



## **EDUCATION AGENT AGREEMENT**

**between**

**Adelaide Institute of Higher Education Pty Ltd (AIHE)**

**and**

**[INSERT Name of Agent]**

**Agreement Date:**

### **BACKGROUND**

- A. Adelaide Institute of Higher Education Pty Ltd ('AIHE') is a Corporation incorporated under the *Corporations Act 2001* and was registered in South Australia and wants to attract full time students from outside Australia to study at its campus in South Australia.
- B. Australian law requires providers of education and training courses to overseas students to be registered and sets out other requirements with which AIHE and its Agents have to comply.
- C. These are known as the *Education Services for Overseas Students Act 2000* (the ESOS Act) requirements and include obligations under the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (the National Code) 2018, which is made under and forms part of the ESOS Act.
- D. AIHE is registered on the Commonwealth Register of Institutions and Courses for Overseas students (CRICOS) as part of the ESOS Act requirements.
- E. **[Agent Name]** provides services of finding suitable prospective students in **[location/Territory/Country]** (the Territory/Country hereafter) for enrolment and study in Australia.
- F. AIHE wants to encourage the Agent as its representative in the Territory/Country to find such students for study at AIHE.
- G. The Agent has been made aware of the requirements of the ESOS Act by AIHE and has agreed to comply with those requirements.

## **AGREEMENT**

### **1. DEFINITIONS - In this Agreement**

- **'Courses'** means the full-time registered courses offered by AIHE and registered on the Commonwealth Register of Institutions and Courses for Overseas students (CRICOS).
- **'Course Fee'** means the tuition and other fees for courses set by AIHE.
- **'CRICOS'** means the Commonwealth Register of Institutions and Courses for students.
- **'Marks'** means logos, trademarks, designs and crests that belong to or carry the name of AIHE.
- **'PRISMS'** means the Provider Registration and International Students Management System (the electronic system that holds CRICOS and the electronic confirmation of enrolment).
- **'Prospective Student'** means a person (whether within or outside Australia) who intends to become, or who has taken steps towards becoming a student or an 'overseas student' as defined by the ESOS Act.
- **'Student'** means a person (whether within or outside Australia) who holds a student visa and is an 'overseas student' as defined by the ESOS Act (Amended 2015).
- **'Territory/Country'** means the countries or regions specified in Item 2 of Schedule 1;
- **'Institute'** means AIHE

In this Agreement, unless the contrary intention appears:

- 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 include other genders;
- c) Other grammatical forms or defined words or expressions have corresponding meanings;
- d) 'Including' and similar expressions are not words of limitation;
- e) Money is in Australian dollars unless otherwise stated and a reference to 'A\$', '\$A', 'dollar', or '\$' is a reference to Australian currency; and
- f) Schedules 1 and 2 to this Agreement form part of the Agreement, but if there is any conflict between clauses, this Agreement will prevail.

### **2. ENGAGEMENT OF THE AGENT**

AIHE engages the Agent to be its representative to perform such services in the Territory/Country from the date of and on the terms set out in this Agreement.

This is a non-exclusive Agreement and AIHE can appoint other Agents in the Territory/Country as it so chooses.

### **3. MAIN RESPONSIBILITY OF THE AGENT**

3.1 Under this Agreement, the Agent must:

- a) Promote the courses in the Territory/Country;
- b) Find suitable prospective students to undertake courses;
- c) In accordance with Institute procedures and requirements, recruit and assist in the recruitment of students;
- d) 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 AIHE. Agents in Australia must not, however, provide students with 'immigration advice' as defined in the *Migration Act 1958* (Cth), unless they are separately registered to do so under that Act.

- e) Perform other services and provide reports or information requested by AIHE or required by this Agreement.
- f) The Agent warrants that it has read and will comply with the Australian International Education and Training Agent Code of Ethics at all times.
- g) Ensure that all students recruited by the Agent on behalf of AIHE are GTE and have the financial resources to support themselves and any dependants for the duration of their program.

