



**Tertiary Education  
Commission**  
Te Amorangi Mātauranga Matua

## Funding Confirmation

for

**[insert name of Organisation]**

### Key Particulars

<b>Date from which funding approval has effect</b>	1 January 2016
<b>EDUMIS Number</b>	[insert]
<b>Funding Period</b>	1 January 2016 to 31 December 2016
<b>Fund and Funding Mechanism that this Funding Confirmation applies to</b>	Gateway
<b>Number of places</b>	[insert]
<b>Total funding, excluding GST</b>	[insert]

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# Funding Confirmation

## Tertiary provider

[insert name of TEO] (Organisation)

## Introduction

- A. This Funding Confirmation sets out the Conditions that apply to your receipt of Funding in respect of the Funding Period.
- B. The Conditions set out in this Funding Confirmation are in addition to the Conditions that apply to your receipt of Funding, as set out in Part 13A of the Education Act.
- C. This Funding Confirmation also sets out other provisions that apply to your receipt of Funding.

### 1. Funding Period

This Funding Confirmation relates to the provision of Funding to you for the Funding Period.

### 2. Funding

#### 2.1 Subject to:

- (a) your compliance with the Conditions; and
- (b) our rights to suspend or revoke funding as set out in the Education Act,

we will provide you with the Funding specified in Appendix 2.

#### 2.2 In addition to our right to suspend or revoke some or all of the Funding, in order to ensure accountability for public money, we will:

- (a) monitor your enrolment data and, if you are tracking below funded volumes, we may implement a reduced payments schedule; and/or
- (b) recover funding for under-delivery of the programmes and activities described in the Minimum Performance Standards, in accordance with the funding Conditions and Funding Recovery Methodologies.

#### 2.3 Amounts specified in Appendix 2 are in New Zealand dollars and exclude GST. We will pay you the Funding plus GST, if applicable.

#### 2.4 Additional funding provisions that apply in respect of Funding provided to you generally are set out in Appendix 2.

#### 2.5 A high level description of the purpose of the Funding provided to you as described in this Funding Confirmation is set out in Appendix 1.

### 3. Conditions

The Funding specified in this Funding Confirmation is payable by us subject to the Conditions specified in this paragraph 3. Conditions are imposed pursuant to section 159ZD(2) of the Education Act. Funding specified in this Funding Confirmation is also payable subject to the statutory Conditions specified in Part 13A of the Education Act.

#### 3.1 Performance commitments and requirements and Minimum Performance Standards

You must:

- (a) deliver on the performance commitments and requirements; and
  - (b) meet the Minimum Performance Standards,
- each as specified in Appendix 5.

#### 3.2 Supply of information

(a) You must notify us immediately if:

- (i) any record required to be kept under section 159ZE(1) of the Education Act has been lost or damaged; or
- (ii) you are no longer able to comply with a Condition of Funding.

(b) You must notify us immediately if:

- (i) your New Zealand Qualifications Authority (NZQA) registration or accreditation is cancelled (relevant if you are a private training establishment (PTE)); or
- (ii) an Insolvency Event (see definition below) occurs in relation to you; or
- (iii) you have a Change of Control (see definition below); or
- (iv) you transfer (or agree to transfer) all or a material part of your assets to a third party; or
- (v) there is any change to the persons who make up your governing body; or
- (vi) you merge with or acquire any other entity or business;
- (vii) you have changed your name; or
- (viii) the location or locations at which you deliver a course or courses has changed,

##### *Definition of Insolvency Event*

**"Insolvency Event"** means, in relation to you, the occurrence of any of the following events:

- (A) you cease or threaten to cease to carry on all or any material part of your business or operations;

- (B) an application is made (which is not withdrawn, stayed or dismissed within 10 business days of being made) to a court for an order, or an order is made, or an effective resolution is passed to place you in liquidation or voluntary administration previously approved in writing by us;
- (C) you propose to enter into any general assignment, arrangement, compromise or composition with or for the benefit of any of your creditors with a view to avoiding insolvency except as previously approved in writing by us;
- (D) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of you or the whole or any material part of your assets, or the board of directors request that a creditor or any other person appoint a receiver to you;
- (E) a distress, attachment or other execution is levied or enforced upon, or commenced against, any of your assets and is not discharged or stayed within 10 business days, except, in each case, when we are satisfied that that you are contesting the same in good faith by appropriate proceedings;
- (F) you are declared or become insolvent, are unable to pay your debts when they fall due, or you are presumed unable to pay your debts in accordance with any applicable legislation;
- (G) you suspend or stop or threaten to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of your indebtedness;
- (H) you seek or obtain protection from your creditors under any statute or any other law;
- (I) you are declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (J) a statutory or judicial manager is appointed over all or any of your assets;
- (K) any recommendation is made by the Financial Markets Authority to the Minister of the Crown who is responsible for administration of the Corporations (Investigation and Management) Act 1989 that you or any associated person of yours be placed in statutory management under that Act;
- (L) all of your directors resign, or signal their intention to resign; or
- (M) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (A) to (L) above happens under the laws of any applicable jurisdiction in respect of the organisation.

