators Institute of New Zealand (AMINZ). 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 a dispute or difference is not resolved within twenty Business Days after the first day of the first mediation meeting (or such other period of time that the parties may agree), either party may commence Court proceedings.
- (f) A party must not commence Court proceedings unless it has complied with this clause 13.6, provided that this clause 13.6 does not affect either party's right to seek urgent interlocutory and/or injunctive relief from any Court of competent jurisdiction.

- (g) Each party must continue to perform its obligations under the Agreement as far as possible as if no dispute had arisen pending the final resolution of any dispute, whether by determination, settlement or mediation.

14. General

14.1 Assignment

- (a) The Sponsor may not assign or transfer any of its rights or obligations under this Agreement without the written consent of the Agency.
- (b) The Agency may assign or transfer any of the Agency's rights or obligations under this Agreement.

14.2 Notices

- (a) A notice, consent, approval or other communication under this Agreement must be sent by email. The initial email addresses for notices for each party are set out in the Specific Terms.
- (b) A communication by email will be deemed to be received 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 or any other day of the week, 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.

14.3 Further assurances

- (a) The Sponsor must provide all assistance and information reasonably requested by the Agency or the Authorisation Board to enable the Agency and the Authorisation Board to undertake its functions, perform its role and exercise its rights under this Agreement and the ETA.
- (b) Each party must do all things and execute all documents as reasonably necessary to give full effect to this Agreement and use reasonable endeavours to cause any relevant third parties to do the same.

14.4 General

- (a) This Agreement may be executed in any number of counterparts (including by scanned copy or electronic signature), all of which, when taken together, will be treated as one and the same document. The date on which the last counterpart is executed will be the date of the Agreement.
- (b) If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, it will be severed from this Agreement without affecting the legality, validity or enforceability of the remaining provisions.
- (c) No party will be deemed to have waived any right under this Agreement unless the waiver is in writing and signed by the parties. Any failure or delay by a party to exercise any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a party of any breach, or failure to exercise any right, under this Agreement will not constitute a waiver of any subsequent breach or continuing right.

- (d) Any review, check, examination, inspection, proposal, request, test or similar act, by or on behalf of the Agency (including any absence of such act), under or in connection with this Agreement will not:
 - (i) limit (whether by waiver, estoppel or otherwise) the Sponsor's responsibilities under or in connection with this Agreement; or
 - (ii) prejudice any right or remedy that may be available to the Agency or a Relevant Person under this Agreement or under Applicable Law.
- (e) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all prior agreements and understandings (written or oral) between the parties about their respective subject matter.
- (f) For the purposes of the Contract and Commercial Law Act 2017, Part 2, Subpart 1 (Contractual Privity), where any provision of this Agreement is expressed to be for the benefit of any person (including the Authorisation Board, the Ministry, the Crown or any other Relevant Person) other than either party (a **Third Party**), such provision is intended to confer a benefit on each such Third Party and may be relied upon and enforced by each such Third Party. Subject to the foregoing, this Agreement is not intended to confer a benefit on or create any obligation enforceable at the suit of any other person other than the parties. Any amendment to this Agreement does not require the consent of any Third Party.
- (g) Each party must pay its own costs arising out of the negotiation, preparation, execution and performance of this Agreement.

14.5 **Governing law and jurisdiction**

This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. Subject to clauses 6 (*Interventions*) and 13.6 (*Dispute Resolution*), each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

SECTION 3: SCHEDULES

Schedule 1 Interpretation

Guidance Note: Capitalised terms used in this Agreement are defined in:



the ETA



this Schedule



the relevant part of this Agreement (e.g., the Performance Plan)

1. Definitions

1.1 Overview

- (a) In this Agreement capitalised terms have the meaning given to them in the ETA, this Schedule 1 or the relevant part of this Agreement.
- (b) For the purposes of this Agreement, where a capitalised term is defined in the ETA and this Schedule 1, the definition set out in this Schedule 1 will apply.
- (c) Subject to clause 1.1(b), where a capitalised terms used in this Agreement is defined in the ETA, that defined term will apply and is not repeated in this Schedule 1.

1.2 Defined terms

Agreement means this Agreement, including all Schedules to this Agreement and the Performance Plan.

Actual Roll has the meaning given to that term in clause 2.3 of Schedule 2 (*Funding*).

Agency Funding Model has the meaning given to that term in clause 2.1 of Schedule 2 (*Funding*).

Agreement Date means the date on which both parties have executed the Agreement.

Applicable Law means the ETA and any other statute, regulation, rule, by-law, ordinance or subordinate legislation, common law, the law of equity, any binding court order, judgment or decree, and any applicable code, standard or regulatory requirement that is enforceable by statute or regulation to which a party is subject from time to time.

Approval Conditions means the Approval Conditions (if any) specified in the Specific Terms (as updated by the Authorisation Board from time to time in accordance with the ETA).

Authorisation Board means the “Charter School Authorisation Board” established under the ETA.

Business Day means any day in New Zealand other than Saturday or Sunday, national public holidays, any provincial anniversary or any day from the 24th day of December up to and including the 5th of January in the following year.

Charter School or School means the Charter School | Kura Hourua identified in the Specific Terms.

Chief Review Officer has the meaning given to that term in the ETA (at the date of this Agreement this means the Chief Executive of the Education Review Office).

Chief Executive means the Chief Executive of the Agency.

Commencement Date means:

- (a) the date on which the Sponsor may open the Charter School for Students to participate in tuition and/or other activities, as set out in the Specific Terms; and
- (b) if the Charter School is a Converting School, means the Conversion Date.

Conflict of Interest means a situation where the Sponsor or its Personnel's business interest or obligations do conflict, potentially conflict or could be perceived to conflict, with its obligations under this Agreement.

Confidential Information means any information that:

- (a) by its nature is confidential;
- (b) is marked by either party as 'confidential' or 'in confidence' (or any similar description);
- (c) is provided by either party, or third party 'in confidence'; or
- (d) is of a sensitive nature or is commercially sensitive to either party,

but excludes any information that was known, or becomes known, to the public through no act or default of the recipient and/or becomes available to the recipient from a source other than the other party to this Agreement. For clarity, in respect of the Sponsor, Confidential Information includes the terms of this Agreement (to the extent that they are specific to the Charter School) and, in respect of the Agency, Confidential Information includes all parts of this Agreement.

Conversion Date means the date on which a State school becomes a Charter School, as set out in the Specific Terms (if the Charter School is a Converting School).

Conversion Declaration has the meaning given to that term in Schedule 3 (if the Charter School is a Converting School).

Crown has the meaning given to that term in section 2(1) of the Public Finance Act 1989 and, where the context requires, includes the NZSPA.

Curriculum Handbook means the handbook that the Sponsor makes available to the Responsible Person of any Student enrolled at the Charter School. This must include the details of the curriculum and its mode of delivery.