#### **4. DETAILED OBLIGATIONS OF THE AGENT**

##### **4.1 In performing the services, the Agent must:**

- a) Have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics
- b) Promote the courses with integrity and accuracy and recruit students in an honest, ethical and responsible manner;
- c) Act honestly and in good faith, and in the best interests of the student;
- d) Ensure all staff members who interact directly with students are aware of the obligations under this Agreement and are suitably qualified or experienced in relation to the functions they perform for students;
- e) Notify students registered with the Agent and AIHE of any intention to relocate the Agent's premises at least 20 working days before such relocation;
- f) Inform prospective students accurately about the requirements of courses. This can only be done by reference to the material provided by AIHE;
- g) Observe appropriate levels of confidentiality and transparency in their dealings with international students or intending international students;
- h) Clearly identify AIHE's name and CRICOS number on all marketing materials including digital materials;
- i) Assist to uphold the high reputation of AIHE and of the Australian international education sector;
- j) Declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of AIHE
- k) Advise the student that they are required to provide to AIHE an address (other than the Agent's address);
- l) If a student's visa is refused, advise the student that AIHE must refund the student's fees and obtain an address (not the Agent's address) from the student and forward this address to AIHE;
- m) Make sure that all necessary evidence and documents accompany a student's application or acceptance of offer;
- n) Provide any offer documents received from AIHE to the student within 3 days of receiving the offer documents;
- o) Provide AIHE with market intelligence about the recruitment of students in the Territory/Country;
- p) Only undertake promotional and marketing activities that are connected to or make reference to AIHE that are expressly authorised by AIHE; and
- q) At all times comply with the requirements of paragraph 49 of the National Code, which is set out at Schedule 2.

The Agent must comply with:

The ESOS Framework and not cause AIHE to be in breach of any laws, statutes, regulations, by-laws, ordinances or subordinate legislations in force from time to time, including but not limited to the:

- 1) ESOS Framework (2018);
- 2) Racial Discrimination Act 1975 (Cth);
- 3) Privacy Act (Cth);
- 4) Equal Opportunity Act 1984 (Cth);
- 5) Sex Discrimination Act 1984 (Cth);
- 6) Disability Discrimination Act 1992 (Cth);
- 7) Fair Work Act 2009: and
- 8) Australian Consumer Law.

The Agent hereby authorises AIHE to request from DHA, and authorises DHA to release to AIHE, the following Outcome Data:

- 1) Visa outcomes for all Students recruited by the Agent on behalf of AIHE who lodge a student Visa application with DHA;
- 2) Data in relation to Visa cancellations including but not limited to number of cancellations and reason for cancellation for any Recruited Students; and
- 3) Any other relevant information used or provided by DHA

4.2 The Agent must give to prospective students, before they complete an application, information provided to the Agent by AIHE about:

- a) AIHE and its location, facilities, equipment and learning resources;
- b) The courses;
- c) The course fees and refund conditions;
- d) Living in Australia and the local environment of the relevant campus, including information about campus location and costs of living;
- e) The minimum level of English language ability, educational qualifications and work experience required for acceptance into a course;
- f) Visa requirements, which must be satisfied by the student including English language proficiency levels.

4.3 The Agent must tell prospective students that:

- a) Students who come to Australia on a student visa must have a primary purpose for studying and must study in compliance with their visa conditions;
- b) That AIHE has attendance and progress requirements to maintain enrolment; and
- c) Any school age dependants who accompany students to Australia are required to pay full fees if they enrol in either government or non-government schools.

4.4 The Agent must not:

- a) 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;
- b) Facilitate applications for students who do not comply with visa requirements;
- c) Make any representation or offer any guarantees to students about whether they will be granted a student visa;
- d) Engage in false or misleading advertising or recruitment practices;
- e) Make any false or misleading comparisons with any other education provider or their courses;
- f) Make any inaccurate claims of association of AIHE with any other education provider;

- g) Give inaccurate information to a prospective student regarding acceptance into the course for which they applied or into any other course;
- h) Undertake any advertising or promotional activity about the courses or AIHE without the prior written consent of AIHE. Advertising or promotional activities will be at the Agent's expense unless otherwise agreed in writing by AIHE in advance;
- i) Receive or bank any fees and charges payable to AIHE by a prospective student or deduct any amount from such fees and charges;
- j) Give inaccurate information to a prospective student about the fees and charges payable to AIHE; and
- k) Charge any fee to a prospective student for their application or acceptance of an offer.

4.5 The Agent is not permitted to:

- a) Commit AIHE to accept any prospective student into a course and must not make representations to the contrary;
- b) Use or access PRISMS, the Australian Government electronic enrolment system without the approval of AIHE; or
- c) Use any registered or unregistered Mark or Trademark of AIHE without the prior written consent of AIHE.

