



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Te Pūnaha Hiringa:
Māori Innovation Fund

He Tupu Ōhanga: Commercial Advisors Scheme 2018 Funding Agreement

between

The Ministry of Business, Innovation and Employment

and

[collective or other legal entity]

SCHEDULE 1 – DETAILS

1 Context

1.1 This Agreement governs the expenditure of funds from Te Pūnaha Hiringa: Māori Innovation Fund on the provision of commercial advisory services to a Māori Collective. The Recipient is a Māori Collective or a coalition (whose membership is at least 50% Māori Collectives) that has successfully applied to the Ministry for funding from Te Pūnaha Hiringa: Māori Innovation Fund. The Fund aims to help Māori Collectives to increase their skills, knowledge and networks so they can realise the economic potential of their assets.

2 Appropriation and approval process (Background)

2.1 The Funding is from Te Pūnaha Hiringa: Māori Innovation Fund. The Fund is contained in the Vote Business, Science and Innovation Appropriation.

3 Funding (clause 2.1, Schedule 2)

3.1 The Recipient has sought a funding contribution from the Ministry for the purposes of the Project described in clause 4 below. The Ministry has agreed to contribute funding on the terms and conditions of this Agreement.

3.2 The maximum amount of Funding available to the Recipient [clarify here if received on behalf of another party] under this Agreement is up to [\$60,000.00] for up to eighteen months (excluding GST, if any).

3.3 The Funding will be used to reimburse the Recipient for 75% of the actual and reasonable cost of commercial advisory services provided by a Commercial Advisor chosen in accordance with clause 6 (**Commercial Advisor**).

3.4 The Recipient must use the Funding to cover 75% of the costs of the commercial advisory services provided by the Commercial Advisor and as invoiced by the Commercial Advisor. The Recipient must pay the remaining 25% of the costs of the Commercial Advisor itself.

3.5 The Funding must not be used for capital expenditure.

4 Project (clause 2, Schedule 2)

4.1 *The Project includes the following:*

- *[Provide an outline of the Project to which the Ministry is contributing funding, including high level outcomes for the Project, timeframe and the amount of funding to be provided];and*
- *Any other activities agreed in writing between the Recipient and the Ministry from time to time.*

5 Project Tasks (clause 2.3(a), Schedule 2)

- 5.1 The Recipient will enter into an agreement with a Commercial Advisor chosen in accordance with this Agreement.
- 5.2 The Recipient will carry out the Project in accordance with this Agreement.
- 5.3 The Recipient will report to the Ministry in accordance with this Agreement.

5.4 [insert any other tasks specific to a Project]

6 Commercial Advisor details

- 6.1 Subject to clause 6.2, the Recipient may only obtain commercial advisory services for the Project from [insert CA name here] who is a Ministry-approved Commercial Advisor.
- 6.2 If, during the term of this Agreement, the Recipient wishes to change its current Commercial Advisor or engage the services of an additional Commercial Advisor, the Recipient must obtain the Ministry's prior written approval before a different (or additional) Commercial Advisor's services can be used. For the avoidance of doubt, if the Recipient does not gain the Ministry's prior approval to use an alternative Commercial Advisor, the Ministry will not provide Funding to reimburse the Recipient for the costs of the commercial advisory services provided by that alternative Commercial Advisor.
- 6.3 If the Commercial Advisor needs to sub-contract any of the services that it is providing to the Recipient, the Recipient must obtain the Ministry's written approval prior to the Commercial Advisor sub-contracting those services. Where the proposed sub-contractor is already on the Ministry's list of pre-approved advisors, the Ministry may require a conflict of interest check to take place.
- 6.4 The Commercial Advisor must be independent of the Recipient, or any of its related entities, as an essential purpose of the Funding is to provide the Recipient with access to skills and knowledge that are not otherwise available to it. The Recipient must ensure that its agreement with the Commercial Advisor is on an "arm's length" basis, provides value-for-money and does not give rise to any conflict of interest.
- 6.5 The Recipient must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must avoid conflicts of interest. Conflicts of interest include:
 - a. situations which could give rise to a conflict of interest or compromise the Recipient's or the Ministry's integrity, including the Recipient working with a Commercial Advisor where there is a conflict of interest between the Recipient and the Commercial Advisor; or
 - b. any financial or other interest or undertaking that could interfere with or compromise the performance of the Recipient's obligations under this Agreement, or the integrity or standing of the Ministry.