**"Change of Control"** means, in relation to a person (the "first person"), when a person acquires Control of the first person or when a person who controls the first person ceases to do so; and

"Control" means, in relation to a person (the "first person"), the ability of another person (the "second person") to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting rights in a body corporate is deemed to constitute Control.

### **3.3 Source, use and repayment of funding**

(a) You must:

- (i) not (without our prior written consent) seek or obtain any funding from any Crown source other than the TEC to fund a programme or training scheme that is delivered using the Funding; and
- (ii) notify us immediately if you become aware of any circumstances that might result in a breach of subparagraph (i) of this Condition.

(b) If we consider on reasonable grounds that you have received funding that was greater than it should have been, or that you were not entitled to receive, then you must treat the amount of over-funding as a debt due to the Crown that, upon reasonable notice from us:

- (i) is repayable on demand to us; and
- (ii) may be off-set against all or any funding, or any sum payable by us to you.

(c) You must only use Funding:

- (i) lawfully, responsibly, and for the purposes for which the Funding is provided; and
- (ii) in a manner consistent with the appropriate use of public funds.

### **3.4 Payment of under-funding**

If you receive less Funding than you are entitled to, we will treat the amount of under-funding as a credit and pay you the amount of under-funding as soon as reasonably practicable.

### **3.5 Fund-specific Conditions**

In addition to the Conditions set out above in this paragraph 3, you must also comply with the Fund-specific Conditions set out in Appendix 3.

### **3.6 TEO-specific Conditions**

In addition to the Conditions set out above in this paragraph 3, you must also comply with the TEO-specific Conditions set out in Appendix 4.

### **3.7 Organisation to make information available to TEC and its appointed representative for the purpose of monitoring**

By accepting Funding the Organisation is deemed to have acknowledged that one of the TEC's statutory functions is to monitor the performance of organisations receiving funding from the TEC, and that it is a statutory condition that the Organisation must maintain certain records

and supply certain information to the TEC. Accordingly, by accepting Funding, the Organisation is deemed to have acknowledged that the TEC needs access to certain information to enable it to undertake its monitoring activities and, as such, the Organisation authorises the TEC (and any representative acting on behalf of the TEC) to have reasonable access to information needed by the TEC to undertake its review and monitoring function. This includes the Organisation authorising the TEC and the TEC's appointed representatives to have reasonable access to the Organisation's premises and any premises where the Organisation's records are kept for the purpose of enabling monitoring and review activities to be undertaken at those premises.

#### **4. Variations**

You must contact us if you wish to vary delivery from that specified in the Minimum Performance Standards.

#### **5. Communication and relationship management**

5.1 The TEC and the Organisation will maintain regular contact with the other for the purpose of:

- (a) us monitoring your performance against the Conditions and Minimum Performance Standards;
- (b) encouraging the on-going review and assessment of your effectiveness by us;
- (c) providing mutual constructive feedback that will enhance the effectiveness of your performance and the relationship between the TEC and you; and
- (d) identifying early any issues and opportunities for you to do things better.

5.2 If you expect that you will not meet the Conditions or Minimum Performance Standards, or comply with a Condition, you must advise our Investment Manager in writing as soon as possible.

5.3 You will appoint a relationship manager who will be the first point of contact for our relationship manager, the TEC Investment Manager. You may change your relationship manager at any time by giving written notice to us. Similarly, we may change our Investment Manager at any time by giving written notice to you. Your relationship manager and the TEC Investment Manager will maintain regular contact with each other during the Funding Period. The initial relationship managers are specified in Appendix 7.

#### **6. Record-keeping and reporting**

6.1 In addition to any specific record-keeping and reporting obligations as described in the Conditions and your Minimum Performance Standards, you must comply with your record-keeping and reporting obligations as set out in section 159ZE of the Education Act. That is, you must ensure that:

- (a) you keep records, in a form consistent with that required by us, for the period to which the funding relates, that fully and fairly show:
  - (i) the transactions, assets, liabilities, and funds of the Organisation that are or were affected by the funding; and

(ii) whether any conditions on which the funding approval was given have been complied with, and

(b) the records are available for inspection by us at all reasonable times.

6.2 We have exempted you from the requirement to provide financial reports or other information described in section 159ZE(2) and (3) of the Education Act.

## **7 TEC monitoring activities**

7.1 We will monitor your performance against your compliance with the Conditions and your delivery against the Minimum Performance Standards.

