

Wentworth Institute

Agent Terms and Conditions

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1. ENGAGEMENT OF THE REPRESENTATIVE FOR WIN

- 1.1 The Representative is engaged to perform the Services in the Territory for 12 months from [insert date] until [insert date] ('the Term').
- 1.2 No exclusivity is given or implied to the representative. WIN may engage other Representatives to operate in the Territory during the Term, if it so chooses to perform the same or similar services.
- 1.3 Upon the appointment of the Representative, the Representative will receive an executed copy of this Agreement from WIN.

2. WARRANTY & INDEMNITIES OF THE WIN EDUCATIONAL REPRESENTATIVE

2.1 The Representative warrants that:

- (a) (Purpose) where WIN has, either expressly or by implication, made known to the Representative any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (b) The Representative its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and

2.2 The Representative indemnifies WIN against any loss, liability or expense, and any payment or fine arising from an audit by the Australian Taxation Office, State Revenue Office or Workcover authority. This indemnity is a continuous obligation and independent from other obligations of the Representative and survives the termination, for whatever reason of this Agreement.

2.3 In addition, the Representative shall indemnify WIN from and against any claim that may be made against WIN or the employees of WIN arising out of any negligent or willful act or omission in the performance of the Contract Services by the Representative, its employees, servants or agents and also from any costs that may be incurred with any claim.

2.4 The Representative warrants that it has not in the past engaged in dishonest or prohibited practices in connection with its activities as an Education Agent, including:

- (a) facilitating the enrolment of a student whom the Representative believes will not comply with the conditions of his or her student visa;
- (b) using PRISMS to create a Confirmation of Enrolment for someone other than a bona fide student;
- (c) providing immigration advice where not authorised to do so under the Migration Act 1958 (Cth); or
- (d) attempting to recruit a student at a time when:
 - (i) the Representative is or ought reasonably to be aware of the circumstances of the student; and
 - (ii) the circumstances of the student are such that the student would be prohibited from becoming enrolled pursuant to Standard 7 of the National Code 2018 – Transfer Between Registered Providers;

3. WHAT THE REPRESENTATIVE MUST DO

3.1 Under this Agreement the Representative agrees to:

- (a) provide WIN with any assistance or information it reasonably requests to allow WIN to comply with its obligations under the National Code 2018;
- (b) abide by the highest ethical standards as described in the National Code 2018;
- (c) promote the Courses in the Territory;
- (d) find suitable potential students to undertake courses;
- (e) in accordance with WIN's procedures and requirements, recruit and assist in the recruitment of students;
- (f) assist people to become students and for that purpose, provide all necessary information about courses and assistance in completing forms or applications and submitting these to WIN;
- (g) arrange for English language proficiency testing of potential students to be carried out through the International English Language Testing System (IELTS) by qualified persons in accordance with the Australian Migration Regulations or through an alternative English language proficiency test prescribed by the Minister of Immigration and Multicultural Affairs for specified countries and visa subclasses from time to time;
- (h) provide interpreters and free use of office space for joint promotions at mutually agreed dates during visits by WIN to the Representative's offices (upon request from WIN);
- (i) regularly monitor the Australian Government Department of Home Affairs (DHA) website at www.homeaffairs.gov.au and from time to time or as directed by WIN, attend local briefings, Australian Education International (AEI) sessions or agents' associations meetings or

other information sessions concerning the recruitment of overseas students for study in Australia as deemed appropriate by WIN; and

3.2 In performing and delivering the Services, the Representative must:

- (a) promote the Courses with integrity and accuracy and recruit students in an honest, ethical and responsible manner;
- (b) inform prospective students accurately about the requirements of courses. This can only be done by referring students to material provided by WIN;
- (c) assist to uphold the high reputation of WIN and of the Australian international education sector;
- (d) ensure that all necessary evidence and documents accompany a prospective student's application or acceptance of an offer;
- (e) only undertake promotional and marketing activities which are connected to or make reference to WIN which have been expressly authorised by WIN; and
- (f) conduct itself in a manner consistent with WIN's obligations under the National Code 2018, including Standard 4.1 set out at Schedule 1.