- 6.5 The Recipient warrants that it has no actual, potential or perceived conflicts of interest at the date of this Agreement.
- 6.6 The Recipient must immediately advise the Ministry in writing of any actual, potential or perceived conflict of interest that arises during the term of this Agreement and take all actions required by the Ministry to resolve any such conflict.
- 6.7 Where in the Ministry's opinion, the Recipient has a conflict of interest that has not been managed appropriately, including avoiding the conflict of interest where possible, the Ministry will be under no obligation to pay Funding in respect of the Recipient's use of that Commercial Advisor.
- 6.8 For the purposes of this Agreement, any reference to Commercial Advisor includes any subcontractor approved by the Ministry in accordance with clause 6.3.

7 Funding Payment terms *(clause 2.1, Schedule 2)*

- 7.1 The Recipient will be invoiced for the costs of the commercial advisory services by the Commercial Advisor as agreed between the Recipient and the Commercial Advisor, subject to the following guidelines. The Recipient must ensure that such invoices from the Commercial Advisor:
- (a) are itemised to show the details of commercial advisory services that the Recipient has received in accordance with this Agreement from the Commercial Advisor (including any commercial advice received from a subcontractor to the Commercial Advisor if approved by the Ministry in accordance with clause 6.3);
 - (b) show the 100% cost (including reasonable disbursements) of the commercial advisory services that the Recipient has received from the Commercial Advisor;
 - (c) do not include any capital expenditure.
- 7.2 The Recipient must provide invoices through the Ministry's Investment Management System online Portal (IMS Portal) addressed to the Ministry for Funding that represents 75% of the cost of the commercial advisory services that the Recipient has received from the Commercial Advisor and will attach with that invoice a copy of the invoice to the Recipient from the Commercial Advisor.
- 7.3 Where the Ministry is satisfied that the invoices reflect the actual and reasonable costs of the commercial advisory services that the Recipient has received from the Commercial Advisor for the Project for the relevant invoice period, and do not include any capital expenditure, the Ministry will then pay the Recipient 75% of the cost of the commercial advisory services that the Recipient has received from the Commercial Advisor.
- 7.4 The Recipient must pay the total cost of the commercial advisory services received from the Commercial Advisor.
- 7.5 The Recipient may only invoice the Ministry for the cost of commercial advisory services provided by the Commercial Advisor during the term of this Agreement.

- 7.6 The Recipient may submit an invoice no more than once a month.
- 7.7 The Ministry's obligations to pay any Funding to the Recipient is subject to the Recipient complying with all of its obligations under this Agreement.
- 7.8 The Ministry's Funding of the Recipient will not exceed the total maximum amount payable in clause 3.2.

8 Commencement Date *(clause 1.1, 3.1 Schedule 2)*

1 February 2019

9 Completion Date *(clause 2.3(b), Schedule 2)*

31 July 2020

10 Reporting Requirements *(clause 5, Schedule 2)*

- 10.1 Subject to clause 10.2, the Recipient must submit a Progress Report and a Final Report under this Agreement through the IMS Portal by the due dates set out in the following table:

Report	Due date
Progress	Progress Report to be submitted to the Ministry during the period beginning 1 August 2019 and ending 31 August 2019.
Final	Final Report to be submitted to the Ministry on or before 30 June 2020 (the Completion Date). Together with your final invoice for Funding submitted under clause 7.2.

- 10.2 If the Recipient has completed the Project prior to 31 August 2019, the Recipient is not required to submit a Progress Report. The Recipient must only submit the Final Report.
- 10.3 The Reports are submitted by answering the reporting questions on the form in the IMS Portal and may also be accompanied by an uploaded report in the format as chosen by the Collective.

11 Content of Report *(clause 5, Schedule 2)*

- 11.1 The Reports should contain answers to all of the questions on the reporting templates in the IMS Portal. Additional content may be submitted by Collectives.
- 11.2 The Ministry may require additional information to the questions provided in the Final Report if they stipulate a timeframe that gives the Recipient adequate time to prepare and provide the additional information required.
- 11.3 The Ministry may contact the Recipient to discuss the contents of its Reports submitted and the commercial advice received under this Agreement.

12 Trust (clause 9.5, Schedule 2) [delete this section when it does not apply]

The Recipient trustees are acting on behalf of [].

