

## SUMMARY

Date:	15 August 2022
Title: <i>(this is what the agreement will be titled in the contract/finance system)</i>	Funding Deed in respect of the Enviroschools and Te Aho Tu Roa Programmes
Reference: <i>(if there is a particular reference you would like noted)</i>	Toimata Foundation
MfE Contract Owner:	Natasha Lewis
MfE Contract Manager:	Benji Moorhouse
MfE Contact Email:	Benji.moorhouse@mfe.govt.nz
MfE Contact Phone number:	022 0087368

## Organisation (Supplier) details

Legal Name:	Toimata Foundation
Trading Name (if different):	
NZBN:	9429043107384
Key Contact:	Heidi Mardon, Chief Executive
Address:	60 Te Aroha Street, Hamilton East, Hamilton 3216
Key Contact Email:	s 9(2)(a)
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## Commitment

Budget (Departmental or Crown):	<b>Crown</b> - Appropriation 'Environmental Training Programmes M29'		
Programme code:	0206	Project code:	335
		Account code:	60101
Fund (if applicable):			
Total Budget (NZ\$ excl. GST):	\$7,600,000.00 (1.9 Million per annum for a total of 4 years)		
Commencement (Start) Date:	09/08/2022		
Completion (End) Date:	09/08/2026		

## Legal Review

Reviewed by:	Adrienne Ellingham / Caitlin Coughtry
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## Comments

[Any additional information to note]  
e.g., milestone date changes

**Variation Information (to be completed if this is a variation to agreement):**

Agreement/ contract number:	
Variation number:	
Reason for Variation: (e.g., dates, time, milestones, amount/total value)	
Has the amount/total value changed?	
Variation reviewed in Legal by (name of solicitor):	

**Comments**

[Any additional variation information to note]

20204

**Funding Deed**

Between Her Majesty the  
Queen and  
Toimata Foundation

In respect of the Enviroschools and  
Te Aho Tu Roa Programmes

Parties.....	1
Background.....	1
1 Definitions and Interpretations.....	1
Definitions.....	1
Interpretation.....	3
2 Funding.....	3
Nature of contributions.....	4
Subject to appropriation.....	4
No Crown Liability.....	4
Use of Funding.....	5
Capital Assets.....	5
3 Outcome delivery.....	7
4 Work Programme and Annual Plans.....	7
Work Programme.....	7
Annual Plans.....	8
Approval of Work Programme and Annual Plans.....	8
5 Reports and Audited Financial Statements.....	9
Annual Report and Presentation.....	9
Six-Monthly Report.....	10
Audited Financial Statements.....	10
Approval of Reports.....	10
6 Payment of Funding.....	10
7 Invoicing and GST.....	11
8 Recovery of Funding.....	11
9 Interest on late repayment.....	12
10 Administration of Funding and Sub-Recipients.....	12
11 Communication, Meetings and Site Visits.....	12
12 The Recipient's obligations.....	13
13 Crown's Obligations.....	13
14 Audit.....	13
15 Term and termination.....	14
16 Regulatory position.....	14
17 Disputes resolution.....	14
18 Confidential Information.....	15
Permitted use and disclosure.....	15
19 Intellectual Property.....	15
New Intellectual Property.....	15
Third Party Intellectual Property Rights.....	16
20 Communications and announcements.....	16

<b>21</b>	<b>Information to Parliament .....</b>	<b>16</b>
<b>22</b>	<b>Approvals and consents.....</b>	<b>16</b>
<b>23</b>	<b>Force majeure .....</b>	<b>17</b>
	No liability .....	17
	Notice .....	17
	Termination .....	17
<b>24</b>	<b>Notices .....</b>	<b>17</b>
	Giving notices .....	17
	Change of address or fax number.....	18
	Time notice or communication is given .....	18
<b>25</b>	<b>No assignment .....</b>	<b>18</b>
<b>26</b>	<b>Variation.....</b>	<b>18</b>
<b>27</b>	<b>Waivers .....</b>	<b>18</b>
<b>28</b>	<b>Survival of Certain Clauses .....</b>	<b>19</b>
	<b>Schedule 1 .....</b>	<b>20</b>
	Outcomes .....	20
	<b>Schedule 2.....</b>	<b>21</b>
	Addresses for notices and representatives.....	21
	<b>Schedule 3.....</b>	<b>22</b>
	Work Programme.....	22
	<b>Schedule 4.....</b>	<b>23</b>
	Annual Plan Template .....	23
	<b>Schedule 5 .....</b>	<b>24</b>
	Capital Assets Register .....	24

## Parties

Her Majesty the Queen acting by and through acting by and through the Secretary for the Environment, Ministry for the Environment (Crown)

Toimata Foundation (Recipient)

