

# **Variation Agreement**

**# 3**

**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**

**The Rise UP 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) The Rise UP 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 16 September 2013 to operate a Partnership School | Kura Hourua under the agreed terms and conditions ("the principal Agreement").
- C. On 9 December 2014 the Minister of Education amended the Gazette Notice issued under section 158B of the Act and which approved the Sponsor to operate a partnership school for class levels 1-6 inclusive to also include years 7 and 8 in the class levels for which education may be given at the school.
- D. The Minister and the Sponsor also amended the principal Agreement on 9 December 2014, to increase the Maximum Roll of the school and to provide for performance standards reflecting the addition of years 7 and 8 to the class levels for which education may be given at the school ("First Variation").
- E. The **Second Variation** agreement further amended the principal Agreement (as amended by the First Variation) as required for the 2015 school year.
- F. This **Third Variation** agreement further amends the principal Agreement (as amended by the First Variation and Second Variation) as required for the 2016 school year.

## Effective Part

### 1. Amendments to the principal Agreement

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

- (a) 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."

- (b) 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."

- (c) 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)."

## 2. Amendments to Schedules

- (a) 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.

- (b) 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

Year	Term Dates			
2014	Term 1	7 February	until	17 April
	Term 2	5 May	until	4 July
	Term 3	21 July	until	26 September
	Term 4	13 October	until	17 December
	Total = 382 half days			
2015	Term 1	2 February	until	2 April
	Term 2	20 April	until	3 July
	Term 3	20 July	until	25 September
	Term 4	12 October	until	15 December
	Total = 370 half days			
2016	Term 1	2 February	until	15 April
	Term 2	20 April	until	3 July
	Term 3	20 July	until	25 September
	Term 4	12 October	until	15 December
	Total = 370 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.			

- (c) the deletion of Clause 4 of Schedule 1 (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."

- (d) 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;'

- (e) 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	Lead Teacher	1
	Teachers	2
	Teacher Aide	1
2015	Lead Teacher	1
	Teachers	5
	Teacher Aide	2
2016	Lead Teacher	1
	Teachers	5
	Teacher Aide	2

- (f) 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)
2014	3	1	4	0	4
2015	6	2	8	0	8
2016	6	2	8	0	8
2017	TBD	TBD	TBD	TBD	TBD
2018	TBD	TBD	TBD	TBD	TBD
2019	TBD	TBD	TBD	TBD	TBD

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- (g) the deletion of clause 1 of Annex A (Performance Standards for Student achievement against National Standards) of Schedule 6 (Performance Management System) and its substitution with the following:

**“1 Primary (Class Levels 1 to 8)**

**1.1 Reading**

Class Level	Performance Standard			
	2014	2015	2016	2017
1	56.6%	70.0%	75.0%	85.0%
2	72.8%	82.0%	83.0%	85.0%
3	75.3%	83.0%	84.0%	85.0%
4	74.1%	83.0%	84.0%	85.0%
5	69.5%	79.0%	81.0%	85.0%
6	75.6%	82.0%	83.0%	85.0%
7	N/A	60.1%	80.0%	85.0%
8	N/A	61.6%	80.0%	85.0%

**1.2 Maths**

Class Level	Performance Standard			
	2014	2015	2016	2017
1	78.0%	85.0%	85.0%	85.0%
2	71.4%	80.0%	81.0%	85.0%
3	64.7%	75.0%	77.0%	85.0%
4	69.2%	79.0%	80.0%	85.0%
5	61.2%	72.0%	74.0%	85.0%
6	65.3%	76.0%	77.0%	85.0%
7	N/A	52.1%	73.0%	85.0%
8	N/A	50.8%	73.0%	85.0%

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### 1.3 Writing

Class Level	Performance Standard			
	2014	2015	2016	2017
1	70.8%	78.0%	79.0%	85.0%
2	69.0%	77.0%	78.0%	85.0%
3	63.6%	73.0%	74.0%	85.0%
4	63.5%	74.0%	75.0%	85.0%
5	56.8%	68.0%	69.0%	85.0%
6	61.3%	71.0%	72.0%	85.0%
7	N/A	50.7%	65.0%	85.0%
8	N/A	51.9%	70.0%	85.0%

- (h) 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%-6%	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	50	100	100	TBC	Quarterly

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- (i) 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 Primary (Class Levels 1 to 6)**

Measure	Performance Standard			
	2014	2015	2016	2017
Unjustified absences	0.01 multiplied by the number of Students multiplied by the number of days the School is open	0.01 multiplied by the number of Students multiplied by the number of days the School is open	0.01 multiplied by the number of Students multiplied by the number of days the School is open	To be determined
Stand downs	0	0	0	To be determined
Suspensions	0	0	0	To be determined
Exclusions	0	0	0	To be determined

**Secondary (Class Levels 7 to 8)**

Measure	Performance Standard			
	2015	2016	2017	2018
Unjustified absences	0.28 multiplied by the number of Students multiplied by the number of days the School is open	0.28 multiplied by the number of Students multiplied by the number of days the School is open	TBD	TBD
Stand downs	2.1 occurrences per year per 100 Students	2.1 occurrences per year per 100 Students	TBD	TBD
Suspensions	0.42 occurrences per year per 100 Students	0.42 occurrences per year per 100 Students	TBD	TBD
Exclusions	0.15 occurrences per year per 100 Students	0.15 occurrences per year per 100 Students	TBD	TBD
Expulsions	0	0	TBD	TBD

- (j) the deletion of paragraph 1.2(a) (Guaranteed Minimum Roll) of Schedule 7 (Payment) and its substitution with the following:

"(a) Where this Schedule 7 refers to the Guaranteed Minimum Roll, this is 50 for the 2014 Year, 100 for the 2015 Year, and 100 for the 2016 Year."

