

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

Advance Training Group Limited

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) Advance Training Group Limited (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 16 September 2013 (the **principal Agreement**) to operate a Partnership School | Kura Hourua under the agreed terms and conditions.
- C. A variation agreement was drafted and approved by the Minister for the 2016 school year, but has not been signed by the Sponsor.
- D. 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 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."

- (b) 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."

- (c) 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."

- (d) 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;
- (iii) 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)."

- (e) 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
2014	Nil
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.

- (f) the deletion of clause 3.1 (School Hours) of Schedule 1 (Student Enrolment and Absences) and its substitution with the following:

"3.1 School hours

The minimum number of hours each day that the School must be open and teaching Students during the term times set out in this Agreement is as follows:

Day	Hours
Monday	0845 – 1500
Tuesday	0845 – 1500
Wednesday	0845 – 1500
Thursday	0845 – 1500
Friday	0845 – 1500
Saturday	Closed
Sunday	Closed
Public Holidays	Closed; except that ANZAC day is classified as a school day as students participate in ANZAC Day events as part of the school's curriculum.

- (g) 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			
2014	Term 1	3 February	until	24 April
	Term 2	5 May	until	4 July
	Term 3	21 July	until	3 October
	Term 4	13 October	until	12 December
	Total = 398 half days			
2015	Term 1	2 February	until	10 April
	Term 2	20 April	until	3 July
	Term 3	20 July	until	2 October
	Term 4	12 October	until	11 December
	Total = 396 half days			
2016	Term 1	25 January	until	15 April
	Term 2	2 May	until	8 July
	Term 3	25 July	until	23 September
	Term 4	10 October	until	9 December
	Total = 388 half days			
2017	Term 1	1 February	until	21 April
	Term 2	1 May	until	7 July
	Term 3	24 July	until	6 October
	Term 4	16 October	until	15 December
	Total = 406 half days			
2018	To be determined as a variation to this Agreement.			
2019	To be determined as a variation to this Agreement.			

- (h) 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 not permitted to provide religious instruction to the Students during School Hours."

- (i) 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;'

- (j) the insertion, as Annex B to Schedule 1, of the *Gazette* notice approving the change of Sponsor from Advance Training Centres Limited to Advance Training Group Limited;
- (k) the deletion of clause 4 (Qualifications) of Schedule 2 (Curriculum and Qualifications) and its substitution with the following:

***4. Qualifications**

4.1 The following qualifications will be offered by the school:

- (a) NCEA Level 1
- (b) NCEA Level 2
- (c) NCEA Level 3
- (d) University Entrance

	Level 1	Level 2	Level 3
University Entrance	Maori Science	Maori Biology History	Maori Biology History Maths English Physical Education
Compulsory	Maths English Physical Education Recruit Development Course	Maths English Physical Education Recruit Development Course	
Vocational Pathway Electives	Engineering	Engineering Defence Force Studies	Recruit Development Course

- (l) 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
2014	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Section Leaders -- Level 1	4
	Section Leaders -- Level 2	3
	Other	0.5
	Total	10.5
2015	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders -- Level 1	4
	Section Leaders -- Level 2	4
	Section Leaders -- Level 3	1
	Other	1
	Total	14
2016	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders -- Level 1	5
	Section Leaders -- Level 2	5
	Section Leaders -- Level 3	1
	Total	15
2017	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders -- Level 1	5

2018	Section Leaders – Level 2	5
	Section Leaders – Level 3	2
	Other	1
	Total	17
	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	5
	Section Leaders – Level 2	5
	Section Leaders – Level 3	3
	Total	17
	Principal	1
	Deputy Principal - Level 1	1
	Deputy Principal - Level 2	1
	Deputy Principal - Level 3	1
	Section Leaders – Level 1	5
	Section Leaders – Level 2	5
	Section Leaders – Level 3	3
	Total	17

- (m) the deletion of paragraph (a) 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:

“(a) 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/1 AT (Minimum)	Non Registered (Maximum)	Total (Minimum)
2014	7	0	7	3.5	10.5
2015	10	0	10	4	14
2016	11	0	11	4	15
2017	12	0	12	5	17
2018	13	0	13	5	18

(b) Registered Teachers will be expected to cover the following subjects in the curriculum.

- (i) Maths
- (ii) English
- (iii) Physical Education
- (iv) Maori
- (v) Science
- (vi) Biology
- (vii) History

(c) Non registered teachers will be expected to cover the following subjects in the curriculum.

- (viii) Engineering
- (ix) Defence Force Studies
- (x) Recruit Development Course
- (xi) Physical Training

(n) the deletion of clause 2.1 (Student Achievement) of Schedule 6 (Performance Management System) and its substitution with the following:

"2.1 Student achievement

The Sponsor will be periodically assessed against the following Performance Standards in relation to student achievement:

Measure	Metric	Performance Standard	Measurement Frequency
Students achieving NCEA	NZQA reporting	See Annex A of this Schedule for separate Performance Standards for each Class Level (and where appropriate course)	Annually at the end of each year
Improvement in Students achieving NCEA	NCEA data	See Annex B of this Schedule for separate Performance Standards for each Class Level (and where appropriate course)	To be determined once baseline data has been collected

(p) 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
		2014	2015	2016	2017	
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	108	144	156	TBC	Quarterly

- (d) deletion of clause 2.1 (student engagement) of Schedule 6 (Performance Management System) and its substitution with the following:

2.1 Student engagement

The Sponsor will be periodically assessed against the following Performance Standards in relation to student engagement:

Measure	Metric	Performance Standard	Measurement Frequency
Unjustified absences	Measured through attendance data provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	Quarterly
Stand downs	Measured through Information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	As they occur
Suspensions	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for each Class Level	As they occur
Exclusions	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for	As they occur

		nach Class Level	
Expulsions	Measured through information provided to the Ministry	See Annex C of this Schedule for separate Performance Standards for nach Class Level	As they occur
School culture	wellbeing@school annual student survey	Collect baseline data	Annually

- (r) The deletion of Annex C (Performance Standards for Student Engagement) of Schedule 6 (Performance Management System) and substitution with the following:

"Annex C: Performance Standards for Student Engagement

1. Secondary (Class Levels 11 to 13)

Measure	Performance Standard			
	2014	2015	2016	2017
Unjustified absences	0.028 multiplied by the number of Students multiplied by the number of days the School is open	0.028 multiplied by the number of Students multiplied by the number of days the School is open	0.028 multiplied by the number of Students multiplied by the number of days the School is open	To be determined
Stand downs	2.1 occurrences per year per 100 Students	2.1 occurrences per year per 100 Students	2.1 occurrences per year per 100 Students	To be determined
Suspensions	0.42 occurrences per year per 100 Students	0.42 occurrences per year per 100 Students	0.42 occurrences per year per 100 Students	To be determined
Exclusions	0.15 occurrences per year per 100 Students	0.15 occurrences per year per 100 Students	0.15 occurrences per year per 100 Students	To be determined
Expulsions	0	0	0	To be determined

- (s) 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 108 for the 2014 Year, 144 for the 2015 Year, and 156 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. The process for reviewing and discussing the Guaranteed Minimum Roll for the following School Year may be initiated by the Minister or the Sponsor following the submission of the third Quarterly Report in the then current Year.
- (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.
- (l) the deletion of clause 1.4(b) (Quarterly Operational Payments) of Schedule 7 (Payment) and its substitution with the following:
 - "(b) The Quarterly Operational Payment for the 2016 Year is \$606,560.15 (exclusive of GST)."
- (u) 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."
- (v) the deletion of clause 1.4(d) to Schedule 7 (Payment) and its substitution with the following:
 - "(d) Quarterly Operational Payments are paid at the beginning of the quarterly period to which the funding relates in order to provide the Sponsor with funds from which to operate and manage the School."
- (w) the deletion of clause 1.6(a) to Schedule 7 (Payment) and its substitution with the following:
 - "(a) Any Operational Payment, Variable Operational Payment and the Establishment Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be paid by electronic transfer of funds to the Sponsor's nominated bank account, which as at the date of this Variation Agreement is the following bank account:

03 1322 0789483 000"
- (x) the deletion of clause 2 (Invoicing) to Schedule 7 (Payment) and its substitution with the following:

"2. Payment Notice

- (a) Any Quarterly Operational Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be payable following the Sponsor's receipt of a payment notice from the Minister, and within the timeframes for payment specified elsewhere in this Schedule 7.
- (b) The Minister shall provide to the Sponsor a payment notice setting out the amount payable for the next quarter taking into account any adjustments from the previous quarter(s).

- (c) Unless otherwise agreed, Quarterly Operational Payments are to be made in accordance with the following schedule:

Quarter	Payment notice due	Payment Date	Period Covered
Quarter 1	15 December	1 January	January to March
Quarter 2	15 March	1 April	April to June
Quarter 3	15 June	1 July	July to September
Quarter 4	15 September	1 October	October to December

- (y) the insertion of a new clause 3 (Invoicing) to Schedule 7 (Payment):

"3. Invoicing

- (a) Any Establishment Payment or Variable Operational Payment that is payable by the Minister to the Sponsor in accordance with this Schedule 7 shall be payable following receipt of a valid tax invoice from the Sponsor to the Minister, and within the timeframes for payment specified elsewhere in this Schedule 7.
- (b) For the purpose of this Schedule 7, a valid tax invoice is one that:
- (i) clearly shows all GST due;
 - (ii) is in New Zealand currency;
 - (iii) is clearly marked 'Tax Invoice';
 - (iv) contains the Sponsor's name, address and GST number if the Sponsor is registered for GST;
 - (v) is addressed to the Minister and is sent to the address and contact person referred to in the corresponding instalment notice;
 - (vi) states the date the invoice was issued; and
 - (vii) states the total payment due, as specified by the Minister in the corresponding instalment notice."

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

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.

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.

Headings, underlining and bold type are for convenience and do not affect the interpretation of this First Variation, unless the context requires otherwise.

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:

Hekia Parata

Witness Signature

Print Name

Witness Occupation

Place of residence

SIGNED by Advance Training Group Limited

s 9(2)(a) OIA

Name

Name

NICK HYDE
Name

WAYNE HYDE
Name

In the presence of

Witness Signature

s 9(2)(a) OIA

Print Name

RETIRED
Witness Occupation

CAMBRIDGE
Place of residence