## Background

- A The Recipient is a registered charitable trust focused on creative sustainability.
- B With founding partner Te Mauri Tau, the Recipient works collaboratively with communities and organisations nationwide. The Recipient is the national support organisation for two main programmes, Te Aho Tū Roa and Enviroschools, and also holds an innovation space for new initiatives.
- C The Recipient provides the organisational structure and leadership for delivery and development of its education programmes throughout New Zealand. The Recipient supports the network of schools, kura, early childhood centres, Iwi, hapū and communities involved in the programmes offered by the Recipient. The Enviroschools and Te Aho Tū Roa programmes offered by the Recipient are initiatives working in the English and Māori medium respectively, each with its own processes and resources. The Recipient also collaborates to develop new initiatives as required.
- D The Parties have agreed to enter into this Deed to define the respective obligations of the Crown and the Recipient to each other in respect of the funding of the Recipient's training programmes .
- E In November 2021 MfE confirmed that Treasury provisionally approved, as per the appropriation 'Environmental Training Programmes (M29)', the Ministry to provide \$1.9 million per year from 1 July 2022 to 30 June 2026.
- F There has been an increase in costs to Toimata (volume growth, inflation and changes in Council contributions) for delivering the funded programmes since the first funding agreement in 2012
- G The parties have agreed to enter into a strategic partnership with the intent to collaborate to fulfill shared long-term goals of environmental and community sustainability. The outcomes in schedule 1 of this Deed reflect the commitment of Toimata to work long-term and collaboratively with MfE and other agencies to deliver the outcomes in a sustainable way.
- H This Deed should be read in the context of the Partnership Agreement, in which the Parties recognise their common mission to support and be part of the regeneration and flourishing of the environment for our whānau and communities, working in true partnership with Tangata Whenua, for the empowerment of communities and the tapu of the taiao being restored.

## 1 Definitions and Interpretations

### Definitions

1.1 In this Deed the following definitions apply:

**Annual Plan** means the Recipient's annual plan which will include detail regarding Work, budgets, timelines, risks and funding sources for a particular Financial Year in the template attached at Schedule 4 and agreed in accordance with clause 4.9.

**Annual Report** means the annual report prepared by the Recipient in accordance with this Deed and as per the Crown's requirements (as notified to the Recipient).

**Capital Assets** means those assets owned by the Recipient and used in the performance of the Work as listed in the register at Schedule 5.

**Capital Costs** means costs incurred by the Recipient in acquiring the Capital Assets or in bringing a Capital Asset to working order or to a state in which it can perform the Work as required for the Programmes.

**Carry Forwards** means Work provided for in the Annual Plan for any Financial Year, but not completed (whether in whole or in part) during that Financial Year.

**Clawback Amount** means an amount calculated as follows:

Clawback Amount =  $G - (G * (x/[60*]))$ , Where:

G = that amount of the Funding applied to Capital Costs

x = the number of whole calendar months since the first payment of that part of the Funding applied to Capital Costs;

*\*[Note: this number should match the restriction period set out in Schedule 5]*

**Confidential Information:** means any information designated as confidential by a party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information relating to the business, affairs, properties, assets, trading practices, developments, Intellectual Property, personnel and suppliers of a party.

**Deed** means this funding deed.

**Final Annual Report** means the final Annual Report submitted by the Recipient in accordance with the relevant provisions of clause 5 (Reports and Audited Financial Statements).

**Financial Year** means the year commencing on 1 January and ending on 31 December.

**Fund** means the 'Environmental Training Programmes (M29)'.

**Funding** means the Crown monetary contribution to the costs of the Programmes' delivery as described in clause 2.

**Intellectual Property** means all manner of intellectual property rights including patents, trademarks, logos, copyright, design rights and know-how whether or not it can be registered in any country.

**New Intellectual Property** has the meaning set out in clause 20.1.

**Operative Date** is 1 July 2022.

**Outcomes** means the long-term outcomes the delivery of the Programmes are intended to achieve as detailed in Schedule 1 and specified in the Programme of Work approved by the Crown.

**Partner** means anybody the Recipient uses and/or works with to deliver the Work but who is not a Sub-Recipient;

**Programmes** means the Recipient's programmes including, EnviroSchools, Te Aho Tū Roa and other nationwide initiatives working with children and young people, schools, kura, hapū, iwi and communities to plan, design and create healthier more sustainable lifestyles and the development of the Toimata network.

**Property** means the Recipient's premises at 60 Te Aroha Street, Hamilton 3216.

**Restriction Period** means in respect of each Capital Asset the restriction period set out in Schedule 5.

**Six Monthly Progress Update** means the six-monthly update prepared by the Recipient in accordance with this Deed and as per the Crown's requirements (as notified to the Recipient).

**Sub-Recipient** means anybody which the Recipient funds in whole or in part from the Funding whether as a supplier, contractor or otherwise and whether by payment or grant.

**Work** means all activities and/or projects for the purpose of achieving the Outcomes which are agreed by the Parties and detailed in an Annual Plan.

**Programme of Work** means the work programme to deliver the Outcomes prepared by the Recipient., which will include detail regarding the Outcomes, the Work, the impacts and the expected benefits covering the period from 1 July 2022 to 30 June 2026, approved by the Crown under and attached to this Deed as Schedule 3 in accordance with clause 4.9.

## Interpretation

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means any day on which banks are generally open for business (other than Saturdays, Sundays or public holidays).
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.5 A reference in this Deed to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
  - 1.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.9 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
  - 1.2.10 A reference to the word 'include' or 'including' is to be construed without limitation.
  - 1.2.11 A reference to this Deed includes the agreement recorded in this Deed.
  - 1.2.12 Any schedules and attachments form part of this Deed.