Curriculum Policy Document means the policy that governs the development and delivery of a curriculum for teaching and learning at a Charter School (this includes ensuring that the Charter School meets tuition standards at least equivalent to that of State schools of the same year levels).

Distance Learning Practices means the Distance Learning Practices identified in the Specific Terms, as updated from time to time in accordance with clause 4.4(a). **ERO** means the Education Review Office.

Establishment Completion Declaration has the meaning given to that term in clause 3.2.

Establishment Plan has the meaning given to that term in clause 3.1.

ETA means the Education and Training Act 2020 and all regulations and directions made under the ETA.

Force Majeure Event means an event that is beyond the reasonable control of the Sponsor but does not include any risk or event that (i) the party claiming could have prevented or overcome by taking reasonable care or by implementing that the Sponsor's business continuity plan, or (ii) is constituted or caused by the Insolvency Event. Examples include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires and any natural disaster;
- (b) pandemics and an act by a Government agency in response to a pandemic;
- (c) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo; or
- (d) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war.

Funding means all amounts in aggregate paid to the Sponsor by the Agency in accordance with Schedule 2 (*Funding*).

Funding Notice has the meaning given to that term in clause 2.8 of Schedule 2 (*Funding*).

Instalment means a recurring Funding payment in accordance with Schedule 2 (*Funding*).

Gazette Notice means the Gazette Notice published by the Minister in accordance with section 212M of the ETA (*Notification of charter schools*) in respect of the Charter School and the Sponsor following execution of this Agreement (as supplemented or replaced from time to time).

Governing Member means any governing member for the Charter School identified in the Charter School application, as updated from time to time in accordance with clause 11.3.

Governing Member Notice has the meaning given to that term in clause 11.3.

Insolvency Event means in respect of the Sponsor (other than for the purpose of solvent reconstruction or amalgamation):

- (a) any step is taken towards appointing a receiver, receiver and manager, liquidator, interim liquidator, statutory manager, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced;
- (b) the Sponsor is unable to pay its debts when due, or is presumed to be unable to pay its debts under any law;
- (c) the Sponsor makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;
- (d) the Sponsor is, becomes, or is deemed to be insolvent or bankrupt;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days; or
- (f) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Inter-School Arrangement has the meaning given to that term in Schedule 3.

Intervention means a Performance Intervention and/or Termination Intervention (as applicable).

Intellectual Property Rights means all rights and interests (including common law rights and interests) in copyright, moral rights, patents, trade marks, business, domain or company names, logos, design rights, trade secrets, domain names, rights in Confidential Information and any other intellectual or industrial rights, whether registered or unregistered, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world.

Intervention Completion Notice has the meaning given to that term in clause 6.2(f).

Key Person means a Key Person specified in the Specific Terms.

Limited Authority to Teach or **LAT** means limited authority to teach granted by the Teaching Council to a person under the ETA (Schedule 3).

Minister means the Minister of Education.

Ministry means the Ministry of Education.

NZSPA means the New Zealand School Property Agency.

Performance Intervention means the type of intervention specified in section 212ZF(1)(a), (b), and (c) (*Types of interventions*) of the ETA and any other non-termination-related intervention specified in this Agreement or the ETA from time to time.

Performance Plan means the Performance Plan entered into and signed by each party for the purposes of this Agreement, as updated from time to time in accordance with clause 5.2.

Performance Notice has the meaning given to that term in clause 0.

Personnel means, in relation to the Sponsor:

- (a) employees, representatives and agents; and
- (b) each Subcontractor (and the employees, representatives and agents of any Subcontractor).

Physical Capacity means the physical capacity of the Charter School premises as set out in the Specific Terms.

Provisional Roll has the meaning given to that term in clause 2.3(a) of Schedule 2 (*Funding*).

Related Charter School Agreement means any Charter School Agreement entered into from time to time between:

- (a) the Agency and the Sponsor; or
- (b) the Agency and any Related Sponsor.

Related Sponsor means, in relation to a Sponsor:

- (a) any “related company” of that Sponsor as defined in section 2(3) of the Companies Act 1993 provided that, for this purpose, references to “company” in that section will extend to any body corporate wherever incorporated or registered; or
- (b) any person that controls that Sponsor, is controlled by that Sponsor, or is controlled by the same person that controls the Sponsor.

Relevant Person means the Agency, the Authorisation Board, the Minister, the Ministry, the Secretary for Education or NZSPA (as applicable).

Relevant GFI has the meaning given to that term in clause 6.2(a)(i).

Relevant Intervention has the meaning given to that term in clause 6.2(a)(iii).

Remedy Period has the meaning given to that term in clause 6.2(a)(iv).

Responsible Person means a Parent or other person who has accepted the responsibility for the education of a Student at the Charter School.

School Lease means a lease for the Charter School premises between the Sponsor and the Crown.

School Year means the School Year specified in the Specific Terms.

Security Interest has the meaning given to that term in clause 5.2 of Schedule 2 (*Funding*).

Specific Term means a Specific Term set out in Section 1 of this Agreement, as updated from time to time in accordance with clause 9.

Supplementary Notice has the meaning given to that term in clause 6.2(b).

Sponsor’s Proposal means the Sponsor’s proposal for the Charter School, submitted to the Agency prior to the date of this Agreement, and all additional and follow up information and responses to questions in connection with such proposal provided by the Sponsor to the Authorisation Board or Agency in writing.

Student means any student who is enrolled to attend the Charter School.

Subcontractor means any third party to whom the Sponsor has subcontracted any of its obligations under this Agreement (in whole or in part) and the Personnel and any such third party.

Term means the term of this Agreement, determined in accordance with clause 2.

Termination Intervention means an intervention of the kind referred to in section 212ZF(1)(d) and (e) of the ETA (*Interventions in charter schools by Authorisation Board*).

1.3 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to a section of the ETA is provided for guidance only and is without prejudice to clause 1.2;
- (b) clause and other headings, "Guidance Notes" and references to sections of the ETA are for ease of reference only and do not affect the interpretation of this Agreement;
- (c) where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (d) any reference to 'include' or any derivatives of that term are not to be treated as limiting;
- (e) a reference to a statute includes all regulations or rules made under and amendments to that statute or any statute passed in substitution for that statute or any statute incorporating the provisions of that statute. A reference to a particular provision in a statute includes that provision as it may be amended, supplemented or replaced from time to time and also includes any provision that is intended to be a substitute for that provision;
- (f) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex in this Agreement;
- (g) the singular includes the plural and vice versa;
- (h) all amounts are in New Zealand dollars;
- (i) the word 'person' includes a natural person and any body or other entity whether incorporated or not;
- (j) a reference to 'party' means a party to this Agreement and includes that party's successors or permitted assigns;
- (k) a reference to Relevant Person includes the Relevant Person's successors, permitted assigns, and any replacement agency, body or person that performs substantially the same or similar functions;
- (l) except as expressly stated otherwise in this Agreement:
 - (i) a party may exercise a right or remedy or give or refuse its consent, approval or agreement under, or in connection with, this Agreement in the discretion of that party (including by imposing conditions);
 - (ii) the rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law or under this Agreement; and
 - (iii) the exercise of any of the rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or existing at law; and
- (m) the provisions of this Agreement will not be construed to the disadvantage of the Agency on the basis that the Agency was the party that prepared this Agreement.