3.3 WIN prefers the Representative to complete (or have completed) the AEI Education Agent Training Course. In the future, preferential treatment will be offered to representative agents who have completed or are completing the AEI Education Agent Training Course.

3.4 The Representative must provide the following written information to prospective students, before the prospective students make an application to study:

- (a) all students who come to Australia on a student visa must do so for the primary purpose of studying and must undertake full-time Study; and

- (b) prospective students are required to notify WIN in writing of any change in their contact details, such as their Australian residential address and telephone number, which starts after they commence their Course.
- (c) disclose to prospective students that:
 - (i) the Representative receives a fee from WIN;
 - (ii) if a prospective student's visa application is refused, WIN shall refund the student's fees to their residential address (not the Representative's address);
 - (iii) WIN's indicative Course related fees have been quoted. Fees quoted will be fixed for the duration of study. If a student needs to extend due to failure, current prices will apply after the normal three year study period;
 - (iv) applicable refund policies apply [Standard 2.1(3), National Code 2018];
- (d) WIN's campus locations, facilities, equipment and learning and library resources available to students [Standard 2.1(c), National Code 2018];
- (e) WIN's courses (as per CRICOS Registration), including course content, the qualification or accreditation gained on completion, duration, modes of study, assessment methods [Standard 2.1(b), National Code 2018]; information about living in Australia and the local environment of the relevant campus, including information about campus location, accommodation options and indicative costs of living [Standard 2.1 (c); (h)(i) and (ii), National Code 2018];
- (f) the requirements for acceptance into a Course, including the minimum level of English language proficiency, educational qualifications and work experience required, and whether course credit may be applicable [Standard 2.1(a) National Code] 2018;
- (g) information about the grounds on which the student's enrolment may be

- deferred, suspended or cancelled [Standard 2.1(f) National Code 2018];
- (h) visa requirements which must be satisfied by the prospective student including English language proficiency levels;
 - (i) conditions imposed on student visas including satisfactory academic performance, attendance requirements and working rights and that WIN will be required to keep a record of the student's academic progress and attendance at classes;
 - (j) WIN's obligation to report any failure by a student to meet their visa conditions relating to attendance or academic performance to Australian Government authorities;
 - (k) the requirement that any school age dependents who accompany the student to Australia may be required to pay full fees school when they enroll in either government or non-government schools [Standard 2.1(h)(iii) National Code];
 - (l) withdrawal arrangements;
 - (m) admission procedures, credit transfers and the recognition of prior learning (RPL) policies at WIN;
 - (n) a description of the ESOS framework made available electronically by Department of Education [Standard 2.1(g) National Code 2018];
 - (o) internal and external grievance procedures; and
 - (p) non-academic student support services of special relevance to international students.

3.5 The Representative must:

- (a) complete a Marketing Plan in consultation with WIN (the Marketing Plan).
- (b) comply with the Marketing Plan when delivering the Services.
- (c) participate in any review of its delivery of the Marketing Plan when

requested by WIN.

- (d) participate in discussions with WIN regarding its performance under this agreement upon being given reasonable notice by WIN.
- (e) obtain a prospective student's details, including their name and residential address (which must not be the Representative's address)
- (f) send offer documents received from WIN to the nominated prospective student within 3 business days of receipt of the offer documents by the Representative;
- (g) within 5 business days of a receipt of fees and charges from a prospective student collect and forward all fees and charges together with the acceptance form to WIN and fax a copy of the bank draft and acceptance of offer form received from the prospective student to WIN within 5 business days of receipt from a prospective student;
- (h) provide WIN with market intelligence relevant to the recruitment of students in the Territory as requested by WIN from time to time;

3.6 The Representative gives information in 'written form' to a prospective student if it:

- (a) gives that person a physical copy of the information in printed form, and the information includes the name and CRICOS number of WIN;
- (b) sends by email to an address nominated by that person an electronic copy of the information in printed form, and the information includes the names and CRICOS number of WIN; or
- (c) gives that person accurate instructions about how to access an electronic copy of the information in printed form, and the information includes the name and CRICOS number of WIN.