## **2 Funding**

- 2.1 The Funding comprises an aggregate maximum of \$7,600,000 (plus GST, if any) towards the total cost of the Work to meet the Outcomes.
- 2.2 The maximum annual allocation of the Funding is determined by the Crown's appropriation for the Programmes, the relevant Annual Plan, the requirements for which are detailed under clause 4 of this Deed.
- 2.3 The Recipient shall use all Funding only in the manner authorised under this Deed.
- 2.4 The payment of Funding to the Recipient in each Financial Year is subject to the Recipient carrying out their obligations and responsibilities as set out in this Deed to the reasonable satisfaction of the Crown.
- 2.5 Subject to the following provisions, any underspend of Funding allocated in any Financial Year may be carried forward to the next Financial Year.
- 2.5.1 The Recipient must notify the Crown of any forecasted underspend of Funding by 30 November in the Financial Year in which the underspend occurs.
- 2.5.2 Any underspend of Funding in the Final Financial Year shall be repaid by the Recipient to the Crown within 60 days of the Recipient submitting the Final Annual Report.

### **Nature of contributions**

- 2.6 The Crown's contributions under this Deed are payments intended to assist the Recipient to achieve the Outcomes during the term of the Deed.

### **Subject to appropriation**

- 2.7 In accordance with section 4(1) of the Public Finance Act 1989, both Parties acknowledge that payment of the Funding in any Financial Year is subject to and contingent upon the Crown's appropriation of adequate levels of funding for the Programmes under an Act of Parliament for that financial year.
- 2.8 If there is no appropriation for the Programmes included in the Estimates of Appropriations tabled in Parliament for the relevant Financial Year, or the appropriation is for an amount less than that detailed in the Annual Plan and approved by the Crown for the relevant Financial Year, the Crown shall give written notice to the Recipient as soon as practicable.

### **No Crown Liability**

- 2.9 The Crown will not be liable (in contract or tort, including negligence, or otherwise) to any party for any direct or indirect damage, loss or cost whatsoever in relation to this Deed, or for any works or activities undertaken in delivering the Work detailed in any Annual Plan.
- 2.10 The Crown will not be liable for any costs or liabilities incurred by the Recipient prior to the Operative Date

### **Use of Funding**

- 2.11 The Recipient shall only use the Funding to implement the Programme of Work for the purposes of achieving the Outcomes for the Programme of Work.
- 2.12 The Recipient shall not use the Funding for any costs incurred before the Operative Date.

### **Capital Assets**

- 2.13 Clauses 2.14 to 2.26 will apply to any Capital Costs exceeding \$10,000.00 (excluding GST).

- 2.14 The Recipient shall not use any part of the Funding for Capital Costs, except as agreed in writing by the Crown, or as set out in clause 2.27.
- 2.15 All Capital Assets will be and remain the property of the Recipient and will at all times be at the risk of the Recipient. The Recipient will bear the risk of any loss, theft, damage or destruction of any Capital Assets and if Capital Assets require repair or replacement, the Recipient will bear the cost of such repair or replacement.
- 2.16 The Recipient will maintain a register of Capital Assets in Schedule 5.
- 2.17 In consideration of the Crown consenting to the application of all or part of the Funding to pay for Capital Costs, the Recipient agrees that, during the Restriction Period, the Recipient's ability to deal with Capital Assets shall be restricted as set out in clauses 2.18 to 2.27 below.
- 2.18 During the Restriction Period, the Recipient shall not, without the prior written consent of the Crown (such consent to not be unreasonably withheld or delayed):
- a) sell, assign or pledge any Capital Asset; or
  - b) underlet, lend or otherwise part with possession of any Capital Asset (other than in the case of subletting of the Property of less than or equal to [10] % of the net lettable area; or
  - c) create, agree to create, allow to come into existence or permit to subsist any security interest, mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention or any other arrangement which has the practical effect of securing payment or performance of an obligation over or affecting all or any part of any Capital Asset, other than the mortgage granted to the mortgagee at the time of acquisition of the Property.
- 2.19 During the Restriction Period, the Recipient shall:
- a) protect all Capital Assets against distress, execution and seizure;
  - b) maintain all Capital Assets in a good state of repair and in good working order and condition;
  - c) upon request by the Crown, notify the Crown of the present location of any Capital Asset.
- 2.20 During the Restriction Period the Recipient shall maintain at its cost insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice to insure against and any other risks which the Crown may from time to time reasonably require for their full replacement value or on such other basis as the Crown may agree in writing, and shall provide evidence of such insurance as and when reasonably requested by the Crown.
- 2.21 If any of the following events occurs (whether or not within the control of any party) at any time prior to the expiry of the Restriction Period:
- a) the Recipient fails to perform or observe any obligation under this Deed regarded by the Crown as material, including the obligations in clauses 2.18 to 2.20, and, in the case of a failure which is capable of remedy, that failure is not remedied within 10 days after written notice thereof has been given to the Recipient by the Crown;
  - b) any representations or warranty made under or in connection with this Deed by the Recipient is false or misleading in any respect regarded by the Crown as material;
  - c) the Recipient suffers an event of insolvency, including:
    - i) the Recipient is unable or is deemed to be unable to pay its debts when they

fall due;

- ii) a receiver, liquidator or other encumbrancer is appointed to the Recipient or to any part of its assets or undertakings;
- iii) a compromise or arrangement is proposed or made between the Recipient and its creditors or any class of them;
- iv) any indebtedness of the Recipient is not paid when due or shall become due and payable or steps are taken to enforce any charge, mortgage or security interest for such indebtedness;
- v) any present or future charge, mortgage or security interest over or in respect of any of the assets of the Recipient becomes enforceable or is enforced;

then the Recipient must notify the Crown, immediately on becoming aware of it, of the occurrence of such event and at any time (and notwithstanding the previous waiver of any default) the Crown may by notice to the Recipient declare any or all of the Clawback Amount to be immediately due and payable.

