SPECIALIST AGENT AGREEMENT

This Agreement sets out the terms and conditions upon which Agent will provide ENZ the Services as a "Specialist Agent" of ENZ. By signing this document Agent agrees to be bound by the terms and conditions of this Agreement. This Agreement is contingent on the Agent gaining Accreditation.

CONTRACT DETAILS

In addition to the terms defined in clause 1 below, in this Agreement the following terms have the following meanings:		
ENZ	Education New Zealand Trust of [***insert address***]	
Agent	[***insert full name of agent entity***] of [***insert*** **address**] and includes all branch offices of that entity in the Territory.	
Accreditation Fee	NZ$[***insert amount***] payable by Agent to ENZ on the Accreditation Date in accordance with clause 3.1.	
Renewal Fee	NZ$[***insert amount***] payable by Agent to ENZ on the Renewal Date in accordance with clause 3.1.	
Performance Obligations	**Number of valid student placements in each Year**	**Percentage of client Immigration NZ visa approvals in each Year**
	[***insert number***]	[**insert percentage**]%
Term	[***insert period***] from the Accreditation Date or any Renewal Date (if any).	
Territory	[***insert territory in which Agent is authorised to operate***]	

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In addition to the terms defined above, in this Agreement the following terms will have the following meanings:

"Accreditation" means formal certification from ENZ that the Agent has been accredited as a "Specialist Agent", the provision of accreditation being at ENZ's discretion;

"Agreement" means this agreement, including the Contract Details above and Schedules (as may be amended by ENZ from time to time);

"Accreditation Date" means the date the Agent receives notice of its Accreditation;

"Confidential Information" means all information of any kind, whether it is in tangible or documentary form, and whether marked or identified as being confidential, relating to ENZ;

"ENZ Material" includes all brochures, texts, information sheets, instructional material, web page content and other resources and materials and all trade marks, logos and brands used or made available by ENZ in relation to this Agreement;

"Intellectual Property Rights" means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to, all copyright and similar rights that may subsist in works or other subject matter and all rights in relation to inventions, trade secrets, know-how, designs, trade marks, business names and domain names;

"Personnel" means the employees, agents and representatives of Agent or any permitted sub-contractor, who are involved in the performance of the Services;

"Renewal Date" means the date this Agreement is renewed in accordance with clause 7.2;

"Services" means:

(a) the promotion of New Zealand and New Zealand educational institutes as education destinations to potential students in the Territory;

(b) identifying and securing placement within New Zealand educational institutes of suitable students from the Territory; and

(c) other services as directed by ENZ from time to time; and

"Year" means a 12 month period commencing on the Accreditation Date or any anniversary of the Accreditation Date.

1.2 **Interpretation:** In this Agreement:

(a) headings are used for convenience only and will not affect its interpretation;

(b) references to the singular include the plural and vice versa;

(c) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);

(d) references to clauses and the Schedules are to those clauses and Schedules in this Agreement; and

(e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

2. SPECIALIST AGENT SERVICES

2.1 **Appointment:** From the Accreditation Date ENZ appoints Agent, and Agent agrees, to perform the Services in the Territory in accordance with the terms and conditions of this Agreement. On granting Accreditation, ENZ agrees to be bound by this Agreement.

2.2 **No agency:** Nothing in this Agreement creates any legal agency relationship between ENZ and Agent. Agent is not authorised and must not:

(a) make, or purport to make, any representation on behalf of ENZ other than as expressly authorised in writing by ENZ; or

(b) enter, or purport to enter, any agreement or undertaking on behalf of ENZ.

2.3 **Performance:** In performing the Services and complying with its other obligations under this Agreement, Agent must:

(a) meet or exceed the Performance Obligations; and

(b) promptly notify ENZ in writing if it becomes aware of any likely failure or delay by it in performing the Services or any breach of this Agreement.

2.4 **Compliance:** Subject to clause 2.5, Agent must comply with all ENZ policies and procedures, including (without limitation) the following:

(a) the Code of Conduct, a copy of which is attached as Schedule 1; and

(b) the Advertising Policy, a copy of which is attached as Schedule 2.