## 5. RESPONSIBILITIES OF AIHE

5.1 AIHE must:

- a) Be responsible at all times for compliance with the ESOS Act and National Code 2018 including the Standards 4 – Education Agents;
- b) Give the Agent sufficient information to enable the Agent to conduct the services;
- c) Help the Agent to access information about visa requirements and the process of visa application;
- d) Inform the Agent of the legal or regulatory conditions for visa requirements and of any changes to those requirements promptly after becoming aware of any such changes; and
- e) Duly process all completed applications received but is under no obligation to accept any prospective students referred by the Agent.

## 6. CONFIDENTIALITY

6.1 The Agent must keep confidential:

- a) All information provided by AIHE, other than to the extent disclosure is required to perform the Services in accordance with this Agreement; and
- b) The terms of this Agreement.

## 7. AGENT'S FEES

7.1 Subject to the other provisions of this clause 7, AIHE must pay the agent fee calculated in accordance with item 3 of Schedule 1 for each student who:

- a) Is recruited by the Agent; and
- b) Is enrolled in a course; and
- c) Has paid the respective course fee to AIHE.

7.2 An Agent will not be regarded as having recruited a student under this Agreement unless:

- a) The Agent submits the student's application for enrolment and that application also bears the Agent's name; and

- b) The Agent submits an acceptance by the student of any letter of offer from AIHE of a place in the course.
- 7.3 No fee will be payable by AIHE to the Agent where the student is recruited through AIHE's own programs for recruitment of students within Australia including any distance education service.
- 7.4 If a student recruited by the Agent at any time undertakes any course or courses offered by AIHE other than those specifically identified in the application for enrolment and for which the student was first recruited by the Agent, no fee or other amount will be payable by AIHE to the Agent.
- 7.5 No fee is payable by AIHE in relation to a recruited student unless the Agent has submitted an invoice in relation to the student:
  - a) Containing the family name and given names of the student;
  - b) Presented on the Agent's letterhead, which shows current address, telephone, fax and email details of the Agent;
  - c) With an invoice number or reference; and
  - d) Containing such other information as AIHE may require.
- 7.6 AIHE must pay the fees payable under Clause 7.1 no later than 60 days after the student has commenced a course or no later than 60 days after receipt of a complying invoice if the invoice is sent after the commencement of the course.

## 8. TERMINATING THIS AGREEMENT

- 8.1 Either party can terminate this Agreement at any time by giving the other party 60 days prior notice.
- 8.2 AIHE can terminate this Agreement at any time and with immediate effect by giving notice to the Agent if the Agent breaches any provision of this Agreement.
- 8.3 AIHE will immediately terminate this Agreement when it becomes aware or has reason to believe that the Agent is engaging in false or misleading recruitment practices or failing to do one of its obligations as specified in section 4 of this Agreement;
- 8.4 If AIHE becomes aware or has reason to believe that an employee or subcontractor of the Agent engages in a false and misleading practice, AIHE will require the Agent to terminate its relationship with those individuals. Failing to terminate its relationship with those individuals by the Agent will result in AIHE's termination of this Agreement with the Agent. When this Agreement terminates, the Agent must:
  - a) Submit all applications and 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 AIHE by registered mail or by a reputable international courier.
- 8.5 This Agreement will be reviewed at 12 months and either renewed, modified or terminated.

## 9. MONITORING AND CONTROL

### Monitoring:

AIHE will monitor the performance of the Agent each Semester for the duration of this Agreement. Monitoring tools used will include:

- Questionnaires and interviews with new students within the first two weeks of the first term in which they enrol.
- Inspection of the Agent's premises and marketing material
- Monitoring of web and print based marketing

- Feedback received from students, parents or other stakeholders (Governments of Australia and the Territory/Country identified in this Agreement).

**Control:**

AIHE will provide verbal and written feedback to the Agent following each monitoring activity and, where there is a variance between required and actual performance, an action plan will be developed and implemented to address the performance gap. The action plan will include timelines for meeting the performance requirement(s).

- ***Failure of the Agent to meet the performance requirements may result in AIHE terminating the Agreement.***

**10. ASSIGNMENT AND SUBCONTRACTING**

- 10.1 The Agent must not assign this Agreement or any right under this Agreement without the prior written consent of AIHE (which may be withheld at AIHE's discretion).
- 10.2 The Agent must not subcontract to any person the performance of any of its obligations under this Agreement without the prior consent of AIHE (which can be withheld at AIHE's discretion).
- 10.3 Notwithstanding any subcontract, the Agent remains fully responsible for performing its obligations under this Agreement.