- 2.22 In order to secure the Recipient's obligations under this Deed in respect of the Clawback Amount, the Recipient hereby grants to the Crown a Purchase Money Security Interest (as that term is defined in the Personal Property Securities Act 1999) in each Capital Asset which is "Personal Property" (as that term is defined in the Personal Property Securities Act 1989). The Recipient will assist as required by the Crown to ensure that that Security Interest becomes a "Perfected Security Interest" (as that term is defined in the Personal Property Securities Act 1999). The Recipient waives its right to receive a copy of any verification statement in relation to any Security Interest created by this Deed.
- 2.23 If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause 2.23) calculated from its due date to the date of its receipt by the Crown (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Crown's cost of funds (expressed as an annual percentage rate) from whatever sources the Crown may select, calculated on a daily basis.
- 2.24 The Recipient will, on demand, indemnify the Crown against any cost, loss, expense or liability (including all legal expenses on a full indemnity basis) incurred by the Crown as a result of or in connection with any amount payable by the Recipient to the Crown not being paid when due.
- 2.25 The Crown will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register.
- 2.26 Clauses 2.24 to 2.25 shall remain in full force and effect after expiry or termination of this Deed.
- 2.27 The Recipient may apply the Funding toward the following costs related to the Property, being:
- a) repayment of the loan used to acquire the Property;
  - b) body corporate fees;
  - c) rates (including water rates);
  - d) insurance; and
  - e) repair and maintenance,

each up to the amount specified in the relevant Annual Plan.

### **3 Outcome delivery**

- 3.1 The Outcomes to be achieved under this Deed are those specified in Schedule 1, they are the subject of the Partnership Agreement between MfE and Toimata and are in the Programme of Work. They shall be reviewed by the Parties every 2 years
- 3.2 The Recipient shall use reasonable endeavours to ensure the Outcomes are achieved in the timing set out in each Annual Plan.
- 3.3 Annual Plans shall identify Work that most effectively and efficiently delivers the Outcomes.

### **Programme of Work and Annual Plans**

#### **Programme of Work**

- 4.1 The Recipient shall prepare the Programme of Work prior to 1 October 2022. The Programme of Work shall be prepared using the template co-developed by Toimata Foundation and the Crown and in accordance with the following provisions.
- 4.2 The Programme of Work of work shall be agreed through strategic discussion between the two Parties as part of their strategic partnership, and enacted through the Annual Plan and Annual Report process.

#### **Annual Plans**

- 4.3 For each Financial Year during the term of this Deed, the Recipient shall prepare an Annual Plan in accordance with this Deed and the Annual Plan template (attached at Schedule 3.)

#### 4.4 Each Annual Plan must include:

- 4.4.1 A description of Work (including any Carry Forwards) to be undertaken in the relevant Financial Year;
- 4.4.2 A statement of the expected Outcomes to be delivered by the specified Work;
- 4.4.3 In relation to the cost of the Work to be undertaken in the relevant Financial Year.
  - The total estimated cost of the planned Work (excluding any Carry Forwards);
  - An annual budget which includes a forecast statement of financial performance and budgeted expenditure for Capital Assets (including as contemplated by clause 2.27). The forecast expenses outlined in the forecast statement of financial performance should include a breakdown of total expenses by nature;
  - Details of the monetary contributions to be made by the Recipient and any other entities; and
  - The amount of Funding required from the Crown (less any Funding received in the previous Financial Year but not spent and not committed for Carry Forwards).
- 4.4.4 In relation to all Carry Forwards for the relevant Financial Year:
  - The total estimated cost of the Carry Forwards;
  - The total estimated cost of the Carry Forwards to be undertaken in the relevant Financial

Year;

- The estimated completion date of the Carry Forwards; and
- The amount of Funding paid by the Crown in the previous Financial Year(s) and not spent but committed to the Carry Forwards.

4.5 A list of all proposed Partners and Sub-Recipients the Recipient will use to deliver the planned Work. Any changes to this information during a Financial Year will not be subject to clause 4.12.

#### **Approval of Programme of Work and Annual Plans**

- 4.6 The Programme of Work and Annual Plans must be approved by the Crown
- 4.7 The Annual Plan template as finalised by the Crown is appended to this Deed as Schedule 3
- 4.8 For every Financial Year during the term of this Deed, the Recipient shall submit an Annual Plan no later than 30 November on the preceding Financial Year for the Crown's approval.
- 4.9 The Crown's approval of an Annual Plan will be confirmed by written notice to the Recipient.
- 4.10 Any changes to an Annual Plan will be confirmed in writing by duly authorised representatives of the Parties.
- 4.11 In each Financial Year, the Recipient will manage and deliver the Work described in the Programme of Work in accordance with the Annual Plan approved by the Crown. The Recipient will not expend monies or incur liabilities outside the terms of the Annual Plan that have implications for Crown funding to any material extent without the prior written approval of the Crown.

### **5 Reports and Audited Financial Statements**

#### **Annual Report and Presentation**

- 5.1 For each Financial Year during the term of this Deed, following each Financial Year's end the Recipient will submit to the Crown an Annual Report that relates to the previous Financial Year. Each Annual Report must be supplied in accordance with the Crown's requirements (as notified in advance). During the term of his Deed the Crown's requirement will include reporting actual and forecast budget figures for the previous and current years, and forecast figures for the subsequent year.
- 5.2 For the final Financial Year the Recipient will submit a more detailed Annual Report (**the Final Annual Report**) covering the progress toward the Outcomes over the term of the Deed and any other detail the Crown may require.
- 5.3 The Recipient and the Crown will arrange an annual meeting to update progress.