4. WHAT THE REPRESENTATIVE MUST NOT DO

4.1 The Representative must not:

- (a) act unethically in performing the Services.

Unethical behaviour includes:

- (i) discounting of tuition fees,
- (ii) aiding and abetting in the submission of fraudulent documents for visa purposes,
- (iii) charging fees for application forms or brochures or misleading or
- (iv) deceiving prospective students in any way.

The use or submission of a fraudulent document is a breach of this Agreement for which WIN may terminate this Agreement.

- (b) engage in any dishonest practices, including suggesting to prospective students that they can come to Australia on a student visa with a primary purpose other than full-time study; attempt to recruit a student where:

- (i) the Representative is aware or ought reasonably to be aware of the circumstances of the student;
- (ii) the Representative is aware or ought reasonably to be aware of the financial inability of the student to pay all course fees without being employed in Australia and
- (iii) the circumstances of the student are such that the WIN would be prohibited from enrolling the student by Standard 7 of the National Code 2018;

- (c) facilitate applications for prospective students who do not comply with visa requirements;

- (d) make any representations or offer any guarantees to prospective students in relation to:
 - (i) whether they will be granted a student visa; or
 - (ii) about residency requirements and status in Australia; the Representative may, however, refer prospective students to the Australian Government's DIBP or to DIBP's website at www.immi.gov.au for these purposes;
- (e) provide prospective students with 'immigration advice' as defined by the Migration Act 1958 (Cth), unless lawfully authorised to do so under that Act;
- (f) engage in false or misleading advertising or recruitment practices;
- (g) make any false or misleading comparisons with any other education provider or their courses, or make any inaccurate claims of association of WIN with any other education provider or organisation;
- (h) give inaccurate information to a prospective student about acceptance into a course or into any other course;
- (i) give false or misleading information or advice in relation to the employment outcomes associated with course;
- (j) give false or misleading information or advice in relation to possible migration outcomes;
- (k) give false or misleading information or advice in relation to any other claims relating to WIN, its courses or outcomes associated with its courses;
- (l) undertake any advertising or promotional activity about the Courses at WIN or any of its associates, sponsors, business partners or any other

organisation without the prior written consent of WIN. Advertising or promotional activities will be undertaken at the Representative's expense unless otherwise agreed in writing by WIN in advance;

- (m) use any written marketing information about WIN, unless it clearly identifies the name and CRICOS number of WIN;
- (n) receive or bank any fees or charges payable to WIN by a prospective student or deduct any amount from such fees or charges;
- (o) give inaccurate information to a prospective student as to fees or charges payable to WIN;
- (p) impose any fee on a prospective student for their application or acceptance of offer unless this fee has been disclosed to the student prior to the lodgment of any papers and has been agreed with WIN.
- (q) commit WIN to accept any prospective student into a course and must not make representations that a student will automatically be accepted into a course;
- (r) use or access PRISMS, the Australia Government electronic enrolment system;
- (s) use any registered or unregistered Mark of WIN without the prior written consent of WIN and
- (t) give false or misleading information or advice in relation to the possibility of obtaining work whilst enrolled as a student of WIN.

5. WHAT WIN MUST DO

5.1 WIN must:

- (a) provide the Representative with information to enable the Representative to provide the Services;

- (b) inform the Representative about how to gain access to information regarding visa requirements and the process of visa applications;
 - (c) inform the Representative of any changes to visa requirements within a reasonable time after becoming aware of any such changes;
 - (d) process all completed applications received within a reasonable time.
- 5.2 WIN may, in its absolute discretion, establish the fees, charges, terms and conditions relating to WIN's courses.
- 5.3 WIN is not required to accept any prospective students referred by the Representative into any of its courses.
- 5.4 WIN will monitor the Representative's activities by auditing the Representative's practices and performance at least annually.
- 5.5 WIN may undertake a review of the Representatives performance under this agreement at any time.