Schedule 2 Funding

1. Introduction

- 1.1 The Agency will pay Funding to the Sponsor in accordance with this Schedule 2.
- 1.2 Funding:
- (a) is intended to achieve broad equivalence with funding provided to State schools;
 - (b) will be calculated based on the number of enrolled domestic students and the key metrics set out in clause 2.3 below;
 - (c) may comprise one-off payments and/or Instalments; and
 - (d) may be applied by the Sponsor at its discretion in order to meet its performance outcomes as set out in the Performance Plan.
- 1.3 The Sponsor may submit requests to the Agency (and the Agency will respond where it is reasonably practicable to do so) for further information relating to Funding, including the calculation and timing of Funding payments in accordance with this Schedule 2.

2. Funding

Agency Funding Model

- 2.1 The Agency will calculate Funding for the Charter School from time to time in accordance with the Agency's then-current model for Funding calculations (**Agency Funding Model**).
- 2.2 The Sponsor acknowledges that the Agency Funding Model:
- (a) is intended to achieve broad equivalence with funding provided to State schools;
 - (b) may include the categories and metrics set out in clauses 2.9 and 2.10 below;
 - (c) may be updated by the Agency from time to time, including to ensure that updates are broadly consistent with the process of adjusting State school rates and are subject to Budget decisions from time to time; and
 - (d) is confidential to the Agency (to the extent that it has not been published by the Agency) and, if it is disclosed to the Sponsor in whole or in part (in the Agency's discretion), it will be subject to the clause 12 of the Agreement.
- 2.3 The Agency Funding Model, will cover the following key metrics (as applicable to the Charter School):
- (a) the following metrics related to the School Roll (as applicable at the relevant time):
 - (i) Establishment Roll;
 - (ii) estimated number of enrolled domestic Students for the first Term following the Commencement Date and for Term 1 of each School Year (or such other period as agreed) (**Provisional Roll**); and
 - (iii) number of domestic Students actually enrolled as reported through official roll returns or where roll returns are not available using information from the ENROL system (**Actual Roll**);

- (b) EQI;
- (c) School type (including primary, secondary, composite, distance);
- (d) Property details (including arrangement e.g. lease or ownership, and location);
- (e) Māori medium school;
- (f) Pacific medium school;
- (g) Isolation Index;
- (h) Vandalism Index; and
- (i) any other metrics the Agency determines is relevant to the calculation of Funding.

Establishment Roll and Provisional Roll

2.4 The Sponsor:

- (a) confirms that, if it has set an Establishment Roll (set out in the Specific Terms), the Establishment Roll is based on a realistic, evidence-based forecast of the likely roll in the 5th term of the Charter School's operation;
- (b) acknowledges that:
 - (i) any Funding calculated based on the Establishment Roll or Provisional Roll may be updated or adjusted (to be increased or decreased, as applicable) to reflect the Actual Roll (as detailed in clause 2.6 and section 3 of this Schedule 2 (*Funding*)); and
 - (ii) if it has set an Establishment Roll (set out in the Specific Terms) and the Establishment Roll is not achieved (that is, if the Actual Roll in the 5th term of the Charter School's operation is not at least the size of the Establishment Roll), the Agency may (in accordance with clause 3.2 of this Schedule 2) to reflect the over-funding:
 - (A) reduce the amount of any Instalment to be paid to the Sponsor; and/or
 - (B) require the Sponsor to return a portion of Funding,

The Agency will calculate any such over-funding based on the portion of the Funding that is based on Establishment Roll (on a proportionate basis to reflect the difference between the Establishment Roll and the Actual Roll).

Disclosures by Agency

- 2.5 For the avoidance of doubt, the Sponsor acknowledges that, in accordance with clause 12.3, the Sponsor may disclose information relating to Funding (including the Agency Funding Model and its application to the Sponsor), in accordance with Applicable Law (including the Official Information Act 1982 (if applicable)).

Funding Notices

- 2.6 The Agency may keep the Sponsor updated on estimated and anticipated Funding payments, including with Funding Notices in accordance with clause 2.8. Any such update or Funding Notice:
- (a) is indicative only and subject to change, including to reflect updates to the metrics set out in clauses 2.9 and 2.10 of this Schedule 2; and
 - (b) will not be final and binding on the Agency until the Agency has confirmed to the Sponsor in writing that specific Funding is “Confirmed Funding” or that a Funding Notice is a “Confirmed Funding Notice”.
- 2.7 The Agency must use reasonable endeavours to ensure that each Funding Notice sets out the extent to which any indicative Funding is conditional on specified matters (such as the Actual Roll) (without prejudice to clause 2.4 above).
- 2.8 The Agency will provide the following indicative Funding Notices to the Sponsor (each a **Funding Notice**) where applicable. In accordance with clause 2.4 above, prior to each Funding Payment, the Agency will confirm the final amount of each “Confirmed Funding” payment.

Indicative Funding Notices		
Funding category	Timing of Funding Notice	Detail
Establishment Funding	The later of 6 months prior the Commencement Date or 10 Business Days following the Agreement Date	Establishment Funding to be paid to the Sponsor prior to the Commencement Date
Transitional Funding	Refer to Schedule 3	Refer to Schedule 3
Instalments	By 30 November in each School Year For the first School Year, as soon as possible following the Agreement Date	Funding that will be paid to the Sponsor in the following School Year For the first School Year, any other Funding to be paid to the Sponsor in the first School Year (or part thereof)
Other	The Agency may provide other Funding Notices from time to time.	

The Agency may update the timing and content of each indicative Funding Notice outlined above from time to time on notice to the Sponsor.

- 2.9 All Funding specified in a Funding Notice excludes GST (if any), unless stated otherwise.

Funding Payments

- 2.10 The Agency will pay each Funding payment into the bank account of the Sponsor as advised in writing by the Sponsor to the Agency from time to time.

Funding categories

- 2.11 Funding will cover the categories specified in the applicable Funding Notice.