2.5 **Policy amendments:** ENZ may amend its policies and procedures from time to time. The most current policies and procedures at any time will be available on ENZ's website. Agent must keep itself up-to-date, and comply, with the most current version of each policy and procedure.

2.6 **Personnel:** Agent will:

(a) ensure that the Services are always provided using appropriately experienced, skilled and qualified Personnel;

(b) ensure that all Personnel comply with the terms of this Agreement; and

(c) be responsible for all acts and omissions of the Personnel as if they were the acts or omissions of Agent.

2.7 **Sub-contractors:** Agent will not sub-contract the provision of any Service to any other person without first obtaining ENZ's written consent. Agent will remain liable to ENZ for all acts or omissions of any permitted sub-contractors as if they were the acts or omissions of Agent.

3. PAYMENTS

3.1 **Fees:** ENZ will invoice Agent for the Accreditation Fee and (where applicable) any Renewal Fee and Agent must pay ENZ that invoiced amount within 30 days of that invoice.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 **Ownership:** Agent acknowledges that ENZ or its licensors or suppliers retains ownership of all Intellectual Property Rights in the ENZ Material.

4.2 **Improvements:** Legal and beneficial ownership of any improvements, modifications or additions to the ENZ Materials will vest exclusively in ENZ on creation together with all Intellectual Property Rights in those improvements, modifications or additions. Agent assigns absolutely to ENZ all such Intellectual Property Rights (including by way of present assignment or future copyright). If any Intellectual Property Rights do not vest in ENZ Agent will, if called upon to do so by ENZ, take all steps necessary to assign to ENZ absolutely all of Agent's rights, title and interest in or to such Intellectual Property Rights.

4.3 **Licence:** ENZ grants Agent a non-exclusive, non-transferable, terminable right to use the ENZ Material in the Territory solely for the purpose of performing the Services in accordance with, and subject to, the terms of this Agreement.

5. CONFIDENTIAL INFORMATION

5.1 **Confidentiality obligations:** Agent will not use or disclose any Confidential Information other than for the purpose of, and to the extent necessary for, performing the Services in accordance with this Agreement. This clause 5.1 will not apply to the extent that any Confidential Information:

(a) was in Agent's possession before being received by Agent from ENZ;

(b) is or becomes generally available to the public through no act or default of Agent; or

(c) is required to be disclosed by law, provided that Agent advises ENZ of that requirement before making any such disclosure.

5.2 **Disclosure to employees:**

(a) Agent may not disclose the Confidential Information to any person other than its Personnel who have a need to know the Confidential Information for the purposes of providing the Services and who have entered into confidentiality obligations to Agent on terms equivalent to those set out in this clause 5 and that apply to the Confidential Information.

(b) Agent will be responsible to ENZ for any unauthorised use or disclosure of Confidential Information by its Personnel or sub-contractors as if the use or disclosure were a use or disclosure by Agent under this clause 5.

6. WARRANTIES AND INDEMNITY

6.1 **Warranties:** Agent warrants that:

(a) the Services will be provided with skill and care and to a professional standard and otherwise in accordance with this Agreement;

(b) it is authorised to enter this Agreement and provide the Services; and

(c) its provision of the Services will not breach any law or third party right or interest.

6.2 **Indemnity:** Agent will at all times indemnify and keep indemnified ENZ from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever awarded against, incurred or suffered by ENZ arising out of or resulting from the negligence of Agent or the non-performance or breach by Agent of any of its obligations under this Agreement.

6.3 **Exclusion of liability:** In no event will ENZ be liable (whether in contract, tort including negligence, or otherwise) to Agent for and loss, damage, cost or expense of any kind whatsoever that is indirect, consequential or of a special nature arising directly or indirectly out of this Agreement (including, without limitation, any loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity).

6.4 **Limitation:** Notwithstanding any other provision of this Agreement, the maximum liability of ENZ to Agent arising out of any and all claims under this Agreement, or relating to the Services, will not in any circumstances exceed the value of the Accreditation Fee.

7. TERM AND TERMINATION

7.1 **Term:** This Agreement will commence on the Accreditation Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue in full force and effect for the Term.