6. PRIVACY

- 6.1 In the course of performing its obligations under this Agreement:
- (a) the Representative and its employees and agents must comply with the Information Privacy Principles; and
 - (b) the Representative must immediately notify WIN if the Representative becomes aware of a breach of clause 6 by the Representative or an employee or agent of the Representative.
- 6.2 The Representative indemnifies WIN and its employees and agents against any liability incurred or loss or damage suffered by WIN and its employees and agents by reason of a breach of the Information Privacy Principles.
- 6.3 Nothing in this clause affects any obligation that the Representative may have to comply with the National Privacy Principles.

7. REPRESENTATIVE'S FEES

7.1 Subject to the other provisions of this clause 7, WIN must pay the representative a fee calculated in accordance with the amount stated in the Agent's Contract for each student who:

- (a) is recruited by the Representative; and
- (b) is enrolled in a course and has commenced that course;
- (c) has paid the respective Course Fee to WIN

NB This fee will be incremental for each student enrolled from enrolment to completion.

7.2 For the purposes of this Agreement, a Representative will not be regarded as having recruited a student unless:

- (a) the Representative submits the student's application for enrolment containing the Representative's name; and
- (b) the Representative submits an acceptance by the student of any letter of offer of a place in a course from WIN; and
- (c) all tuition fees, charges & material costs as outlined in the Letter of Offer provided to the student together with supporting documentation are submitted to WIN.

7.3 No Fee will be payable by WIN to the Representative if the student is recruited through WIN programs for the recruitment of students conducted in Australia.

7.4 If a student withdraws from their course prior to 45 days after the commencement of their course, WIN will pay the Representative a processing charge of AUD\$200.00.

7.5 If a student recruited by the Representative withdraws from their

course and enrolls in another course offered by WIN within the student's first semester, WIN will pay the fee appropriate to the new course.

7.6 No Fee is payable by WIN unless the Representative has submitted an invoice in AUD\$ containing the following information:

- (a) the student's family name and given names,
- (b) the student's residential address,
- (c) the student's date of birth,
- (d) course commencement date of the student's course;

7.7 The invoice must be in following form:

- (a) presented on the Representative's letterhead, containing the current address, telephone, fax and email details of the Representative;
- (b) including the date and an invoice or reference number; and
- (c) containing such other information as WIN may require from time to time.

7.8 WIN must pay the Fees payable under this clause 7 on the receipt of an invoice from the Representative and no later than 60 days after the student has commenced the Course.

7.9 If there is a dispute regarding whether a Representative has recruited a student, or a student has submitted their own documentation or for any other reason, WIN has an absolute discretion to determine whether the Representative recruited a student for the purposes of clause 7.

7.10 If there is a dispute between two or more Representatives concerning the recruitment of a student, WIN has an absolute discretion to pay the Representative that it determines has recruited the student.

7.11 WIN may request any student to provide it with information about the fees or charges paid or payable by the student to the Representative and

other information. This information may be considered during any Review of the Representative by WIN.

7.12 The Representative must submit to WIN a tax invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such information as WIN may reasonably require and be sent to the address specified in Schedule 2 of this Agreement.

7.13 Payment of an invoice is not taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

7.14 The Representative must provide an Australian Business Number ("ABN") and will not be entitled to any payment under this clause unless the Representative obtains an ABN.

8. DISPUTE DETERMINATION

8.1 If any dispute arises between the parties in relation to the effect of this agreement and that dispute is not mutually resolved within one (1) calendar month, the parties may appoint a person who may be a senior member of WIN or a person independent of WIN to resolve the dispute, failing which the dispute may be referred to arbitration in accordance with the laws relating to arbitration in force in the State of NSW.