#### **Six-Monthly Progress Update**

- 5.4 The Recipient will submit to the Crown a six-monthly report for the period ending 30 June by 15 August that follows. The report will reflect the Crown's requirements (as notified in advance) and:
- (a) provide a progress update on the Work toward achieving the Outcomes outlined in Schedule 1.

- (b) the progress update will be in the form agreed by both Parties and may include sharing relevant stories at times other than the formal update and reporting times.
- (c) provide an update on expenditure to date against the Annual Plan budget;
- (d) raise any issues or risks that will require discussion / action by the Recipient and the Recipient's other funding partners (if any) and note the action to be taken.

#### **Audited Financial Statements**

- 5.5 The Recipient will provide to the Crown audited financial statements for the Recipient's financial year ended 31 December no later than 15 April of each Financial Year. These will include a Statement of Service Performance or other format required by the Crown.

#### **Approval of Reports**

- 5.6 The Crown will consider and discuss with the Recipient any report submitted to it under this Deed and notify the Recipient in writing whether the Crown accepts the report, or:
- 5.7.1 requests reasonable modifications to the report, or
  - 5.7.2 subject to clause 5.8, rejects the report on reasonable grounds.
- 5.8 Where the Crown rejects the report under clause 5.6.2 either party may request a meeting with the other party's appointed representative to discuss matters related to the report.

### **6 Payment of Funding**

- 6.1 Subject to the provisions of clause 2, in each Financial Year the Funding payable by the Crown is the amount requested by the Recipient and approved by the Crown as specified in the Annual Plan.
- 6.2 Subject to the provisions of **clauses 2** and 7, in each Financial Year the Crown shall pay its contribution under the agreed Annual Plan in equal instalments as follows:
- 6.2.1 Within 10 business days of 1 August, 1 November, 1 February, and 1 May

### **7 Invoicing and GST**

- 7.1 The Recipient shall submit invoices to the Crown for the Funding.
- 7.1.1 The Recipient shall provide the Crown with a tax invoice at least 5 business days before the date that the payment of an instalment of Funding is due
  - 7.1.2 Any invoices must quote the deed number on this deed.
  - 7.1.3 Payment of any Funding is not due until the Crown has received a correct valid tax invoice.
- 7.2 Amounts specified in this Deed are exclusive of GST (if any).

### **8 Recovery of Funding**

- 8.1 The Crown may reduce, suspend or withhold the Funding or require all or part of the Funding to be repaid:
- 8.1.1 If it judges the Recipient's delivery of the Programme of Work or an Annual Plan

to be unsatisfactory;

- 8.1.2 If the Recipient fails to comply in a material way with any of the Recipient's obligations under this Deed;
  - 8.1.3 If there is a substantial change to the Work which the Crown has not approved;
  - 8.1.4 Until the Recipient has provided sufficient evidence that an underspend from a previous Financial Year has been spent;
  - 8.1.5 If the Recipient has not provided an Annual Plan complying with clause 4.5.4 (Carry Forwards) and/or 5.5 (Six-Monthly Reports) to the Crown's reasonable satisfaction;
  - 8.1.6 If the Deed is terminated in accordance with clause 15 (Term and Termination); or
  - 8.1.7 If there has been an overpayment.
- 8.2 In the event repayment is required under this clause, the Crown shall have the right to require prompt repayment (and no later than 30 days following the date this Deed ends) of prior advances that are unspent.

## **9 Interest on late repayment**

- 9.1 If the Recipient fails to pay to the Crown any sums due under this Agreement within 30 Working Days' notice, interest shall accrue at a rate of 8% per annum on the amount due to be paid from the due date until payment is made.

## **10 Administration of Funding and Sub-Recipients**

- 10.1 The Recipient will account for the Funding received in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Funding is applied for the purposes of this Deed.
- 10.2 Where any Work is to be undertaken by a Sub-Recipient under a contract with the Recipient, the Recipient shall take all reasonable steps to ensure that:
  - 10.2.1 the Sub-Recipient is selected through an appropriate procurement process, so as to ensure best value for money for all Work undertaken (taking qualitative criteria into account), and open and effective competition is achieved (where appropriate); and
  - 10.2.2 the contract with a Sub-Recipient requires the Sub-Recipient to:
    - (a) carry out the Work with all reasonable skill, care and diligence and in accordance with the approved Annual Plan; and
    - (b) comply with the Recipient's obligations in relation to audit as specified in clause 14 (Audit) of this Deed; and
  - 10.2.3 prior to execution of any Sub-Recipient contracts, the Recipient has approved the following aspects of the contract:
    - (a) Scope;
    - (b) Price; and
    - (c) Payment for any aspects outside the scope of the relevant Annual Plan.
- 10.3 The Recipient will remain wholly responsible for the acts and omissions of all Sub-

Recipients. The Recipient shall use all reasonable endeavours to satisfy itself that its Sub-Recipients are competent to deliver the Project.

## **11 Communication, Meetings and Site Visits**

- 11.1 Each Party's appointed representative is set out in Schedule 2. The appointed representatives will be the first point of contact for all communication in respect of the Programme of Work and Annual Plans, the Funding, and this Deed.
- 11.2 Each Party's appointed representatives will meet at least once a year to review progress on the Programmes and the relevant Programme of Work.
- 11.3 The meetings will be arranged at either the Crown's or the Recipient's request.
- 11.4 Each Party will use reasonable endeavours to give reasonable prior notice of any proposed meetings. Where possible site and case study visits will be detailed in the relevant Annual Plan.

