

Contract

relating to

use of the NEW ZEALAND EDUCATED brand

Education New Zealand Trust

and

Date

2010

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- (i) if it is an educational institution, it meets the requirements specified in paragraph (a) above; or
- (ii) if it is an entity that represents educational institutions, all institutions it represents meet the requirements specified in paragraph (a) above.

2. Grant of licence

- (a) ENZ grants to the Licensee a non-exclusive licence to use the NEW ZEALAND EDUCATED brand in relation to the Services in all countries and territories in the world. ENZ, as Licensee of the New Zealand Fernmark, also grants the Licensee a non-exclusive sub-licence to use The New Zealand Fernmark as incorporated in the NEW ZEALAND EDUCATED logo.
- (b) The Licensee shall use the NEW ZEALAND EDUCATED brand in relation to the Services only.
- (c) The Licensee acknowledges that The New Zealand Fernmark is the absolute property of NZWL and that NZWL grants licences to use The New Zealand Fernmark in respect of other goods and services to other licensees. The Licensee also acknowledges that correct use of the NEW ZEALAND EDUCATED logo will ensure correct use of The New Zealand Fernmark.
- (d) The Licensee shall not use The New Zealand Fernmark on its own and shall only use it as part of the NEW ZEALAND EDUCATED logo unless the Licensee has been separately licensed to do so under a Brand Partner Agreement by NZWL. Such other use of The New Zealand Fernmark should not conflict with use of The New Zealand Fernmark as part of the NEW ZEALAND EDUCATED logo. The Licensee shall obtain prior written approval from NZWL (through ENZ) to such other use in relation to the Services and shall provide samples of such use to ENZ.
- (e) All further references to use of the NEW ZEALAND EDUCATED logo in this Contract are also references to use of The New Zealand Fernmark.
- (f) This Contract must be executed and returned to ENZ before the Licensee may use the NEW ZEALAND EDUCATED brand.

3. Duration

- (a) This Contract takes effect, and the obligations of each party commence, on the date of this Contract and shall continue until 30 June 2011.
- (b) This Contract may be renewed for a further two years upon review at the end of the first and subsequent terms by ENZ and the Licensee of the licence and sub-licence arrangements provided for in this Contract, including a review of whether the objectives of ENZ and NZWL are being achieved and whether the Licensee is using the NEW ZEALAND EDUCATED brand and The New Zealand Fernmark in accordance with the terms and conditions of this Contract.

4. Conditions of use of the NEW ZEALAND EDUCATED brand

- (a) The Licensee shall comply with the standards and conditions in the brand user CDs "The New World Class Brand Standards" (also provided within the brand standards section on the website <http://industry.mynzed.com>) when using the NEW ZEALAND EDUCATED brand.
- (b) The Licensee shall use the NEW ZEALAND EDUCATED brand in a manner which supports and enhances the objectives of ENZ. In doing so, the Licensee acknowledges that it shall be using the NEW ZEALAND EDUCATED logo in a manner which supports and enhances the objectives of NZWL and the New Zealand Fernmark.
- (c) The Licensee shall not use the NEW ZEALAND EDUCATED brand in a manner or in circumstances which may damage the reputation of the NEW ZEALAND EDUCATED brand, New Zealand itself or ENZ. Nor shall the Licensee use the NEW ZEALAND EDUCATED logo in a manner or in circumstances which may damage the reputation of The New Zealand Fernmark, New Zealand itself or NZWL.
- (d) The Licensee is entitled to use the NEW ZEALAND EDUCATED brand on or in connection with brochures, letterhead, directories, signage, posters, advertising and other forms of promotional merchandise items such as T-shirts, pens and other goods (collectively referred to as **Materials**) specifically relating to the Services, but shall not use the NEW ZEALAND EDUCATED brand on merchandise items for profit but only for promotion of the NEW ZEALAND EDUCATED brand in keeping with the objectives of this Contract.
- (e) The Licensee shall notify ENZ of:
 - (i) any changes to the Services and Materials in relation to which it is allowed to use the NEW ZEALAND EDUCATED brand and which may have a bearing on its eligibility to use the NEW ZEALAND EDUCATED brand; or
 - (ii) any agreement, arrangement or other transaction which results, or will result in, a change of 50 per cent. or more in its ownership or control or any significant change of its management.
- (f) The Licensee shall, on request, supply to ENZ samples of its materials bearing or showing use of the NEW ZEALAND EDUCATED brand.
- (g) The Licensee shall, on request, provide to ENZ a brief summary of promotional activities, offshore marketing expenditure and the percentage of offshore marketing expenditure that relates to use of the NEW ZEALAND EDUCATED brand.
- (h) The Licensee shall, on request, notify ENZ of any forthcoming promotions involving use of the NEW ZEALAND EDUCATED brand which offer the opportunity for joint promotion with other licensees or approved users of The New Zealand Fernmark.
- (i) The Licensee shall not use the NEW ZEALAND EDUCATED brand in place of its own trade marks (i.e., brands, logos, etc.) or be used in conjunction with its trade marks in such a manner as to appear to be part of such trade marks.
- (j) The Licensee shall not register any components of the NEW ZEALAND EDUCATED brand or The New Zealand Fernmark in its own name or otherwise hold itself out as the owner of the NEW ZEALAND EDUCATED brand or The New Zealand Fernmark.