7.2 **Renewal:** This Agreement will be renewed for a further Term on the expiry of any current Term where ENZ provides Agent written approval for that renewal and Agent pays the Renewal Fee.

7.3 **Termination for convenience:** ENZ may terminate this Agreement at any time by giving Agent at least 30 days' prior written notice.

7.4 **Termination on breach:** Without prejudice to any other right or remedy it may have, ENZ may immediately terminate this Agreement at any time by giving to Agent notice in writing if:

(a) Agent is in breach of this Agreement and the breach is not remedied within 10 days of Agent receiving notice specifying the breach and requiring its remedy;

(b) Agent ceases or threatens to cease to carry on all or substantially all of its business or operations, is declared or becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt;

(c) a trustee, manager, administrator, administrative receiver, receiver, inspector under any legislation or similar officer is appointed in respect of the whole or any part of Agent's assets or business; or

(d) an order is made or a resolution is passed for the liquidation of Agent (other than voluntarily for the purpose of a solvent amalgamation or reconstruction).

7.5 **Consequences of termination:** On termination or expiration of this Agreement for any reason whatsoever:

(a) Agent will pay ENZ any outstanding Accreditation Fees as at the date of termination or expiration;

(b) Agent will immediately return or destroy (at ENZ's option), all ENZ Material and Confidential Information in its possession or under its control;

(c) the provisions of clauses 4.2, 5, 6.2 to 6.4, 7.4, 7.5, and 8 will remain in full force and effect; and

(d) subject to this clause 7.5, and except for any accrued rights, neither party will be under any further obligation to the other party.

7.6 **Accrued rights:** Termination or expiration of this Agreement will be without prejudice to the rights and remedies of the parties that

have accrued prior to termination, including for any prior breach of this Agreement.

8. GENERAL

8.1 **Assignment:**

(a) Agent may not sell, assign, transfer, novate, or sub-contract any of its rights or obligations under this Agreement, without ENZ's prior written consent.

(b) ENZ may assign, transfer or novate any or all of its rights or obligations under this Agreement by giving notice in writing to Agent.

8.2 **Waiver:** No failure or delay by either party to exercise any right or remedy under this Agreement will be treated as a waiver of such right or remedy.

8.3 **Entire agreement:** This Agreement contains the whole of the contract and understanding between the parties relating to the matters covered by it.

8.4 **Governing law:** New Zealand law governs the formation, validity, construction and performance of this Agreement. This Agreement is subject to the non-exclusive jurisdiction of the New Zealand courts, and the parties submit to that jurisdiction.

8.5 **Counterparts:** The parties may sign this Agreement in any number of counterparts (including facsimile copies).

SIGNED

[*INSERT FULL NAME OF AGENT*]
by:

Signature of Authorised Person

Name of Authorised Person

Date

SCHEDULE 1
CODE OF CONDUCT

A. In providing the Services, Agent must:

(a) conduct itself with integrity and in a manner that will reflect positively on New Zealand as a trusted, high quality education provider;

(b) maintain the highest professional standards, be ethical, and act with due diligence;

(c) always provide correct and accurate information to prospective students;

(d) serve the best interests of all its New Zealand providers and students without prejudice or favour;

(e) respect the confidentiality of providers and students;

(f) ensure that no directors, managers or key personnel have any criminal record or a negative immigration history in relation to any country;

(g) achieve the necessary student numbers and approval percentages as criteria set out in this agreement or advised by ENZ from time to time;

(h) adhere in all respects to the New Zealand Ministry of Education Code of Practice for the Pastoral Care of International Students (http://www.minedu.govt.nz/goto/international) and keep abreast of any changes or developments to it;

(i) provide its contact details (including the contact details of its branch offices) to ENZ and ensure those contact details (including those that appear on any ENZ or related web page) are accurate, and immediately advise if changes are required (branch office details will not normally be included on any ENZ web page);

(j) not offer any discount to students or enter into any arrangement, directly or indirectly, with students for sharing of any commission whether called scholarship or otherwise. Any amount passed back to a student out of the commission receivable by the agent shall be treated as violation of this clause. Scholarships, if offered, should meet all ethical definitions of a scholarship which ideally means that it is either offered by education providers, government agencies or by benevolent trusts where the scholarship results from a secured fund set aside for the purpose. Publication of any advertisement, publicity material, brochure etc offering such discount or pass back of commission to students shall be construed as violation of this clause;