13 Address for Notices (clause 12.5, Schedule 2)

Ministry:	Recipient:
Ministry of Business, Innovation & Employment 15 Stout Street PO Box 1473 Wellington 6140 Email: mif@MBIE.govt.nz Attention: Māori Economic Development Unit	XX Email: XX Attention: XX

SCHEDULE 2 - FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1. Interpretation

1.1 In this Agreement, the following terms have the following meanings:

“**Agreement**” means this agreement, including Schedule 1 and this Schedule 2;

“**Business Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“**Commencement Date**” means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

“**Completion Date**” has the meaning given in the Details;

“**Confidential Information**” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“**Details**” means Schedule 1;

“**Funding**” means the funding amount set out in the Details;

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“**Parties**” means the Ministry and the Recipient and their respective successors and permitted assigns;

“**Project**” means the project described in the Details; and

“**Project Tasks**” means the project tasks (if any) set out in the Details which must be completed by the Recipient before a Funding payment is made by the Ministry.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 “Including” and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency.

1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail.

2. Funding

2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.

2.2 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.

2.3 In consideration of the Funding, the Recipient must:

(a) complete each Project Task (if any) by the relevant payment date set out in the Details;

(b) complete the Project to the Ministry's satisfaction by the Completion Date; and

(c) carry out the Project in accordance with:

(i) the methodology (if any) set out in the Details;

(ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and

(iii) all applicable laws, regulations, rules and professional codes of conduct or practice.

3. Project Progress

3.1 If, upon reading a Progress Report, or through other means:

(a) the Ministry is not satisfied with the progress of the Project:

(b) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or

(c) the Recipient breaches any of its obligations under this Agreement, the Ministry may (without limiting its other remedies):

(a) contact the Collective to discuss these concerns;

(b) renegotiate this Agreement with the Recipient; or

- (c) terminate this Agreement immediately by notice to the Recipient, and clauses 4.4 and 4.5 will apply.

4. Term and Termination

4.1 This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier in accordance with this Agreement.

4.2 In the event that the government reduces, stops or freezes funding to the Ministry, the Ministry may terminate this Agreement by giving at least 10 Business Days notice to the Recipient.

4.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or
- (c) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest on all sums due, which will be charged on a daily basis at a rate that

is the same as the credit and debit rate that is charged by Inland Revenue on each day on which interest is charged by the Ministry, from the date on which the Recipient was paid the money by the Ministry to the date the Recipient returns the money .

4.6 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

5. Reporting Requirements and Audit

5.1 The Recipient must report on the progress of the Project to the Ministry:

- (a) as set out in the Details;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding if requested to do so by the Ministry;

6. Warranties

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this

Agreement was, at the time it was provided, true, complete and accurate in all material respects; and

- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

7. Intellectual Property

- 7.1 All Intellectual Property Rights in the reports provided under clause 5.1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 The Ministry agrees that, with the exception stipulated in 7.1, all Intellectual Property Rights arising from this agreement are the property of the Recipient, and will make no claim to the ownership of any Intellectual Property Rights arising from the Project.
- 7.3 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

8. Confidentiality

- 8.1 The Recipient must:
 - (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
 - (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.
- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

9. Liability and Insurance

- 9.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.2 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.
- 9.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
 - (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.
- 9.4 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.
- 9.5 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in the Details in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.
- 9.5 The Recipient must effect and maintain for the term of this Agreement:
 - (a) adequate insurance to cover standard commercial risks; and
 - (b) other insurance reasonably required by the Ministry.The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10. Dispute Resolution

- 10.1 The Parties must use their best efforts to resolve

- any dispute under, or in connection with, this Agreement through good faith negotiations and informal dispute resolution techniques such as mediation, expert determination or similar techniques agreed by them.
- 10.2 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of LEADR New Zealand Inc.) and on the terms of the LEADR New Zealand Inc. standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).
- 10.3 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.
- 10.4 Nothing in this clause 17 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand court.
- 11 Force Majeure**
- 11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:
- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
 - (b) use its best endeavours to overcome the Force Majeure Event; and
 - (c) continue to perform its obligations as far as practicable.
- 12 General**
- 12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.
- 12.2 Assignment:
- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
 - (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).
- 12.3 This Agreement may only be varied by agreement in writing signed by the Parties.
- 12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.
- 12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by facsimile or registered post to the Parties' respective addresses or facsimile numbers as set out in the Details. A notice is deemed to be received:
- (a) if personally delivered when delivered;
 - (b) if posted, three Business Days after posting; or
 - (c) if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.,
- provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.
- 12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- 12.7 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 12.8 This Agreement will be governed by and construed in accordance with the laws of New Zealand.