- (k) No variations of the NEW ZEALAND EDUCATED brand is permitted, except with the prior written approval of ENZ and NZWL, and any unapproved variation shall be withdrawn immediately.
- (l) The Licensee shall immediately inform ENZ of:
 - (i) any infringement of the NEW ZEALAND EDUCATED brand or The New Zealand Fernmark by third parties including, but not limited to where damage to the reputation or to the prestige of ENZ, the NEW ZEALAND EDUCATED brand, New Zealand, NZWL or The New Zealand Fernmark is possible, or where there is false representation of origin or false descriptions of the NEW ZEALAND EDUCATED brand or The New Zealand Fernmark; and/or
 - (ii) any legal action, pending or threatened, or administrative procedures which may concern the NEW ZEALAND EDUCATED brand or The New Zealand Fernmark or the Services.
- (m) ENZ shall not be liable for damages suffered by the Licensee due to infringement of ENZ's rights in the NEW ZEALAND EDUCATED brand. This clause shall survive termination of the Licensee's right to use the NEW ZEALAND EDUCATED brand.
- (n) The Licensee shall allow ENZ to publish its name, address, contact details and any other information in ENZ's promotional material relating to the NEW ZEALAND EDUCATED brand and, if the Licensee is an individual, he or she acknowledges, for the purposes of the Privacy Act 1993, that ENZ is entitled to publish such information.

5. Amendments

- (a) ENZ shall notify the Licensee of any revision or alteration to the NEW ZEALAND EDUCATED brand by the ENZ and shall allow the Licensee to continue using the NEW ZEALAND EDUCATED brand in its existing form for a period to be agreed between ENZ and the Licensee.
- (b) ENZ may, for the purposes of improving the terms of this Contract and/or the arrangements between it and the Licensee, amend or modify the terms and conditions of this Contract, on 30 days notice to the Licensee.
- (c) No amendment or modification to this Contract is to be effective unless it is in writing and signed by each party.

6. Non-assignment or transfer

This Contract is personal to the parties and the Licensee may not transfer, assign or licence its rights to any party whatsoever, unless it obtains ENZ's prior written consent.

7. Termination of use

- (a) The Licensee's right to use the NEW ZEALAND EDUCATED brand may be terminated by ENZ:
 - (i) if the Licensee ceases or fails to comply with this Contract; or
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- (ii) if any information provided by the Licensee to ENZ at the time of review for renewal of this Contract is incorrect at the time it was provided; or
 - (iii) if the Licensee is charged with any offence that discredits its reputation and good faith; or
 - (iv) if the Licensee is insolvent; or
 - (v) if the Services and Materials and/or the circumstances in which they are provided have changed so that they no longer meet the conditions under which the Licensee's right to use the NEW ZEALAND EDUCATED brand was granted; or
 - (vi) if, in the opinion of ENZ or NZWL, the Licensee's image or the image of the Services has altered to the extent that there is the potential to damage the reputation of ENZ, the NEW ZEALAND EDUCATED brand, The New Zealand Fernmark, New Zealand or NZWL; or
 - (vii) if, in the opinion of ENZ or NZWL, the Licensee ceases to be active in the international marketplace for a period of more than six consecutive months due to a lack of international marketing; or
 - (viii) by the giving of three months written notice.
- (b) If ENZ considers it appropriate, it shall notify the Licensee that it is considering termination of the Licensee's right to use the NEW ZEALAND EDUCATED brand and shall clearly set out the reasons for the potential termination. The Licensee shall be given an opportunity to address and rectify the situation to the satisfaction of ENZ or will voluntarily cease using the NEW ZEALAND EDUCATED brand.
- (c) Upon termination of the Licensee's right to use the NEW ZEALAND EDUCATED brand, it shall forthwith cease to use the NEW ZEALAND EDUCATED brand, and shall:
- (i) withdraw all of the materials bearing the NEW ZEALAND EDUCATED brand, or with the consent in writing of ENZ, obliterate or cover the NEW ZEALAND EDUCATED brand to ENZ's satisfaction; and
 - (ii) sign a notice of cessation of use of the NEW ZEALAND EDUCATED brand which ENZ may require for its purposes.
- (d) This Contract may be terminated by the Licensee by the giving of 30 days written notice to ENZ and by complying with points (i) and (ii) in clause (c) above.