(k) immediately notify ENZ (before notifying any other entity) if Agent has any concerns or is aware of any matters relating to this Agreement or the Specialist Agent network, including concerns or issues about:

(i) conditions, criteria and requirements under the Agreement;

(ii) Agent's benefits under the Agreement; or

(iii) the development and growth of NZ Specialist Agents generally; and

(l) immediately advise ENZ if any personnel who attended an ENZ training workshop leave the Agent.

B. Agent must never:

(a) act, conspire, or enter agreements in an unlawful manner;

(b) knowingly or by a failure of professional standards provide or disseminate to any stakeholders false, incomplete or misleading information about themselves, their clients (students and providers), ENZ, or any other stakeholders;

(c) criticise or accuse the NZ Specialist Agents group, any individual NZ Specialist Agents group members, ENZ, or any other stakeholder without substantive evidence and the opportunity for ENZ, to first investigate any such evidence prior to disclosure; or

(d) bring the New Zealand education system, ENZ, the NZ Specialist Agents group or individual NZ Specialist Agent group members, or any other stakeholder in to disrepute by the above or any other means.

C. As part of ENZ commitment to Agent, and to help ensure the reputation and standing of the NZ Specialist Agents group, ENZ shall use all reasonable efforts to:

(a) communicate with Agent (by a variety of means), in a timely and accurate manner, new information which is imperative or advantageous for Agent to be able to operate and prosper in the New Zealand market;

(b) investigate any alleged or suspected breach of the code of conduct by a Specialist Agent, in an objective, unprejudiced, timely, and discreet manner; and with the assistance of any other institutions, businesses, or person ENZ sees fit;

(c) take such steps as ENZ sees fit as a result of any investigation of a Specialist Agent; and

(d) consult with the NZ Specialist Agents group members on issues of importance regarding their country and NewZealand export education.

SCHEDULE 2
ADVERTISING POLICY

These advertising rules were formulated by ENZ after consultation with NZ Specialist Agents, in order to regulate the advertisement and publicity activities of the NZ Specialist Agents, to protect the legitimate rights of prospective students, agents and institutions and to enable advertisements to play a positive role in marketing New Zealand education institutions.

A. Agent must follow principles of fairness, honesty and credibility in their advertisement and publicity activities.

B. An advertisement released or caused to be released by a NZ Specialist Agent must not contain any false or misleading information.

C. All advertisements must be true to the facts stated therein, lawful and in compliance with all relevant laws in the country in which Agent operates and all New Zealand immigration rules.

D. Any advertisement released or caused to be released by Agent must not:

(a) use any name, logo or brand of any New Zealand organisation (including, without limitation, ENZ, NZTE, Immigration New Zealand or any of their functionaries) without the prior written permission of that organisation;

(a) use sentences such as "Official New Zealand Education Fair", "New Zealand Government" or similar;

(b) make any representation or provide any undertaking or guarantee about clients obtaining employment in New Zealand;

(c) make any statement or provide any representation about permanent residency rules other than in strict accordance with prevailing New Zealand Government Immigration Rules and wherever practical, providing reference to the appropriate website address;

(d) make any representation or provide any undertaking or guarantee about clients obtaining a visa (including , without limitation, using words such as "Guarantee Visa");

(e) offering discounts in fees and other incentives like gifts, free air tickets, money backs or free accommodation; and

(f) make any claims that cannot be substantiated or verified like "Best", "No.1" etc. However, award winning NZ Specialist Agents would be allowed to publicize their achievements (as stated on the NZ Specialist Agent Certificate).

E. Agent must only advertise for New Zealand educational institutions:

(a) that are registered to deliver courses to international students by the New Zealand Qualification Authority; and

(b) that Agent is authorised to represent (as evidenced by a current written agency agreement between Agent and that institution).

F. Before including the name or any trade mark or logo of any New Zealand educational institution in any advertisement, Agent must obtain the prior written permission of that institution.