8.2 At such arbitration each of the parties may be represented by a qualified legal practitioner.

8.3 The costs of the arbitration shall be dealt with as follows:

- (a) the costs of each of the parties shall be borne by the party that incurred them and not by any other party; and

- (b) the fees and expenses of the arbitrator and any costs of the arbitration shall be borne equally by the parties.

9. GST

- 9.1 Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if not so defined, which are defined in the Trade Practices Act 1974 (Cth), have the same meaning in this clause.
- 9.2 Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as GST inclusive, does not include an amount on account of GST.
- 9.3 Despite any other provision in this Agreement, if the Representative makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as GST inclusive):
 - (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (GST exclusive consideration) is increased by, and WIN must also pay to the Representative, an amount equal to the GST payable by the Representative on that supply; and
 - (b) the amount by which the GST exclusive consideration is increased must be paid to the Representative by WIN without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 9.4 If a Fee relates to a supply upon which GST is imposed, the Representative must provide to WIN a Tax Invoice in AUD\$.

10. CONFIDENTIALITY

- 10.1 The Representative acknowledges that all documents, data and information disclosed by WIN is 'Confidential Information' and shall be used only for the purposes of this Agreement. The Representative shall keep all information confidential and may disclose it only to its officers and employees in connection with this Agreement. Before disclosure, the Representative shall direct that its officers and employees keep the information confidential.
- 10.2 The obligations of this clause 10 are continuing obligations and shall not cease on termination of this Agreement.
- 10.3 The information contained in this agreement and the Marketing Plan is also confidential information and is not to be divulged to any third party unless required by law.

11. ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Representative must not assign its obligations under this agreement to any third party unless the Representative has first obtained the written consent of WIN.
- 11.2 If WIN agrees to an assignment of the Representative's obligations under clause 11.1, the Representative agrees that it will retain responsibility for its obligations under this Agreement.
- 11.3 The Representative must provide any assignee with copies of this Agreement and ensure that the assignee undertakes to comply with the terms of this agreement.
- 11.4 The Representative must provide WIN with the names and contact details

of all assignees and copies of the documentation by which they are appointed within 5 business days after such assignment.

12. TERMINATION OF THE AGREEMENT

12.1 This agreement is automatically terminated when WIN becomes aware or reasonably suspects that the Representative:

- (a) is engaged in or has been previously engaged in dishonest practices, including the deliberate attempts to recruit the student where this clearly conflicts with the Representative's obligations in this agreement.
- (b) facilitates the enrolment of a student who WIN believes will not comply with the terms of his/ her student VISA.
- (c) uses PRISMS to create confirmation of enrolment other than of a bona fide student.
- (d) provides advice when not authorised to do so under the Migration Act 1958.

12.2 Either party may terminate this agreement by giving the other party 30 days notice in writing.

12.3 WIN may terminate this agreement by WIN giving notice to the Representative that the Representative has breached a provision of this Agreement including if WIN is directed or required so to do by a relevant Australian government department. In such cases, termination will be effective immediately upon the service of the notice.

12.4 Notification of termination under clause 12.3 will be sent to the Representative and the nearest Australian Diplomatic Mission and other relevant government bodies.

12.5 If the Agreement is ended by either party, the Representative must:

- (a) submit to WIN all applications and Course Fees from prospective students received up to the date of termination; and
- (b) immediately cease to use any advertising, promotional or other material supplied by WIN and return such material to WIN by registered mail or by a reputable international courier.

12.6 This Agreement will lapse if the Representative does not refer any international students to WIN within the first 12 months of this agreement or such other time as agreed in writing with WIN.

12.7 Termination of this Agreement does not affect any accrued rights or remedies of either party.

13. CONTINUATION OF THE AGREEMENT

13.1 Where the parties agree in writing, this Agreement may continue and its terms may be extended for a period of 12 months or such other time as is agreed in writing by the parties

14. NOTICES AND VARIATIONS

14.1 This Agreement can only be altered in writing, signed by both parties.

14.2 Any notice under this Agreement must be in writing and sent by prepaid post, facsimile or electronic mail to the address of the other party specified in Item 4 of Schedule 2, or such revised address as is notified to the other party in accordance with Clause 14.3.