3. Payment adjustments and review

- 3.1 The Agency may adjust any amount of the Funding (as specified in a Funding Notice or otherwise) from time to time at its discretion in order to reflect:
- (a) any decision to change the metrics by which broad equivalence with State school funding is achieved (except where the Agency has confirmed that the Funding is "Confirmed Funding"); or
 - (b) any over-funding or under-funding made in relation to any period (including to reflect any non-achievement of the Establishment Roll, in accordance with clause 2.4(b)(ii) of this Schedule 2).
- 3.2 In the case of over-funding for any reason at any time, the Agency may at its discretion:
- (a) reduce the amount of any Instalment to be paid to the Sponsor by an amount equal to the over-funding; and/or
 - (b) require that the Sponsor return any amounts which have been over-funded.
- 3.3 Any return of Funding by the Sponsor to the Agency will be paid to the bank account nominated by the Agency within 5 business days of written request or otherwise in accordance with any payment plan agreed between the Agency and the Sponsor in relation to the return of such funds.
- 3.4 The Funding provided under this Schedule 2 will be subject to an annual review and may also be adjusted as a result of that annual review.

4. Termination or expiry of this Agreement

- 4.1 The Agency will make no further payments under this Schedule 2 on and from the expiry or effective date of termination of the Agreement.
- 4.2 Upon expiry or termination of this Agreement (for any reason whatsoever), the Sponsor must return to the Agency (or any third party nominated by the Agency):
- (a) any Funding which has been paid to it to the extent that it:
 - (i) relates to the operation of the Charter School after the expiry date or the effective date of termination (as applicable); and/or
 - (ii) has not been spent by the Sponsor as at the expiry date or effective date of termination,

and any such sum (as reasonably determined by the Agency) will be payable by the Sponsor as a debt due to the Agency; and
 - (b) if and to the extent requested by the Agency:
 - (i) all assets acquired or developed by the Sponsor during the term of the Agreement using the Funding; and
 - (ii) in respect of any period where a Sponsor has acquired or developed assets using both the Funding and funding from other sources, such assets of the Sponsor as directed by the Agency (at the Agency's absolute discretion) which are equivalent in value to the Funding during the relevant period (provided that the Agency's rights under this clause are subject to the rights of any prior-ranking secured third party).

5. Security Interest

- 5.1 Words and phrases used in this clause 5 have the meanings given to them in, or by virtue of, the Personal Property Securities Act 1999 (**PPSA**).
- 5.2 As security for the obligations of the Sponsor under this Schedule and the Agreement, the Sponsor grants to the Agency a security interest in all the Sponsor's right, title and interest (present and future, legal and equitable) in, to, under or derived from:
- (a) all amounts of Funding held by the Sponsor; and
 - (b) any property of the Sponsor which is required to be returned to the Agency in accordance with this Schedule or the Agreement,
- (the **Security Interest**). For the purposes of sections 71 and 72 of the PPSA, this Security Interest secures future advances.
- 5.3 The Agency may:
- (a) register a financing statement on the New Zealand Personal Property Securities Register in order to reflect the Security Interest in all present and after acquired personal property and the Sponsor waives its right to receive a copy of any verification statement in relation to the same;
 - (b) register a caveat over any real property acquired by the Sponsor using Funding (in full or in part) in order to claim its interest as a mortgagee under the agreement to mortgage granted by the Sponsor below; and/or
 - (c) require the Sponsor to grant a registered mortgage over any real property acquired by the Sponsor using Funding (in full or in part) and the Sponsor agrees to do all things required in order to register the Agency's interest as a mortgagee over any such property.
- 5.4 The Agency and the Sponsor agree that, to the maximum extent permitted by law:
- (a) they each contract out of sections 114(1)(a), 133 and 134 of the PPSA, and in doing so the Sponsor waives its rights under, or by reference to any of these sections;
 - (b) the Sponsor has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA and waives its rights to sections 116, 120(2), 121, 125, 129, 131 and 148 of the PPSA; and
 - (c) where the Agency has rights in addition to Part 9 of the PPSA, those rights shall continue to apply.
- 5.5 The Sponsor undertakes to:
- (a) at its own cost, promptly do all things, sign any further documents and/or provide any information which the Agency may reasonably require to enable the Agency to perfect and maintain the perfection of any Security Interest (including by registration of a financing statement); and
 - (b) give the Agency not less than 14 days' prior written notice of any proposed change in the Sponsor's name and/or any other change in the Sponsor's details (including changes in the Sponsor's address, trading name or business practice).
- 5.6 For the avoidance of doubt the Security Interest granted to the Agency under this clause 5 does not restrict the Sponsor from granting any security interest to any other parties.

6. Donations Scheme

- 6.1 If the Charter School meets the EQI eligibility criteria for the Ministry's donations scheme, the Sponsor may elect for the Charter School to opt-in to that donations scheme.
- 6.2 If the Sponsor elects for the Charter School to opt-in to the Ministry's donations scheme, the Sponsor cannot seek or receive any solicited voluntary payments from parents and caregivers for any curriculum related activities, except for overnight school camps.
- 6.3 Whether or not the Sponsor elects for the Charter School to opt-in to the Ministry's donations scheme does not affect a Sponsor's ability to fundraise through the sale of goods and services (for example running a school fair or selling raffle tickets) and does not prevent charging for sports trips or activities that are outside the curriculum, for example school sports teams.

Schedule 3 **Converted School**

Template Guidance Note: If the Charter School is not a Converting School, insert "Not applicable" and delete the rest of this Schedule.

1. **Introduction and interpretation**

1.1 **Introduction**

This Schedule 3 will apply if this Agreement relates to a State school that proposes to convert to a Charter School (referred to in this Schedule 3 as a **Converted School**). It sets out the parties' respective obligations:

- (a) before the Conversion Date, relating to the conversion of the Converting School into a Converted School; and
- (b) after the Conversion Date, relating to the operation of the Converted School operated by the Sponsor.

1.2 **Converting School and Converted School**

In this Schedule, references to the:

- (a) **Converting School:**
 - (i) prior to the Conversion Date, are to the Converting School identified in the Specific Terms (being the State school that proposes to convert to the Converted School); and
 - (ii) on and following the Conversion Date, are to the Minister on behalf of the Crown; and
- (b) **Converted School**, are to the Charter School identified in the Specific Terms (being the former State school that has become a Charter School).

1.3 **Defined terms**

Agreed Date means:

- (a) the date that is 15 Business Days after the Agreement Date (or, if the Charter School Agency gives a written notice to the Sponsor before the expiry of that 15 Business Day period, the date specified in that notice (which may extend the period by up to a further 30 Working Days)); or
- (b) such other date that is agreed in writing between the Charter School Agency and the Sponsor (in their respective discretion).

Cash Balance has the meaning given to that term in clause 7.2.

Cash Balance Payment has the meaning given to that term in clause 1.1(c).

Cash Balance Restrictions has the meaning given to that term in clause 7.4.

Chattels means the movable assets, owned by the Crown, and used by the Converting School immediately prior to the Conversion Date, including furniture and equipment, information and communications technology (whether owned or leased), motor vehicles and library books.

Conversion Declaration has the meaning given to that term in clause 2.6.

