

Variation Agreement

1

relating to

Partnership Schools / Kura Hourua

Her Majesty the Queen in right of New Zealand acting by and on
behalf of the Minister of Education

Minister

and

He Puna Marama Charitable Trust

Sponsor

2016

This Agreement is made on

2016

between (1) Her Majesty the Queen in right of New Zealand acting by and on behalf of the Minister of Education (Minister)

and (2) He Puna Marama Charitable Trust (Sponsor)

Introduction

- A. Section 158D of the Education Act 1989 (the **Act**) enables the Minister, in the name and on behalf of the Crown, to enter into a contract with a sponsor for the operation, by that sponsor, of a Partnership School | Kura Hourua in accordance with the requirements set out in the Act.
- B. The Minister and the Sponsor (jointly known as "the parties") are parties to such a contract dated 11 September 2014 (the **principal Agreement**) to operate a Partnership School | Kura Hourua (Te Kāpehu Whetu - Teina) under the agreed terms and conditions.
- C. Pursuant to clause 34.12 of the principal Agreement, this variation (the **First Variation**) amends the principal Agreement as required for the 2016 school year:

Effective Part

1. Amendments to the principal Agreement

The parties agree to vary the principal Agreement with effect from the effective date by:

- (a) the deletion of paragraph (f) of clause 17.2;
- (b) the deletion of clause 7.1(c) (Maximum Roll) and its substitution with the following:

"Either party may initiate a review of the Maximum Roll at the second quarter review. If the Minister agrees to adjust the Maximum Roll this must be effected in writing by way of a variation to the Agreement."

- (c) the deletion of clause 18.7 and replacement with the following:

"18.7 Reporting generally

Nothing in clause 18 of this Agreement alters or affects the Sponsor's other obligations under the Act or any other enactment to report on matters that it may be required to report on by law, including without limitation reporting to the Education Council in accordance with any relevant provision in Part 32 of the Act."

- (d) In clause 35.1 deletion of the definition of 'Holders of Limited Authority to Teach' and replacement with the following:

"**Holders of Limited Authority to Teach** means a person who has been authorised under section 366 of the Act as having a limited authority to teach, whose authorisation has not been suspended under section 402 or 404(1)(d) of the Act."

- (e) in clause 35.1 deletion of the definition of 'Registered Teacher' and replacement with the following:

"Registered Teacher means:

- (i) a person listed on the register (kept by the Education Council pursuant to section 359 of the Act) whose registration has not been cancelled, or whose registration has been cancelled but who has subsequently been re-registered;
- (ii) a person holding a practising certificate as defined in section 348 of the Act that has not been suspended under section 402 or 404(1)(d) of the Act;
- (f) any person who has an authorisation that has not been cancelled unless that person has been authorised again or has been registered as a teacher (register, registration, authorised, and authorisation having the meanings set out in section 348 of the Act);"
- (g) the deletion of clause 2 (International Student vacant place upper limit) of Schedule 1 (Student Enrolment and Absences) and its substitution with the following:

"2. International Student vacant place upper limit

Year	International Student Cap
2015	Nil
2016	Nil
2017	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2018	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2019	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
2020	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.

- (h) the deletion of clause 3.2 (School Terms) of Schedule 1 (Student Enrolment and Absences) and its substitution with the following:

"3.2 School terms

The minimum term dates for each Year when the School must be open for teaching Students are as follows:

Year	Term Dates
2015	Term 1 - 16 February until 17 April
	Term 2 - 5 May until 4 July
	Term 3 - 24 July until 26 September
	Term 4 - 13 October until 12 December
	Total = 368 half days

2016	Term 1 - 9 February until 15 April
	Term 2 - 2 May until 8 July
	Term 3 - 25 July until 23 September
	Term 4 - 10 October until 16 December
	Total = 382 half days
2017	To be determined as a variation to this Agreement.
2018	To be determined as a variation to this Agreement.
2019	To be determined as a variation to this Agreement.

- (i) the deletion of Clause 4 of Schedule 1 (Ability to provide religious instruction) and its substitution with the following:

"4 Religion and curriculum

The Sponsor is permitted to provide religious instruction to the Students during School hours. The Sponsor may provide education reflective of its secular cultural world view."