## **12 The Recipient's obligations**

12.1 The Recipient shall:

- 12.1.1 In each Financial Year, subject to appropriation of Crown funding, pay its contribution towards the Funding allocated to the costs of the Work described in the Annual Plan;
- 12.1.2 Submit the Programme of Work, Annual Plans and reports to the Crown in accordance with the provisions of this Deed;
- 12.1.3 Undertake and progress the Work diligently in accordance with the approved Annual Plans;
- 12.1.4 Notify the Crown of any matters that are likely to affect the progress toward achievement of the Outcomes; and
- 12.1.5 Act at all times in accordance with this Deed.

## **13 Health and Safety at Work Act 2015**

- 12.2 The Recipient must have in place a health and safety management system that is appropriate to the size of its organisation and the level of risk its activities present. The Recipient must submit a copy, or evidence of, such system to the Crown on request.
- 12.3 The Recipient is responsible for health and safety relating to the provision of services/activities that it carries out including any of the Recipient's obligations under the Health and Safety at Work Act 2015.
- 12.4 The Recipient must report to the Crown if any of the following occurs to the extent it relates to, or affects, this Deed:
  - 12.4.1 notifiable event immediately, followed up in writing with a copy of the notification and an appropriate report within 3 working days or otherwise agreed by the Parties; and
  - 12.4.2 any health and safety incident or event which may bring the Crown into disrepute or attract media attention immediately, followed up in writing as required or requested by the Crown.
- 12.5 The Recipient is responsible for the health and safety due diligence and performance of any contactors or Sub-Recipients.

- 12.6 The Recipient must provide to the Crown a copy of its health and safety plan for the Programmes within ten business days of: (a) the Operative Date; and (b) each anniversary of the Operative Date.

## **14 Crown's Obligations**

- 14.1 The Crown shall:
- 14.1.1 In each Financial Year pay the allocated Funding in accordance with the terms of this Deed;
  - 14.1.2 Make decisions in an expeditious manner; and
  - 14.1.3 Act at all times in accordance with this Deed.

## **15 Audit**

- 15.1 The Recipient agrees that upon the Crown's request it shall provide the Crown, at all reasonable times and upon reasonable notice, access to their premises, personnel and records (physical files and electronic) in relation to the Programmes for the purpose of audit and verification of work undertaken and other reasonable purposes in connection with this Deed. The Recipient shall ensure that the Crown has the same rights of access in respect of any Sub-Recipient.
- 15.2 The purpose of any audit will be to check compliance with the terms and schedules of this Deed and the appropriate use of the Funding. Any such audit will be undertaken at the Crown's expense.
- 15.3 The Crown will inform the Recipient if an audit is to be carried out and will seek an appropriate date and time for both Parties. Audits will be carried out by a fully qualified accountant or technical specialist who is independent of the Crown.
- 15.4 A full report of the outcome of any audit may be made available to the Recipient upon request.
- 15.5 In the event that the audit reveals any misappropriation of the Funding or material discrepancies (particularly those related to Work), the Recipient will be liable for the costs of the audit together with the repayment of any misappropriated Funding monies.

## **16 Term and termination**

- 16.1 The term of this Deed shall commence on the Operative Date and subject to earlier termination under clause 15.2 shall end on the date the Crown notifies the Recipient that the final Annual Report has been accepted.
- 16.2 The Crown may extend the term of this Deed by giving the Recipient Notice on or before [30 November 2025] (Extension Notice). If the Crown gives an Extension Notice, the Parties will record the terms of the extension in a variation to this Deed. Prior to any Extension Notice being given, the Parties may meet to discuss the terms of any variation. To the extent that the Parties wish to discuss the terms of any variation, the Parties intend to commence discussions 1 January 2024.
- 16.3 The Crown may terminate this Deed prior to the date in clause 16.1 if:
- (a) The Recipient fails to deliver or is late delivering Annual Plans and/or reports on two or more consecutive occasions and is unable to provide a satisfactory explanation for each such failure or late delivery; or

- (b) The Recipient fails to make adequate progress in carrying out the Programme of Work and/or toward achieving the Outcomes; or
- (c) The Recipient commits a breach of its obligations under this Deed; or
- (d) The Recipient becomes insolvent, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of external administration; or
- (e) The Recipient ceases for any reason to continue in business or to deliver the Programmes; or
- (f) There is no longer an appropriation for the Programmes (see clauses 2.7 and 2.8).

16.4 The date of termination of this Deed under clause 16.3 shall be the date determined by the Crown following consideration of the circumstances and notified to the Recipient but at least one month's written notice must be given to the Recipient.

16.5 In the event notice is given under clause 16.4, the Crown may require prompt repayment (and no later than 30 days following the date this Deed ends) of prior advances of Funding that are unspent.

## **17 Regulatory position**

17.1 Each party's ability to act under this Deed shall in all things be subject to any and all statutory and regulatory requirements establishing or recording powers or functions or delimiting the same and/or the exercise thereof by that party. Nothing in this Deed shall be read or construed as abrogating, delimiting or otherwise affecting the proper or valid undertaking or exercise of any such power or function by any party.