Conversion Plan means a conversion plan for the conversion of the Converting School to the Converted School.

Converted School has the meaning given to that term clause 1.2(b).

Converting School has the meaning given to that term in clause 1.2(a).

Estimated Funding Reduction has the meaning given to that term in clause 6.2.

Ministry Property means land and buildings that are:

- (a) owned by the Crown; or
- (b) leased and/or licensed by the Crown.

Permitted Purpose has the meaning given to that term in clause 7.6.

Property Capex Funding means funding (if any) that the Sponsor receives from the Ministry in connection with the School Lease in accordance with Schedule 2.

Property Plan means the property plan agreed to by the Ministry in accordance with the terms of the School Lease.

Property Reporting and Monitoring Framework means the property management performance framework as notified by the Ministry to the Sponsor from time to time.

Transferring Chattels has the meaning given to that term in clause 1.1(a).

Transferring Chattels List means the schedule of Chattels agreed between the Sponsor and the Ministry in accordance with clause 8.1.

Transitional Funding has the meaning given to that term in clause 6.1.

School Licence has the meaning given to that term in clause 3.2(c).

2. Conversion

Conversion Plan

- 2.1 The Sponsor must prepare and provide to the Agency a written Conversion Plan no later than 8 calendar weeks prior to the Conversion Date (unless the parties agree a different timeframe in writing, in their respective discretion).
- 2.2 The Conversion Plan must set out the conversion activities, owners, dependencies, timelines and risks for at least the following areas:
 - (a) Staff (including consultation, transfer processes, payroll, leave and pay equity implications);
 - (b) Buildings and Property (including occupancy arrangements, site readiness, health and safety, and cash asset transfers);
 - (c) Students (including wellbeing, continuity of learning, and communications to students and whānau);
 - (d) Community engagement; and
 - (e) Financial.

2.3 The Sponsor must:

- (a) keep the Conversion Plan up to date as reasonably required by the Agency; and
- (b) implement the Conversion Plan in good faith.

Co-operation

2.4 The Sponsor acknowledges that successful conversion of a Converting School requires significant activity by the Ministry, the Agency and the Sponsor, including the transfer of records, Chattels, equipment, liabilities, services, contracts and potentially cash assets. The Sponsor must actively engage with the Ministry and the Agency, and provide all assistance requested by the Ministry and the Agency, in a timely and constructive manner to facilitate a successful conversion.

2.5 Without limiting clause 2.4, the Sponsor must comply with the following:

- (a) **access:** provide continued access to the Converted School to the Ministry's and Agency's representatives, including the Ministry's Change Manager and Residual Agent (or any successor roles), as reasonably required for a period following the Conversion Date to enable completion of the closure of the Converting School;
- (b) **Chattels and records:** co-operate with such representatives to facilitate the removal of any Chattels (excluding Transferring Chattels) or records held at the Converting School premises that are required to be transferred to the Ministry or the Crown or otherwise dealt with by the Ministry or the Agency in connection with the closure of the Converting School;
- (c) **contracts:** in respect of contracts relating to the Converting School:
 - (i) take all reasonable steps directed by the Ministry or the Agency to:
 - (A) complete a novation or assignment; or
 - (B) enter into a replacement contract; and
 - (ii) not take any action, or fail to take any action, that would result in the termination, suspension or non-renewal, where such termination, suspension or non-renewal would impose liabilities on the Converting School, or adversely impact the Converting School or Converted School or the completion of the conversion process; and
- (d) **amounts owing:** apply any Cash Balance Payment to any amounts owing by the Converting School (including costs, expenses and liabilities) that relate to the period prior to the Conversion Date.

Conversion Declaration

2.6 The Sponsor must sign and deliver to the Agency a conversion declaration in the form provided to the Sponsor by the Agency (Conversion Declaration), no later than the Conversion Declaration deadline specified in the Specific Terms (or a date otherwise approved by the Agency).

ETA Guidance Note: Under the ETA (clauses 115-116 of Schedule 1), on the Conversion Date:



the board of the converted school is dissolved and its members go out of office on the close of the day before that date; and



if the converted school was State-integrated immediately before conversion, the integration agreement between the proprietor and the Crown relating to the State integrated school is treated as cancelled.

ETA Guidance Note: Under the ETA (clause 117 of Schedule 1), on the Conversion Date, all rights, assets and liabilities of the Converted School vest in the Minister on behalf of the Crown.

The ETA (clauses 121 to 123 of Schedule 1) also confirms that:



Any rights, duties or obligations relating to pay equity claims or settlements relating to Transferred Employees vest in and apply to the Sponsor.



Rights, duties, liabilities and obligations of the board of the converted school relating to Transferred Employees that were in existence immediately before the Conversion Date vest in the Sponsor, except for any liabilities relating to any holiday, sick leave, bereavement leave or family violence leave provided under the Holidays Act 2003 and taken by a Transferred Employee before the Conversion Date, which vest in the Minister on behalf of the Crown.

3. Ministry Property

Template Guidance Note: The provisions in this clause 3 only apply if some or all of the School will be on Ministry Property (essentially, land and building owned by the Crown or land and buildings that were leased by the Crown, but where the lease will be assigned to the Sponsor).

Application

- 3.1 This clause 3 only applies if some or all of the Converted School will be located on, or comprise, Ministry Property on the Conversion Date or if it is agreed pursuant to clause 3.12.

School Lease and other property agreement(s)

- 3.2 If all or part of the Converted School will be located on, and/or comprise, any Ministry Property on the Conversion Date, then, on or before the Agreed Date, the Sponsor must, in respect of the Ministry Property, negotiate with the Ministry and enter into one of the following documents (as applicable):

- (a) a School Lease with the Crown or the Ministry;
- (b) a deed of assignment in respect of the Crown's interest in the lease relating to the School premises; and/or
- (c) a licence relating to the School premises with the Ministry (**School Licence**).

- 3.3 The Sponsor must provide to the Agency fully signed copies of the final form of the relevant document required under clause 3.2 before the Agreed Date.

- 3.4 If the Sponsor has not provided to the Agency fully signed copies of the final form of the relevant document required under clause 3.2 on or before the Agreed Date, the Authorisation Board may direct the Agency to (and the Agency may) terminate this Agreement with immediate effect by written notice to the Sponsor.

Compliance with School Lease or other property agreement(s)

- 3.5 The Sponsor will comply with:

- (a) the Property Plan and the Property Reporting and Monitoring Framework; and
- (b) the School Lease or other applicable agreement entered into pursuant to clause (b) or 3.12 of this Schedule,

in respect of the property that is located on and/or comprising Ministry Property.

Ministry Property Policy Framework

- 3.6 The Sponsor:
- (a) confirms that it has read and acknowledges (and, if applicable, must comply with) the Ministry's "Converted Charter Schools – Property Policy Framework Information. Information for Sponsors" document provided to the Sponsor prior to the date of this Agreement; and
 - (b) must read (and, if applicable, comply with) any updates or supplements to that document provided to the Sponsor from time to time.

