

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

11 FEB 2015

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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) 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 16 September 2013 (the **principal Agreement**) to operate a Partnership School | Kura Hourua 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 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:

| Year | Term Dates |
|------|--|
| 2014 | Term 1 - 10 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 - 9 February until 2 April |
| | Term 2 - 27 April until 26 June |
| | Term 3 - 13 July until 19 September |
| | Term 4 - 5 October until 5 December |
| | Total = 364 half days |
| 2016 | To be determined as a variation to this Agreement in accordance with 7.3(c) of this Agreement. |
| 2017 | To be determined as a variation to this Agreement in accordance with 7.3(c) of this Agreement. |
| 2018 | To be determined as a variation to this Agreement in accordance with 7.3(c) of this Agreement. |
| 2019 | To be determined as a variation to this Agreement in accordance with 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 | Tumuaki- Education Leader | 1 |
| | Kaiwhakaako - HOD | 1 |
| | Kaiwhakaako | 4 |
| | Total | 6 |
| 2015 | Tumuaki- Education Leader | 1 |

| | | |
|--|-------------------|-----|
| | Kaiwhakaako - HOD | 1 |
| | Kaiwhakaako | 6.5 |
| | Total | 8.5 |

- (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 | 5 | 0 | 1 |
| 2015 | 7 | 0 | 1.5 |
| 2016 | TBC | TBC | TBC |
| 2017 | TBC | TBC | TBC |
| 2018 | TBC | TBC | TBC |

- (f) the deletion of clause 3 (Percentage of Curriculum time taught by Registered Teachers and Holders of Limited Authority to Teach) of Schedule 4 (Governance and Teachers) and its substitution with the following:

"The percentage of the Curriculum taught by Registered Teachers and Holders of Limited Authority to Teach is as follows:

| Year | % Curriculum time taught by Registered Teachers or holders of Limited Authority to Teach |
|---------|--|
| 2014 | 60% |
| 2015 | 60% |
| 2016 | TBC |
| 2017 | TBC |
| 2018 | TBC |
| Average | 60% |

- (g) 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 | 70 | TBD | TBD | Quarterly |

- (h) the deletion of clause 2.1 (Class Levels 11 to 13 (NCEA)) of Annex A (Performance Standards for Student Achievement against National Standards and NCEA) of Schedule 6 (Performance Management System) and its substitution with the following:

| NCEA level/ University Entrance | Performance Standard | | | |
|----------------------------------|----------------------|-------|------|------|
| | 2014 | 2015 | 2016 | 2017 |
| School leavers with NCEA level 1 | 80.9% | 84.0% | TBD | 90% |
| School leavers with NCEA level 2 | 66.9% | 73.0% | TBD | 85% |

- (i) 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 70 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.
- (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."
- (j) 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 \$536,271.42 (exclusive of GST)."
- (k) 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."
- (l) 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 |

- (m) 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

- 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 :

)
)
)

Heke Paraka


Witness Signature

s 9(2)(a) OIA


Print Name

PRIVATE SECRETARY

Witness Occupation

WELLINGTON

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

s 9(2)(a) OIA


Print Name

Corporate Manager

Witness Occupation

Whangarei

Place of residence