- (j) the insertion of the following in clause 35.1 (Definitions) after the definition of 'Registered Teacher':

'Religious Instruction means instruction in religion, including for example, instruction in prayer and religious observances as distinct from providing education about different religions and religious beliefs;'

- (k) the deletion of clause 1 (Teaching Positions) of Schedule 4 (Governance and Teachers) and its substitution with the following:

"The number of full time teaching equivalent Teaching Positions for the School is as follows:

Year	Position	No.
2015	Tumuaki- Education Leader	0.5
	Pouwhakaako - HOLD	1
	Pouako	2
	Total	3.5
2016	Pouwhakaako - Lead	1
	Pouwhakaako - HOLD	0
	Pouako	4
	Total	5

- (l) the deletion of clause 2 (Number or percentage of Registered Teachers and Holders of Limited Authority to Teach) of Schedule 4 (Governance and Teachers) and its substitution with the following:

"2. Number or percentage of Registered Teachers and Holders of Limited Authority to Teach

The number or percentage of Registered Teachers and Holders of Limited Authority to Teach is as follows:

Year	Registered	Limited Authority to Teach	Subtotal Reg/LAT (Minimum)	Non Registered (Maximum)	Total (Minimum)
2015	2	1	3	0.5	3.5
2016	5	0	5	1	6
2017	TBC	TBC	TBC	TBC	TBC
2018	TBC	TBC	TBC	TBC	TBC

- (m) The deletion of clause 2.3 (Financial performance) of Schedule 6 (Performance Management System) and its substitution with the following:

"2.3 Financial performance

The Sponsor will be periodically assessed against the following Performance Standards in relation to financial performance:

Measure	Metric	Performance Standard				Measurement Frequency
		2015	2016	2017	2018	
Operating surplus	Measured through information provided to the Ministry	2%-5%	2%-5%	2%-5%	2%-5%	Quarterly
Working capital ratio	Measured through information provided to the Ministry	2:1	2:1	2:1	2:1	Quarterly
Debt/equity ratio	Measured through information provided to the Ministry	0.5:1	0.5:1	0.5:1	0.5:1	Quarterly
Operating cash	Measured through information provided to the Ministry	Positive cash flow forecast = actual	Positive cash flow forecast = actual	Positive cash flow forecast = actual	Positive cash flow forecast = actual	Quarterly
Enrolment variance	Measured through information provided to the Ministry	Establishment Roll	85	TBD	TBD	Quarterly

- (n) the deletion of clause 1.2 (Guaranteed Minimum Roll) of Schedule 7 (Payment) and its substitution with the following:

"1.2 Guaranteed Minimum Roll

- (a) Where this Schedule 7 refers to the Guaranteed Minimum Roll, this is 65 for the 2015 Year and 85 for the 2016 Year.
 - (b) The Guaranteed Minimum Roll for each subsequent Year will be agreed by the Minister and the Sponsor in writing by way of a variation to this Agreement, by the end of the then current Year. If agreement cannot be reached between the parties, the Minister shall make the final decision.
 - (c) The Guaranteed Minimum Roll is used for the purpose of calculating certain payments during the first three years of this Agreement.
 - (d) The Minister reserves the right to adjust the Guaranteed Minimum Roll at any time of any year, in which the Guaranteed Minimum Roll is in effect."
- (o) the deletion from Schedule 7 (Payment) of clause 1.4(b) and replacement with:
- "(b) The Quarterly Operational Payment for the 2016 Year is \$176,099.02 (exclusive of GST)."
- (p) the deletion of clause 1.4(c) to Schedule 7 (Payment) and its substitution with the following:
- "(c) The Quarterly Operational Payment for any Year from 2017 onwards will be determined by the Ministry on behalf of the Minister in accordance with the framework described in paragraphs (a) and (e) to (i) of this clause 1.4."

2. **Effective Date**

The provisions of this First Variation will come into effect on the date this First Variation is signed by both parties ("Effective Date").

3. **General Provisions**

- 3.1 This First Variation is intended to supplement and form part of the terms and conditions contained in the principal Agreement. The parties declare that the terms and conditions set out in the principal Agreement remain in full force and effect except to the extent that they have been amended or added to by this First Variation.
- 3.2 If there is any conflict between the terms and conditions contained in the principal Agreement and the terms and conditions set out in this First Variation, the terms and conditions of this First Variation will prevail.
- 3.3 Headings, underlining and bold type are for convenience and do not affect the interpretation of this First Variation, unless the context requires otherwise.
- 3.4 Each party will do, execute and perform all such acts, deeds, matters and things as may be reasonably required by the other party to enable them to obtain the full benefit and advantage of the terms, intent and meaning of this First Variation.

Execution

SIGNED as an agreement.

SIGNED by Her Majesty the Queen
in right of New Zealand acting by
and on behalf of the Minister
of Education in the presence of :

Hekeia Parake

Witness Signature

Print Name

Witness Occupation

Place of residence

SIGNED by He Puna Marama Charitable Trust s 9(2)(a) OIA

Trustee

Raewyn Tipene
Name

Trustee

Adrian Warren
Name

In the presence of

Witness Signature

Print Name

Print Name

Project Co-Ordinator
Witness Occupation

Whangarei
Place of residence

s 9(2)(a) OIA