Property Capex Funding

- 3.7 Where the Sponsor is a party to a School Lease and receives Property Capex Funding, the Sponsor must only use that Property Capex Funding as capital for projects that create Crown assets, as specified in a Property Plan, or as otherwise approved in writing by the Ministry.
- 3.8 If requested by the Agency, the Sponsor will report to the Agency (within 5 Working Days of a request) on what it has spent its Property Capex Funding on, and, as part of that, will provide reasonable information evidencing such expenditure.

Renewal

- 3.9 Notwithstanding clause 2.2 of this Agreement, the Agency agrees that it will not exercise any right to extend the Term pursuant to clause (a) of this Agreement if the Sponsor has not been able to renew the School Lease where it has a right of renewal under the terms of the School Lease (except this will not apply where the Sponsor has not been able to renew due to a breach by the Sponsor of the School Lease), provided that the Sponsor has demonstrated to the satisfaction of the Agency that the Sponsor has already used reasonable endeavours to extend the School Lease and find and agree terms for alternative suitable premises for the Converted School (but has been unable to do so).

Termination

- 3.10 If the Sponsor is a party to a School Lease and/or School Licence and the School Lease and/or School Licence is terminated in accordance with its terms or otherwise for any reason whatsoever, the Authorisation Board may direct the Agency to (and the Agency may) terminate this Agreement with effect from the effective date of termination of the School Lease, by written notice to the Sponsor.
- 3.11 If the Sponsor is a party to a School Lease and:
- (a) the School Lease is terminated pursuant to any of the following clauses in the School Lease:
 - (i) clause 12.1(c) (Force Majeure); or
 - (ii) clause 12.4(b) (Expiry of Headlease); or
 - (b) the Ministry has given notice to the Sponsor of its intention to terminate the School Lease in accordance with any of the clauses listed above,

then, provided that the Sponsor can demonstrate to the satisfaction of the Agency that the Sponsor has already used reasonable endeavours to find and agree terms for alternative suitable premises for the Converted School (but has been unable to do so), the Sponsor can terminate this Agreement by notice in writing to the Agency. The Sponsor must specify in that notice the date of termination of this Agreement, which cannot be any earlier than the date of termination of the School Lease.

Additional arrangements relating to Ministry Property

- 3.12 If, at the Conversion Date, or during the Term, the Sponsor wishes to take a lease or licence of Ministry Property, or to create new improvements on Ministry Property, and the Sponsor is not already party to an agreement with the Ministry governing this, then the Sponsor may approach the Ministry to discuss arrangements for the proposed new arrangements, but with no obligation on any party to agree to any such arrangements (in their respective discretion). If the parties agree terms, the Sponsor and the Charter School Agency must also agree which provisions of this Schedule will apply to that additional Ministry Property.

4. Other property

Other property that is not Ministry Property

- 4.1 If all or part of the Converted School will not be located on, or comprise, Ministry Property on the Conversion Date:
- (a) the Sponsor warrants, on the Conversion Date, that it is lawfully occupying the relevant premises at the property identified in the Specific Terms. Those premises and all associated equipment are suitable to be used for the Converted School in accordance with the Agreement. All consents, approvals and authorisations required in relation to the use of the premises and the activities that will be carried out by the Sponsor from the premises have either been obtained or will be obtained no later than they are required for the relevant use or activity to be carried out lawfully. The Sponsor has met, and will continue to meet, all conditions of all consents, approvals and authorisations granted; and
 - (b) any other applicable provisions of the Agreement will apply in respect of that property.

5. Employment

- 5.1 The Sponsor acknowledges the provisions of the ETA that apply to employees of a Converting School and confirms that it is complying with those requirements.

ETA Guidance Note: The ETA (clauses 119 to 124 of Schedule 1) provides that on the Conversion Date all employees employed at the Converting School become employees of the Sponsor (**Transferred Employees**), on the following basis:



A Transferred Employee is employed on an individual employment agreement on terms and conditions of employment that are no less favourable overall than those that applied immediately before they became employed by the Sponsor.



Clause 119(5) of the ETA sets out what is required to meet the no less favourable overall test. This includes allowing for any modifications that are necessary to reflect the fact that employment will be on an individual employment agreement (rather than a collective agreement), and the transfer from a State school to a Converted School (including funding and payment of remuneration, the eligibility of a Transferred Employee who holds a teaching position for any awards, grants, or associated leave, and the fact that a Sponsor is not required to advertise vacancies at Converted Schools in the Education Gazette).



Note that an employee employed at a Converting School may be a member of the Teachers Retirement Savings Scheme, the State Sector Retirement Savings Scheme, or the National Provident Fund. If so, this should be addressed when considering the terms and conditions of employment.



Employment with the Sponsor is to be treated as continuous for the purposes of the Holidays Act 2003, the KiwiSaver Act 2006 and any service-related entitlements or benefits.



Any participation by a Transferred Employee in the Government Superannuation Fund is not impacted by the fact that a Transferred Employee is no longer employed at a State school, with a Transferred Employee deemed, for the purposes of the Government Superannuation Fund Act 1956, to be employed in the Government service as long as they continue to be employed at a Converted School. The ETA (clauses 119 to 124 of Schedule 1) also confirms that:



Information regarding a Transferred Employee that is held by the board of a converted school, the Ministry or Education Payroll Limited is to be treated as if it is held by the Sponsor on and from the later of the date of this Agreement, or the date that is 3 months before the Conversion Date. The transfer of this information to the Sponsor is not a breach of the Privacy Act.



Any rights, duties or obligations relating to pay equity claims or settlements relating to Transferred Employees vest in and apply to the Sponsor.



Rights, duties, liabilities and obligations of the board of the converted school relating to Transferred Employees that were in existence immediately before the Conversion Date vest in the Sponsor, except for any liabilities relating to any holiday, sick leave, bereavement leave or family violence leave provided under the Holidays Act 2003 and taken by a Transferred Employee before the Conversion Date, which vest in the Minister on behalf of the Crown.

6. Transitional Funding

Overview

- 6.1 The Sponsor may be eligible for additional transitional funding, calculated in accordance with this clause 6 (**Transitional Funding**).
- 6.2 Eligibility for, and the value of, any Transitional Funding will be determined by the Agency based on an estimate of any reduction in staffing-based and operational grant-based funding for the first 12 months after the Conversion Date (**Estimated Funding Reduction**). The Estimated Funding Reduction (if any) will be calculated by comparing the following:
- (a) the information on the Converting School's funding as a State school (as advised by the Ministry based on the most recent roll return and associated information on average teacher and principal remuneration); and
 - (b) the funding that the Sponsor would receive under this Agreement for the same number of students as the most recent roll return (based on the Converted School Agency calculator for Entitlement funding, for staffing-based and operational grant-based funding components only).