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- (k) The deletion of clause 1.4 of Schedule 7 and replacement with the following:

#### 1.4 Quarterly Operational Payments

- (a) From the 2014 Year, the Sponsor will receive Quarterly Operational Payments from the Minister which will be calculated by the Ministry and will be comprised of sums relating to the various payment types set out in the following table:

Type of payment	Description of payment	Payment adjustment mechanism
Property and Insurance funding	25% of the annual cashed up property and insurance funding amount.	Reviewed every three years
Base funding	25% of the annual cashed up base funding amount.	Consumers price index and labour cost index
Centrally funded support	25% of the annual cashed up centrally funded support amount per Student multiplied by the number of Students enrolled at the school at the time of payment calculation.	Reviewed every three years
Per student funding	25% of the annual per student funding amount multiplied by the number of Students enrolled at the school at the time of payment calculation.	Consumers price index and labour cost index

- (b) The Quarterly Operational Payment for the 2016 Year is \$210,255.06 (exclusive of GST).
- (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.
- (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.
- (e) As indicated in the third column of the table in paragraph (a) of this clause 1.4, in respect of the "base funding" and "per student funding" components that the Ministry will use to calculate Quarterly Operational Payments, the payment adjustment mechanism that will be used by the Ministry will be the consumers price index and the labour cost index. During the third quarter of each Year, the Minister shall calculate through a combined use of the labour cost index and the consumers price index a percentage change to the base funding and per student funding amounts. This adjustment will take effect from the first quarter of the next Year. The percentage of each of the base funding and per student funding amounts that will be adjusted by the labour cost index and the consumers price index will be as follows:
- Labour cost index = 70%; and
  - Consumers price index = 30%
- (f) As Indicated in the third column of the table in paragraph (a) of this clause 1.4, in respect of the "property and insurance funding" and the "centrally funded support" components that the Ministry will use to calculate Quarterly Operational Payments, the payment adjustment mechanism that will be used by the Ministry is that the Ministry will review the payments once in every three year period and may, following a review, determine that the underlying payment amounts used in any calculations should be adjusted.

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- (g) For the purpose of any calculations that are relevant to determining a Quarterly Operational Payment where the School's decile rating is a factor in the calculation, the School's decile will be deemed to be three. Any new decile rating that is provided by the Ministry (either following a request for a decile review from the Sponsor, or otherwise) will be deemed to be the new decile rating that applies to the School for the purpose of this clause.
- (h) For the 2014 to 2016 Years, for the purpose of determining any funding component described in the table in paragraph (a) of this clause 1.4 where the School's roll is used to calculate a payment, the School's roll will be deemed to be the Guaranteed Minimum Roll that applies as at the payment date or the actual roll submitted through relevant roll returns (whatever number is greater).
- (i) Quarterly Operational Payments will be made on the following basis:
  - (i) 99% of each Quarterly Operational Payment will be payable during the term of this Agreement on the 20th Business Day of the month following receipt of an invoice from the Sponsor provided in accordance with clause 2 of this Schedule 7 (Invoicing); and
  - (ii) the remaining 1% of each Quarterly Operational Payment will be retained by the Minister and, following the Minister's receipt and consideration of the Sponsor's Annual Report, will be paid to the Sponsor provided that the Minister is satisfied, in the Minister's sole discretion, that the Sponsor has met all of the Performance Standards for the relevant School Year to which the Annual Report relates by the end of the relevant School Year.

### 3. **Effective Date**

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

### 4. **General Provisions**

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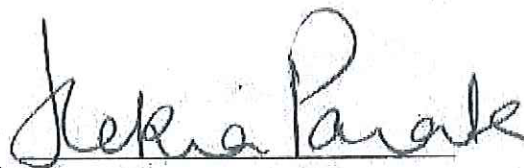
- 4.1 This Third Variation is intended to supplement and form part of the terms and conditions contained in the principal Agreement. The parties declare that the terms and conditions set out in the principal Agreement remain in full force and effect except to the extent that they have been amended or added to in this Third Variation or any other validly executed variation Agreement.
- 4.2 If there is any conflict between the terms and conditions contained in the principal Agreement and the terms and conditions set out in this Third Variation, the terms and conditions of this Third Variation will prevail.
- 4.3 Headings, underlining and bold type are for convenience and do not affect the interpretation of this Third Variation, unless the context requires otherwise.
- 4.4 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 Third 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 :

  
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SIGNED by The Rise UP Trust

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Trustee

Sita Selupe

Name

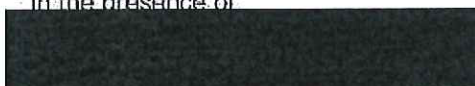


Trustee

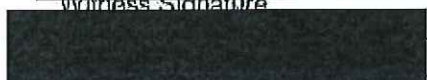
Sally KINGO

Name

In the presence of



Witness Signature



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Print Name

ADMINISTRATOR

Witness Occupation

AUCKLAND

Place of residence