8. Indemnity

The Licensee shall indemnify ENZ in matters relating to the NEW ZEALAND EDUCATED brand from any claims, costs, damages or expenses arising from the breach of this Contract, or from any use of the NEW ZEALAND EDUCATED brand not within the terms of this Contract, by the Licensee. This clause shall survive termination of this Contract.

9. Notices

9.1 Form of notice

- (a) Each notice or other communication under this Contract is to be in writing and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party.
- (b) The initial facsimile number, address and relevant person or office holder of each party is set out under its name at the end of this Contract.

9.2 Notice effective

No communication is to be effective until received. A communication is deemed to be received by the addressee:

- (a) in the case of a facsimile, on the business day on which it is sent or, if sent after 5:00 p.m. (in the place of receipt) on a business day, or if sent on a non-business day, on the next business day after the date of sending;
- (b) in the case of personal delivery, when delivered; and
- (c) in the case of a letter, on the third business day after posting by fast post or by airmail.

10. Partial invalidity

- (a) The illegality, invalidity or unenforceability of any provision of this Contract under any law does not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- (b) If, for any reason, a provision of this Contract is to any extent illegal, invalid or unenforceable, the parties shall agree on any necessary and reasonable legal, valid and enforceable amendments to this Contract, the effect of which is as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

11. Waiver

Any delay or failure by ENZ to exercise any right, power or remedy under, or in connection with, this Contract shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Contract shall not be effective unless that waiver is in writing and is signed by ENZ. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

12. No partnership

Nothing in this Contract, or in the relationship between ENZ and the Licensee, is to be construed as creating a partnership between ENZ and the Licensee or giving to ENZ or the Licensee any of the rights, or subjecting it to any of the liabilities, of a partner.

13. Dispute Resolution

13.1 Mediation

- (a) If a dispute or difference arises under or in relation to this Contract (including any claim in tort, in equity or pursuant to any statute) (a **dispute**), no party may commence any arbitration proceedings relating to the dispute unless the party has complied with this clause 13.1.
- (b) A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (c) On receipt of that notice, the parties are to use all reasonable endeavours to resolve the dispute in good faith expeditiously using informal dispute resolution techniques such as mediation, expert appraisal or determination or similar techniques agreed to by them.
- (d) If the parties do not resolve the dispute within 14 days of the receipt of the notice (or any longer period agreed to by the parties in writing):
 - (i) the parties are to refer the dispute to mediation which is to be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement;
 - (ii) the mediation is to be conducted by a mediator and at a fee agreed to in writing by each party; and
 - (iii) if the parties fail to agree to the mediator and/or the mediator's fee within 7 days of the reference of the dispute to mediation pursuant to clause 13.1(d)(i), the mediator is to be selected, and/or the mediator's fee is to be determined, by the Chair for the time being of LEADR New Zealand Incorporated.
- (e) If the dispute is not resolved by mediated agreement or otherwise within 14 days of the reference of the dispute to mediation pursuant to clause 13.1(d)(i) the parties (if agreed to by them) may refer the dispute to arbitration in accordance with clause 13.2.

13.2 Arbitration

- (a) If a dispute is referred to arbitration pursuant to clause 13.1, it is to be determined by:
 - (i) a single arbitrator agreed to by the parties; or
 - (ii) failing agreement within 7 days, a single arbitrator appointed by the President of the New Zealand Law Society for the time being or by the President's delegate appointed in writing for this purpose in accordance with the Arbitration Act 1996.
- (b) The arbitration is to be held in Wellington and is to be conducted in accordance with the Arbitration Act 1996.

Schedule 1: The NEW ZEALAND EDUCATED Brand Standards

“The NEW ZEALAND EDUCATED Brand Standards” are made available on the brand industry website located at <http://profile.newzealandeducated.com>.

Schedule 2: NEW ZEALAND EDUCATED logo

The logo:

