

# **Variation Agreement**

## **# 2**

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

**11 FEB 2015**

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11 FEB 2015

This Agreement is made on

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. This **Second Variation** agreement further amends the principal Agreement (as amended by the First Variation) as required for the 2015 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 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	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.
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.

- (c) 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	To be determined as a variation to this Agreement in accordance with clause 7.3(c) of this Agreement.			
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.			

- (d) 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
	Teacher Aide	2

- (e) 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:

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

Year	Registered	Limited Authority to Teach	Non Registered
2014	3	1	0
2015	6	2	0
2016	TBD	TBD	TBD
2017	TBD	TBD	TBD
2018	TBD	TBD	TBD
2019	TBD	TBD	TBD

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

"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	50	100	TBD	TBD	Quarterly

- (g) the deletion of clause 1.2 (Guaranteed Minimum Roll) of Schedule 7 (Payment) and its substitution with the following (and consequential renumbering of old clauses 1.4, 1.5, 1.6 and 1.7 as 1.3, 1.4, 1.5 and 1.6 respectively):

#### **"1.2 Guaranteed Minimum Roll**

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

- (c) the addition of new sub-clause 1.4(c) (Quarterly Operational Payments)(as renumbered by clause 1(b) of this Second Variation) to Schedule 7 (Payment) and consequential renumbering of current sub-clauses (c), (d), (e), (f), (g), (h), and (i) as (d), (e), (f), (g), (h), (i) and (j) respectively:

"(c) The Quarterly Operational Payment for the 2015 Year is \$209,340.48 (exclusive of GST)."

- (d) the deletion of clause 1.4(e) (as renumbered by clause 1(c) of this Second Variation) to Schedule 7 (Payment) and its substitution with the following:

"(e) 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) the deletion of clause 2 (Invoicing) to Schedule 7 (Payment) and its substitution with the following :

## **"2. Payment Notice**

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- (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

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

## **"3. Invoicing**

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- (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**

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

## **3. General Provisions**

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- 3.1 This Second 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 Second Variation or any other validly executed variation Agreement.
- 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 Second Variation, the terms and conditions of this Second Variation will prevail.
- 3.3 Headings, underlining and bold type are for convenience and do not affect the interpretation of this Second 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 Second 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:

Helen Parake

Witness Signature

s 9(2)(a) OIA

Print Name

PRIVATE SECRETARY  
Witness Occupation

WELLINGTON  
Place of residence

SIGNED by The Rise UP Trust

s 9(2)(a) OIA

[Redacted Signature]

Trustee

Trustee

SITA SELUPE  
Name

Sally KINOED  
Name

In the presence of

[Redacted Signature]

Witness Signature

s 9(2)(a) OIA

[Redacted Signature]

Print Name

Administrator  
Witness Occupation

Auckland  
Place of residence