7.2 Your performance against the performance commitments as specified in Appendix 5, including the Minimum Performance Standards, will also be considered when making future funding decisions.

## **8 Suspension or revocation of Funding**

We may suspend or revoke some or all of the Funding provided under this Funding Confirmation in accordance with section 159ZF of the Education Act, in which case sections 159ZG to 159ZH of the Education Act also apply.

## **9 Entire confirmation**

This Funding Confirmation sets out the entire understanding between you and us in relation to the Funding to be provided by us to you for the Funding Period. This Funding Confirmation supersedes all prior verbal or written communication relating to the provision of Funding to be provided by us to you for the Funding Period (including all earlier communication in respect of the approval of Funding made by the Chief Executive of TEC or any other TEC official).

## **10 No guarantee of further funding**

It is important to understand that funding approval does not mean that we:

(a) approve any funding other than that specified in this Funding Confirmation; or

(b) agree with every statement in your application; or

(c) will fund you in the future.

## **11 Definitions and Interpretation**

### **11.1 Definitions**

In this Funding Confirmation, unless the context otherwise requires:

**Conditions** means the funding conditions set out in paragraph 3 and (as applicable) Appendix 3 of this Funding Confirmation, along with any statutory funding conditions set out in the Education Act;



**Education Act** means the Education Act 1989;

**Fund** means any fund established by the Minister pursuant to a Funding Mechanism;

**Funding** means any funding provided by TEC to the Organisation in accordance with this Funding Confirmation, the approved amounts for each Fund being set out in Appendix 2;

**Funding Confirmation** means this Funding Confirmation;

**Funding Mechanism** means a funding mechanism determined by the Minister pursuant to section 159L of the Education Act;

**Funding Period** means the funding period set out in the Key Particulars;

**Funding Recovery Methodologies** means the funding recovery methodologies in Appendix 2;

**GST** means tax charged under the Goods and Services Tax Act 1985;

**Key Particulars** means the 'Key Particulars' table on the first page of this Funding Confirmation;

**Minimum Performance Standards** means the minimum standards of performance that the Organisation must meet in respect of any relevant off-plan Fund, as set out in Appendix 5;

**Organisation** means the Organisation as set out on the first page of this Funding Confirmation and all references to "you" and "your" are to the Organisation;

**TEC** means the Tertiary Education Commission and all references to "we," "our" and "us" are to TEC; and

**TEC Investment Manager** means the person named as the contact in Appendix 7 or any person that we subsequently advise is the TEC Investment Manager.

## **11.2 Interpretation**

Unless the context otherwise requires:

- (a) headings are not to be used for interpretation;
- (b) the Introduction forms part of this Funding Confirmation;
- (c) the singular includes the plural and vice versa;
- (d) a reference to documentation (including this Funding Confirmation) includes a reference to that document as varied, supplemented or substituted from time to time;
- (e) a reference to any legislation or policy includes a modification of that legislation or policy or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (f) a reference to an Appendix is a reference to an appendix to this Funding Confirmation;

- (g) a reference to a paragraph is a reference to a paragraph in this Funding Confirmation; and
- (h) whenever the words 'includes' or 'including' are used in this Funding Confirmation, they are deemed to be followed by the words "without limitation".

## Appendix 1: Overview of purpose of Funding by Fund

### Gateway Fund

The purpose of the Gateway Fund is to enable state, state integrated, or partnership school kura hourua New Zealand secondary schools to give eligible students opportunities to access quality structured workplace learning that is integrated with school-based learning.

Eligible students have their learning assessed in the workplace and can achieve credits, which may align to one or more vocational pathways, towards qualifications on the New Zealand Qualifications Framework (**NZQF**) or the National Certificate of Educational Achievement (**NCEA**).

## Appendix 2: Funding

### 1. Funding

We will pay you \$[•] (excluding GST) for eligible students enrolled in a Gateway programme during the Funding Period, up to the maximum number of places (individual eligible students) in accordance with the Payment Schedule in paragraph 2 of this Appendix below.

<b>Gateway Fund</b>	<b>2016</b>
Number of eligible student places funded by the Gateway Fund	[•]
Total maximum Funding amount (excluding GST)	\$[•]

### 2. Payment Schedule

The total maximum Funding amount will be paid in 12 equal monthly instalments at the start of each calendar month during the Funding Period.

### 3. Funding Recovery Methodologies

Funding is payable for the number of eligible students (places) enrolled in the Gateway programme up to the number of eligible student places specified in paragraph 1 of this Appendix 2 above. If you deliver less than 100 percent of the places for which you receive Funding during the Funding Period, we will recover the Funding for the places that you did not deliver in the Funding Period. Any recovery of over-funding will occur in accordance with the Condition in paragraph 3.3(b) of this Funding Confirmation. We will inform you in early 2017 if any recovery is required. If you deliver less than 100 percent of the places you are funded for in 2016, this may also inform future Gateway funding allocations

## Appendix 3: Fund-specific Conditions

The following Conditions apply to Funding that is received from the Gateway Fund:

### 1. Organisation eligibility

To receive Funding you must ensure that you meet and continue to meet the eligibility criteria for eligible organisations. An “eligible organisation” is an organisation which is:

- (a) a state, state integrated, or partnership school kura hourua New Zealand secondary school; and
- (b) is quality assured by the Education Review Office.

### 2. Programme eligibility

To receive Funding you must ensure that the Gateway programme of study or training in which an eligible student is enrolled meets and continues to meet the eligibility criteria for eligible programmes. An “eligible programme” is a programme which:

- (a) has credits that contribute to the award of a NCEA and/or a qualification on the NZQF; and
- (b) allows each eligible student to participate in structured workplace learning, including the assessment and recognition of that learning in the form of credits towards a NCEA and/or a qualification on the NZQF; and
- (c) integrates workplace learning with each eligible student’s wider course of study.

### 3. Student eligibility

To receive Funding you must ensure that each student who is enrolled in a Gateway programme of study or training meets and continues to meet the eligibility criteria for being an eligible student. An “eligible student” is a student who is:

- (a) a domestic student as defined in section 159 of the Education Act; and
- (b) enrolled at a state, state integrated, or partnership school kura hourua New Zealand secondary school; and
- (c) year 11 or above; and
- (d) capable of undertaking a structured work placement and achieving credits that contribute to the award of a NCEA and/or a qualification on the NZQF in the workplace.

### 4. Organisation responsibilities

You must:

- (a) not use Funding provided under this Funding Confirmation to fund:
  - (i) the cost of school space; nor

- (ii) school office or administrative services other than services specifically for Gateway provision; and
- (b) not charge a tuition fee, or course or equipment costs to an eligible student in Gateway for his or her programme of study or training; and
- (c) ensure that each eligible student has the equipment necessary for his or her work placement, including tools, equipment, safety clothing and tuition material, at no cost to the student; and
- (d) comply with all administrative requirements specified by us, including the administrative requirements specified in the TEC Gateway Handbook; and
- (e) take all reasonable and practicable steps to ensure that each eligible student will be safe in his or her work placement; and
- (f) monitor the safety of each eligible student in his or her work placement; and
- (g) ensure that each employer is aware of its employer obligations and that the workplace is appropriate for structured workplace learning; and
- (h) ensure that each eligible student is aware of his or her obligations as an employee.

**5. Access to and supply of information**

- (a) You must provide us with access to your premises, employees, and information for the purposes of:
  - (i) inspecting the records that you must keep; and
  - (ii) auditing your compliance the Conditions and requirements in the Education Act.
- (b) You must supply to us information about each eligible student in accordance with the reporting requirements specified in the TEC Gateway Handbook available on our website.
- (c) You must ensure that each eligible student's credit achievement information is submitted to the New Zealand Qualifications Authority.

**Appendix 4: TEO-specific Conditions**

None.

<b>Appendix 5: Performance commitments and requirements and Minimum Performance Standards</b>
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**1. Performance commitments and requirements**

You must deliver the following during the Funding Period from the Funding that you receive from the Gateway Fund:

- (a) Gateway programmes for [●] places (individual eligible students);
- (b) the Gateway programmes you offer must closely align with one more of the following six vocational pathways:
  - (i) primary industries;
  - (ii) services industries;
  - (iii) social and community services;
  - (iv) manufacturing and technology;
  - (v) construction and infrastructure; and
  - (vi) creative industries.

**2. Minimum Performance Standards**

You must meet the following Minimum Performance Standards in relation to the Funding that you receive from the Gateway Fund:

Name of minimum performance standard	Description of what must be achieved to meet the minimum performance standard
Credit achievement of eligible students	Average level of achievement per eligible student of at least 20 credits on the NZQF or at least 20 NCEA credits, drawn from one of the six vocational pathways set out in paragraph 1 of Appendix 5.



## Appendix 6: Contacts

<b>Fund title</b>	Gateway Fund	
<b>Organisation name</b>	[insert]	
<b>EDUMIS number</b>	[insert]	
<b>Contact persons</b>		
<b>Organisation</b>	<b>Relationship Manager</b>	[insert]
	<b>Address</b>	[insert]
	<b>Phone</b>	[insert]
	<b>Facsimile</b>	[insert]
	<b>Email</b>	[insert]
<b>TEC</b>	<b>Investment Manager</b>	John Velvin
	<b>Address</b>	Level 10 44 The Terrace PO Box 27 048 WELLINGTON 6141
	<b>Phone</b>	0800 601 301
	<b>Facsimile</b>	04 462 5400
	<b>Email</b>	john.velvin@tec.govt.nz