## **18 Disputes resolution**

18.1 If any difference or dispute arises as to the interpretation of this Deed or as to any matter arising out of or in connection with this Deed then either party may notify the other party in writing of the details of the difference or dispute.

18.2 Each party shall use its best endeavours to resolve any differences or disputes following the three consecutive stages below:

- (a) Stage 1: by discussion between the representatives identified in Schedule 2.
- (b) Stage 2: by discussions between the Parties' respective Chief Executives or equivalent.
- (c) Stage 3: by mediation if discussions at Stage 2 do not resolve the difference or dispute within two months of the date of notice given under clause 17.1. If the Parties cannot agree upon the appointment of the mediator, the appointment shall be made by the then Chair of the Resolution Institute or his or her nominee.

18.3 Pending resolution of the dispute, the Parties shall continue to perform all their obligations under this Deed except where it is impractical to continue performing any obligations being the subject of the dispute, and such obligations shall be suspended during the dispute.

## **19 Confidential Information**

### **Permitted use and disclosure**

19.1 The Parties must not disclose any of the other Parties' Confidential Information unless one of the following circumstances applies:

- 19.1.1 The Parties have agreed in writing to the disclosure. Agreement may be conditional upon the person to whom the disclosure is to be made entering into a separate confidentiality document with the Parties.
- 19.1.2 The disclosure is specifically contemplated and permitted by this Deed.
- 19.1.3 The disclosure is to personnel of one of the Parties, a Partner or Sub-Recipient, to the extent the personnel, Partner or Sub-Recipient need to know the Confidential Information in order to perform a function in connection with this Deed. The party must ensure that its personnel, Partner or Sub-Recipient comply (or complies) with the terms of this clause.
- 19.1.4 The disclosure is to a representative of one of the Parties in order for it to provide advice in relation to matters arising under or in connection with this Deed.
- 19.1.5 The disclosure is required by a court, a binding directive of a governmental or administrative authority or to comply with any applicable law, provided that the Parties will use reasonable endeavours to consult with each other prior to making any such disclosure.
- 19.2 All obligations of confidence set out in this Deed continue in full force and effect after this Deed ends.
- 19.3 The Recipient shall ensure that all obligations of confidence set out in this Deed apply to any Sub-Recipient.

## **20 Intellectual Property**

### **New Intellectual Property**

- 20.1 The Crown acknowledges that the Recipient owns or has legal access to certain Intellectual Property prior to or on the Operative Date (**Existing Intellectual Property**).
- 20.2 The Parties agree that any new Intellectual Property generated as a result of the Funding (**New Intellectual Property**) whether generated in part or in whole by the Funding will be owned by the Recipient.

The Recipient will grant the Crown a non-exclusive, royalty free, perpetual licence to use, modify, sub licence and disseminate all New Intellectual Property (which may include Existing Intellectual Property) subject to the Crown obtaining the Recipient's prior written approval, which the Recipient may consider in accordance with the Recipient's guiding principles of the programmes and its delivery objectives]

The Recipient may not unreasonably withhold approval of, nor impose unreasonable conditions on, any proposed licence.

### **Third Party Intellectual Property Rights:**

- 20.3 The Parties agree that any entity providing services to deliver the Work (**the Services**) will be required to:
  - 20.3.1 warrant that the entity has a legal entitlement to use any third party intellectual property provided as part of the Services and that providing the Services does not infringe the Intellectual Property of any third party; and
  - 20.3.2 indemnify the Crown and the Recipient against any claim arising from any infringement or alleged infringement of any third party's Intellectual Property in

providing the Services or the Recipient's claim of New Intellectual Property developed under or in connection with this Deed.

- 20.4 The Parties agree that any agreement they may enter into with another entity to provide the Services will reflect clauses 19.2.1 and 19.2.2 including that such clauses are intended to benefit the Crown and be enforceable by the Crown under the Contract and Commercial Law Act 2017.

## **21 Communications and announcements**

- 21.1 No party will make any material public announcement or public communication in connection with this Deed without previously agreeing its contents with the other party, except where:
- 21.1.1 a disclosure is required by a court; or
  - 21.1.2 a disclosure is required to be made by applicable law or regulation.
- 21.2 The Parties will promptly notify each other of material communication issues and co-operate in taking appropriate steps to address and mitigate communication risks.

## **22 Information to Parliament**

21.1 The Recipient acknowledges that the Crown will be required to provide information from time to time to Ministers of the Crown and to Parliament. Clauses 18 (Confidential Information) and 20 (Communications and announcement) do not apply to the provision of information to, and between, Ministers of the Crown and Government departments or to Parliament.

## **22 Approvals and consents**

- 22.1 Unless this Deed expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. Unless this deed expressly provides otherwise, a party is not obliged to give its reasons to giving or withholding a consent or approval or for giving a consent or approval subject to conditions
- 22.2 Unless this Deed expressly provides otherwise, where this Deed refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

## **23 Force majeure**

### **No liability**

- 23.1 A party is not liable for failure to perform, or delay in performing, an obligation if each of the following is satisfied:
- 23.1.1 The failure or delay arose from a cause beyond the reasonable control of that party. A cause beyond the reasonable control of a party includes any strike, lockout, other industrial disturbance, war, revolution, riot, civil commotion, lightning, storm, flood, fire, earthquake, explosion or unavailability of any essential equipment or materials.
  - 23.1.2 The failure or delay did not arise (directly or indirectly) as a result of any willful act or default of the party.