Year 1 and Year 2 Transitional Funding

- 6.3 The Agency will calculate the Year 1 Transitional Funding and Year 2 Transitional Funding (if any) at the same time, based on the information described in clause 6.2, as follows:

Year	Eligibility criteria	Value
Year 1 Transitional Funding	If the Estimated Funding Reduction exceeds five percent of the Converting School's funding as a State school	The amount by which the Estimated Funding Reduction exceeds five percent of the Converting School's funding as a State school
Year 2 Transitional Funding	If the Estimated Funding Reduction exceeds ten percent of the Converting School's funding as a State school	The amount by which the Estimated Funding Reduction exceeds ten percent of the Converting School's funding as a State school

- 6.4 By way of example, if a Converting School has an Estimated Funding Reduction of 12 percent (or \$120,000) in the first 12 months after the Conversion Date, the Sponsor would be eligible to receive:

- (a) Year 1 Transitional Funding of seven percent (or \$70,000); and
- (b) Year 2 Transitional Funding of two percent (or \$20,000).

Payment of Transitional Funding

- 6.5 Year 1 Transitional Funding will be paid to the Sponsor on the later of:
- (a) the date on which the first Instalment is payable following the Conversion Date; and
 - (b) 10 Working Days after the Agency is able to complete the calculation described in clause 6.2 (which may be after the Conversion Date if the most recent roll return is not available prior to the Conversion Date).
- 6.6 Year 2 Transitional Funding will be paid to the Sponsor at the same time as the Instalment for the first quarter of the second year following the Conversion Date.

7. Cash Balance**Application**

- 7.1 This section 7 will only apply to the Sponsor, if the Converting School has a Cash Balance (as determined in accordance with clause 7.3).

Cash Balance

- 7.2 For the purpose of this clause 7, **Cash Balance** means an amount calculated in accordance with the following formula:

Cash Balance means an amount equal to Cash less Liabilities, immediately prior to the Conversion Date, as determined by the Agency in accordance with clause 7.2.

Where

- (i) **Cash** means public funds held in cash in a Converting School bank account; and
- (ii) **Liabilities** means the aggregate of all liabilities (including accrued, contingent, disputed, prospective or potential liabilities) of the Converting School, and any amounts (including costs and expenses) owing or payable by the Converting School to any person, in each case whether or not known or due and payable at the Conversion Date.

For clarity, the Converting School does not have a Cash Balance if the amount calculated in accordance with this formula is zero or less than zero.

Cash Balance Payment

- 7.3 As soon as practicable following the Conversion Date, the Ministry and/or the Agency will:

- (a) determine the Cash Balance;
- (b) notify the Sponsor of the Cash Balance and any Cash Balance Restrictions; and
- (c) pay (or procure payment) to the Sponsor of an amount equal to the Cash Balance (**Cash Balance Payment**).

- 7.4 The Sponsor acknowledges that specific requirements or restrictions may apply to any part of the Cash Balance Payment (in addition to the requirements set out in this clause 7) (**Cash Balance Restrictions**). For example, Cash Balance Restrictions may apply due to the relevant funds having been paid to the Converting School for a specific:

- (a) purpose, by the School community or through grants;
- (b) project or cyclical maintenance of the School property, by the Ministry or New Zealand Schools Property Association; or
- (c) liability that is transferred to the Sponsor.

- 7.5 The Agency may pay (or procure the payment) of the Cash Balance Payment to the Sponsor:

- (a) in staged payments (pending confirmation of all Liabilities); and
- (b) subject to specified conditions, including repayment to the Agency or a nominee if additional Liabilities are identified within a specified period following the Cash Balance Payment.

Permitted Purpose

7.6 Subject to clauses 2.5(d) and 7.7, the Sponsor must only use the Cash Balance Payment for expenditure that satisfies each of the following criteria (a **Permitted Purpose**):

- (a) **purpose:** is directly related to achieving the Sponsor's performance targets and outcomes as set out in the Performance Plan;
- (b) **additionality:** is used to purchase, procure or provide assets, resources, services, or opportunities that benefit students and are accretive to (and not a substitute for) assets, resources, services, or opportunities that the Sponsor would otherwise expect to purchase, procure or provide using Funding; and
- (c) **restrictions:** complies with any Cash Balance Restrictions.

For clarity, a Permitted Purpose may incidentally benefit the wider community.

7.7 The Agency may (at its discretion):

- (a) on request from the Sponsor, approve exceptions for expenditure that does not comply with the Permitted Purpose, on a case-by-case basis; and/or
- (b) notify the Sponsor that any portion of Cash Balance Payment is not subject to the Permitted Purpose.

7.8 For the avoidance of doubt, the Sponsor must not distribute any part of the Cash Balance Payment to its shareholders, investors or any other person in any circumstances whatsoever (irrespective of whether the Converted School is being operated for profit in accordance with the Specific Terms).

Reporting Requirements

7.9 The Sponsor must ensure that:

- (a) the financial reports, provided in accordance with the Performance Plan, include relevant details relating to the Cash Balance Payment (including the Self-Audit Report; End of Year Report and Public Annual Report); and
- (b) each Self-Audit Report provided in accordance with the Performance Plan:
 - (i) takes into account the Sponsor's obligations in respect of the Cash Balance Payment, including under clause 7.6 above; and
 - (ii) includes the following additional information in respect of the Cash Balance Payment:
 - (A) its use (or proposed use) of the Cash Balance Payment; and
 - (B) the proposed Permitted Purposes (to the extent that its use of the Cash Balance Payment is subject to the Permitted Purposes).

7.10 If requested by the Agency, the Sponsor must provide:

- (a) the information set out in clause 7.9(b) to the Agency before the Conversion Date; and
- (b) reasonable information evidencing expenditure of the Cash Balance Payment.

7.11 If, and to the extent that, the Sponsor is unable to demonstrate to the Agency's reasonable satisfaction that it has used the Cash Balance Payment in accordance with this clause 7, upon demand from the Agency, the Sponsor must reimburse to the Agency (or its nominee) an amount equal to the value of the Cash Balance Payment that the Sponsor is unable to demonstrate was used in accordance with this clause 7.

- 7.12 If requested by the Agency, the Sponsor must establish and maintain a separate account for the portion of the Cash Balance Payment that is subject to the Permitted Purpose, to ensure that the Sponsor will comply, and can demonstrate to the Agency that it is complying, with this clause 7.

Funding Schedule

- 7.13 The following clauses of Schedule 2 (*Funding*) will be deemed to apply to the Cash Balance Payment and be amended, in respect of their application to the Cash Balance Payment, as follows:
- (a) in clause 4.2 (*Termination or expiry of this Agreement*), references to “Funding” include the Cash Balance Payment and references to “assets” include assets acquired or developed by the Sponsor (in whole or in part) using Cash Balance Payment; and
 - (b) in clause (ii) (*Security Interest*), the security interest granted by the Sponsor includes the Cash Balance Payment.