14.3 A party that changes its address, facsimile number or electronic mail address must give notice of that change to the other party within a reasonable time.

14.4 From time to time the parties may agree to additional activities being undertaken by the Representative which activities shall to be identified in separate Schedules attached to this Agreement. 14.5. The parties agree to vary this Agreement if required because of changes to relevant Acts, the National Code 2018 or Regulations.

15. AGREEMENT

15.1 This Agreement replaces and supersedes any agreement or arrangement between the parties in relation to its subject matter.

16. APPLICABLE LAW

16.1 This Agreement is governed by and is to be construed in accordance with the law in force in the State of NSW, Australia.

16.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of NSW, Australia, including the Federal Court of Australia.

17. DEFINITIONS AND INTERPRETATION OF THIS AGREEMENT

17.1 In this Agreement:

WIN means Wentworth Institute;

'Marketing Plan' means a Plan for the activities of the Representative;

'Courses' means the Full-time Registered courses offered by WIN and registered in accordance with the requirements of the ESOS Act;

'Course Fee' means the tuition and other fees for Courses set by WIN;

'CRICOS' means the Commonwealth Register of Institutions and Courses for

Overseas Students;

'Education Agent' means a person or organisation representing WIN which recruits overseas students and refers them to WIN;

'ESOS Act' means the Education Services for Overseas Students Act 2000 of the Commonwealth of Australia, as amended from time to time;

'Fee' means the fees and commission outlined in **clause 7** of this Agreement;

'Marks' means logos, trademarks, designs, crests that belong to or carry the name of WIN and any variations or modifications thereto.

'National Code 2018' means the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018, established pursuant to Part 4 of the ESOS Act, as amended from time to time;

'National Privacy Principles' means the National Privacy Principles under the Privacy Act 1988 (Cth).

'Personal Information' means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.

'PRISMS' means the Provider Registration and International Students Management System (the electronic system that holds CRICOS and electronic confirmation of enrolment details);

'Prospective student' means a person (whether within or outside Australia) who intends to become, or who has taken any steps towards becoming, a **Student** including an 'overseas student' or 'intending overseas student' as defined by the ESOS Act;

Representative means an Education Agent.

'Review' means a review of the **Business Plan** which may be conducted by WIN

and the Representative at the expiration of the **Term** or at any other time;

'Services' means all of the services and obligations described in **clause 0**;

'Student' means a person (whether within or outside Australia) who holds a student visa including an 'overseas student' as defined by the ESOS Act;

'Territory' means the countries or regions the Representative operates in;

'Term' means the period for which the Representative is engaged as described

'Written information' includes;

- (a) Giving a person a physical copy of the information in printed form, and the information includes the name and CRICOS number of WIN;
- (b) Sending by email to an address nominated by that person an electronic copy of the information in printed form, and the information includes the name and CRICOS number of WIN;
- (c) giving that person accurate instructions about how to access an electronic copy of the information in printed form, and the information includes the name and CRICOS number of WIN.

17.2 A word or phrase used in this Agreement that is defined in the National Code has the same meaning as it has in the National Code.

17.3 In this Agreement:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender includes the other gender;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) 'including' and other similar expressions are not words of limitation; and
- (e) money is in Australian dollars unless otherwise stated and reference to

'AUD' or A\$ is a reference to Australian currency.

'Full-time' and **'Full-time Study'** means the amount of study for a particular Course which is approved by the accrediting authority for the Course, or in cases where the accrediting authority gives no such approval, means the amount of full-time study per week determined by the designated authority;

'Information Privacy Principles' means the Privacy and Personal Information Protection Act 1998 (NSW) (PPIP Act)

'WIN' means the Wentworth Institute;

'Market Intelligence' is the information relevant to a company's markets, gathered and analysed specifically for the purpose of accurate and confident decision-making.