- 23.1.3 The party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute if, in the party's opinion, that is not in its best interests.
- 23.1.4 The party gave the other party notice of the cause as soon as practicable after becoming aware of it.

#### **Notice**

- 23.2 From the date notice is served in accordance with clause 23.1.4, no party is required to perform its obligations under this Deed that are dependent on the delayed or failed obligations until the party that gave notice is able to resume full performance of its obligations.

#### **Termination**

- 23.3 If the cause of the failure to perform and the resulting failure or delay lasts for more than 40 business days from the date that notice was given, then either of the Parties that receive that notice may terminate this Deed immediately by giving the other Party written notice.

### **24 . Notices**

#### **Giving notices**

- 24.1 Any notice given to a party under this Deed is only given if it is in writing and sent in one of the following ways:
- 24.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 2.
- 24.1.2 Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out Schedule 2.
- 24.2 Any other communication may be given in writing (delivered in person, post, by fax or by e-mail) to or by telephone or teleconference call with the relevant department or officer (if any) set out in Schedule 2.

#### **Change of address or fax number**

- 24.3 If a party gives the other party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

#### **Time notice or communication is given**

- 24.4 Any notice or communication is to be treated as given at the following time:
- 24.4.1 If it is delivered, when it is left at the relevant address.
- 24.4.2 If it is sent by post, two business days after it is posted.
- 24.4.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 24.4.4 If it is sent by e-mail, as soon as the sender receives a successful receipt notification to the correct e-mail address.
- 24.5 However, if any notice or communication is given on a day that is not a business day or after 5pm on a business day, the notice or communication is deemed to have been given at the beginning of the next business day.

**25 No assignment**

25.1 Neither party may assign, charge or sublicense any of the rights granted in this Deed, without the prior consent in writing of the other (which shall not be unreasonably withheld).

**26 Variation**

26.1 Any amendment, variation or deletion to this Deed will be only be effective if agreed by both Parties in writing and signed by duly authorised representatives of each party.


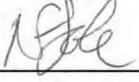
**27 Waivers**

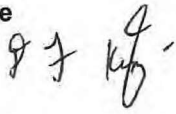
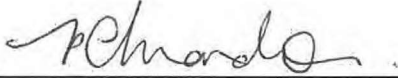

27.1 A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27.2 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

**28 Survival of Certain Clauses**

28.1 The clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed shall accordingly survive the expiry or termination of the Deed.

Executed and delivered as a deed	
Date:	
Signed and delivered as a deed on behalf of <b>Her Majesty the Queen acting by and through the Minister for the Environment</b>	Signature 
	Name (print): Natasha Lewis
	On (Date): 10/08/2022
In the presence of:	
Witness Signature 	
Witness name (print) Nicola Sole	
Occupation: manager, mfe.	
Address: 8 Willis St, Wellington.	

Signed and delivered as a deed by the <b>Toimata Foundation</b> in accordance with the Property Law Act 2007	Signature 
	Name (print): Dean Francis King
	On (Date): 9/8/22
In the presence of:	
Witness Signature 	
Witness name (print) Heidi Mardon	
Occupation: CE Toimata	
Address:	s 9(2)(a) 

## **Schedule 1**

**Outcomes – subject to the Annual Planning process and necessary funding being available.**

1. Equity of access to Te Aho Tū Roa and Enviroschools, enabling availability to all schools, kura, Early Childhood Education (ECE) centres, Iwi, hapū and communities that want to participate throughout the country.
2. A diverse and resilient nationwide partner network of organisations contributing long-term funding, collaborative programme development and regional implementation.
3. A wide range of sustainability projects are being undertaken in the built and natural environment contributing to community resilience and observable environmental, cultural, educational and economic benefits for individuals, schools, kura, ECE centres, Iwi, hapū and communities.
4. A holistic approach is maintained in Toimata programmes, and brings a holistic context to partners' kaupapa and projects also - helping learners to look at root causes and contribute to root solutions.

**Schedule 2 Addresses for notices and representatives**

Name: **Ministry for the Environment**  
Address: 8 Willis Street, Wellington 6011  
Fax number: (04) 439-7700  
For Notices: Manager with delegated authority  
Mana Tātaki – Intergenerational Change  
Nicola Sole  
Email: Nicola.Sole@mfe.govt.nz

**For any other communications:**

Benji Moorhouse  
Kaitohutohu Matua, Intergenerational Change  
Email: Benji.moorhouse@mfe.govt.nz

Name: **Toimata Foundation**  
Address 60 Te Aroha Street, Hamilton East, Hamilton 3216  
Telephone (07) 959 7321  
Attention Heidi Mardon  
Chief Executive  
s 9(2)(a)  
Representative: Heidi Mardon, Chief Executive  
Email: s 9(2)(a)

### **Schedule 3**

#### **Programme of Work**

Schedules 3 and 4 have been withheld under section 9(2)(b)(ii) of the Act.

## **Schedule 4**

### **Annual Plan Template**

Schedules 3 and 4 have been withheld under section 9(2)(b)(ii) of the Act.

## Schedule 5

### Capital Assets Register

Capital Asset	Capital Cost	Restriction Period
The Property	<i>[costs incurred by the Recipient, and description of how the Funding is to be applied, in acquiring the Capital Assets or in bringing a Capital Asset to working order or to a state in which it can undertake the Work as required for the Programmes – should be identified by the Recipient in the Annual Plan]</i>	<i>[5 years] from first payment of any portion of the Funding applied to Capital Costs.</i>