8. Transferring Chattels

Transferring Chattels List

- 8.1 Prior to the Conversion Date, the Sponsor must work with the Ministry (or the Ministry’s appointed agent) to:
- (a) identify and agree which Chattels will be transferred from the Converting School to the Sponsor on the Conversion Date (**Transferring Chattels**);
 - (b) document the Transferring Chattels in a Transferring Chattels List (including a description and estimated value of each Transferring Chattel) and finalise such Transferring Chattels List as close as practicable to the Conversion Date; and
 - (c) document the transfer of the Transferring Chattels from the Converting School to the Sponsor on the Conversion Date.

No warranties

- 8.2 The Sponsor acknowledges that, on the Conversion Date:
- (a) title to and risk in each Transferring Chattel will transfer to the Sponsor on an “as is, where is” basis, with no warranties; and
 - (b) the Sponsor assumes full responsibility for each Transferring Chattel, including any maintenance, repair or replacement.

- 8.3 The Sponsor will have no recourse to, and waives any right to a claim against, the Agency, Crown, the Ministry or the board of the Converting School in respect of the condition of any Transferring Chattel.

Treatment of Transferring Chattels on termination or expiry

- 8.4 In clause 4.2 (*Termination or expiry of this Agreement*) of Schedule 2 (*Funding*), references to “assets” include Transferring Chattels.

9. Other

Inter-School Arrangements

- 9.1 The Specific Terms identify whether the board of the Converting School had an arrangement with any other school boards regarding the sharing of education services, employees or students.

ETA Guidance Note: Under the ETA (clause 125 of Schedule 1), if the board of a Converted School was, before the Conversion Date, a party to a written arrangement (for example, a memorandum of understanding), whether legally binding or not, with the board of one or more State schools regarding the sharing of education services, employees or students (**Inter-School Arrangement**), from the Conversion Date:



the Sponsor must be treated as if it were a party to the Inter-School Arrangement; and



all references in the Inter-School Arrangement to the board of the converted school must be treated as if they were references to the Sponsor.

For clarity, a Sponsor of a Converted School (whether or not the Converted School was a Converting School) may enter into an Inter-School Arrangement during the Term.

Other

- 9.2 The Specific Terms and Special Terms may identify any other details that are relevant to a Converting School for the purposes of this Agreement (including if Converting School property is held in a trust).

ETA Guidance Note: If any property of a Converted School was held in trust immediately before the Conversion Date, any additional terms that may be required will be included as Special Terms in the Specific Terms (Part E). Refer to ETA clause 118 of Schedule 1.

Template Guidance Note: If the Converting School is a PPP school, or on a site that is leased from a post-settlement governance entity, further detail will need to be included in this Schedule or the Special Terms.

Schedule 4 Records and Reporting

1. Records

1.1 The Sponsor must:

- (a) maintain full and accurate records of the operation of the Charter School that are sufficient to enable the Sponsor to complete its reporting obligations under, and demonstrate compliance with this Agreement and Applicable Law (**Records**);
- (b) use the Ministry's ENROL enrolment management application to manage enrolment of students, ensuring that this is updated within five school days of the first day of attendance for each student at the Charter School;
- (c) comply with the 'School Records - Retention and Disposal' publication issued by the Ministry and Archives New Zealand (as updated or replaced from time to time), irrespective of whether the Public Records Act 2006 applies to the Sponsor (as at the date of this Agreement, this publication is available on the Ministry's website (<https://assets.education.govt.nz/public/Records/School-Records-Retention-and-Disposal-Schedule-All.pdf>));
- (d) maintain Records in accordance with prudent educational and business practices and Applicable Law; and
- (e) comply with any other record keeping requirements set out in the Performance Plan.

2. Reporting and monitoring

2.1 The Sponsor must:

- (a) provide the Agency and Authorisation Board any Records requested by the Agency and Authorisation Board from time to time;
- (b) comply with its reporting obligations set out in the Performance Plan or applicable to the Sponsor under Applicable Law;
- (c) use a School Management System (**SMS**) approved by the Ministry for reporting; and
- (d) permit the Agency or its representative to access the Charter School premises, Personnel and/or Records on reasonable notice from the Agency to the Sponsor from time to time.

2.2 The Sponsor will ensure that any required report, notification or response to an Agency request includes reasonable details and explanations and other evidence and supporting materials, in each case:

- (a) sufficient for the Agency to understand the nature, extent and materiality of any adverse matter raised in the report, notification or response; and
- (b) demonstrating how the Sponsor has responded (or will take action to respond) in an appropriate manner to any adverse matter.

3. Notification to the Agency

- 3.1 The Sponsor must:
- (a) promptly notify the Agency of any matters that are material to the Agency's role in relation to the Charter School (including the Agency's role of monitoring and reporting on the Sponsor's compliance with this Agreement); and
 - (b) comply with any other notification obligations set out in the Performance Plan.
- 3.2 Without limiting clause 3.1, the Sponsor must promptly notify the Agency if any of the following acts, omissions or events occur:

Key notification obligations	
Financial viability	Any source of anticipated funding on which the ongoing viability of the Sponsor and/or the Charter School is dependent will not be available either in the expected amount or at the expected time (and an equivalent replacement source of funding has not been secured by the Sponsor). Sponsor has failed to pay any debt from borrowed money, or the Sponsor reasonably anticipates that it will fail to pay such debt in future. Any other Insolvency Event affecting the Sponsor has occurred or is reasonably likely to occur.
Criminal offence	Sponsor or any of its Personnel is investigated or convicted for any criminal offence that represents a material risk to the operation of the Charter School or would otherwise breach clause 4.2(c)(ii).
Operation of Charter School	Any act, omission or event that has adversely affected, or is likely to adversely affect, the operation of the Charter School or the Sponsor's compliance with this Agreement in any material respect.
Grounds for Intervention	Any other act, omission or event occurs that constitutes, or is likely to constitute, a ground for Intervention.

4. Audit rights

- 4.1 The Agency may conduct, or appoint a representative to conduct, an audit no more than once in each School Year to confirm that the Sponsor has complied, and continues to comply, with this Agreement (provided that the Agency or its representative may conduct an additional audit following any breach of this Agreement by the Sponsor).
- 4.2 The Sponsor must provide any assistance reasonably requested by the Agency or its representative, including access to the Charter School premises, Personnel and Records.
- 4.3 Each party will be responsible for its own costs in relation to any audit undertaken in accordance with this section 4, unless an audit identifies a material breach of this Agreement by the Sponsor, in which case the Agency may require the Sponsor to reimburse the Agency for the reasonable costs and expenses incurred by the Agency in carrying out the audit.