**11. INSTITUTE REPRESENTATIVE**

The representative(s) of AIHE for the purpose of this Agreement is/are set out in Item 5 of Schedule 1.

**12. NOTICES**

- 12.1 A notice under this Agreement must be written and sent by prepaid mail, facsimile, or electronic mail to the party at the address specified at Item 4 of Schedule 1, or such revised address notified in accordance with Clause 12.2.
- 12.2 A party, which changes its address, facsimile number or electronic mail address must give notice of the other party within 14 days of the change.

**13. THIS DOCUMENT IS THE ENTIRE AGREEMENT**

This Agreement, its Schedules and annexures:

- a) Constitutes the complete and full agreement between the parties as to its subject matter; and
- b) In relation to that subject matter, replaces and suspends any prior arrangement or agreement between the parties.

**14. VARIATION**

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

**15. GOVERNING LAW**

This Agreement is governed and construed in accordance with the law in force in the State of South Australia, Australia and the Federal Court of Australia.

**Signed for:**                    **Adelaide Institute of Higher Education Pty Ltd**

**Signature**

.....

**Please Print Name and Date**

.....

**Office Held**

.....

**Witness by**

.....

**Signature**

.....

**Office Held**

.....

**Signed for:**                    **[Insert Agent Name]**

**Signature**

.....

**Please Print Name and Date**

.....

**Office Held**

.....

**Witness by**

.....

**Signature**

.....

**Office Held**

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**SCHEDULE 1: ADELAIDE INSTITUTE OF HIGHER EDUCATION**

**Item 1:** Commencement Date: [Insert the commence date of this Agreement]

The Agreement will apply until: Written termination as per agreement.

**Item 2:** Territory/Country: Australia

**Item 3:** Agent Fees:

The Agent fee will be calculated on the following basis:

(for students 1 – 5 referred and commenced in a calendar year)

Course	Agent's fees
Bachelor of Business	[TBA] of Tuition Fee

**Please Note:** Enrolment fee and genuine temporary entrance assessment fee cannot be claimed for commission

**Bonus Rates:** An additional [TBA]% bonus is paid where an Agent recruits more than 5 students and they are enrolled by AIHE in a calendar year.

**Item 4:** Address for notices for AIHE courses

**Adelaide Institute of Higher Education**

**Attention:** General Manager – Adelaide Institute of Higher Education

**Address:** Level 5, 127 Rundle Mall, Adelaide SA 5000

**Phone:** +61 8 8470 0156

**Email:** [angela.noack@aihe.sa.edu.au](mailto:angela.noack@aihe.sa.edu.au)

**[AGENCY NAME]**

**Attention:**

**Address:**

**Phone:**

**Facsimile:**

**Email:**

**SCHEDULE 2****Paragraph 49 of the National Code 2018**

The registered provider must not accept or continue to accept overseas students recruited by an Agent, or authorise an Agent to use PRISMS on their behalf, if they know, or reasonably suspect the Agent to be:

- Engaged in dishonest practices, including suggesting to overseas students that they come to Australia with a student Visa with a primary purpose other than full time study.
- The enrolment of overseas students who do not comply with the conditions of their student visas.
- Engaged in false or misleading advertising and recruitment practices including providing immigration information or advice where not authorised to do so under the Migration Act 1958.
- Using PRISMS to create COEs (electronic confirmation of enrolment) for other than bona fide students.

**Privacy Statement**

You agree to your personal information being:

- Recorded in PRISMS. This may include your name, business email address, phone number and address;
- Accessed by the Australian Government Department of Education and Training, Department of Home Affairs and other Commonwealth agencies that access PRISMS;
- Used to administer or monitor compliance with the Commonwealth legislation e.g. Education Services for Overseas Students Act 2000, Migration Act 1958; and
- Disclosed by the Australian Government Department of Education and Training to other Australian Government entities (including, but not limited to TEQSA), education institutions and publicly. The Australian Government Department of Education and Training will share individual Agents' performance publicly as aggregated data (but will not identify Agent – provider relationships). Agent-provider relationships will only be identified when data is shared with education providers and other Australian Government entities.

**Document management**

*\* Unless otherwise indicated, this Form will still apply beyond the review date*

<b>Document No</b>	FMO12.1	<b>Approving Authority</b>	General Manager
<b>Version</b>	1.3	<b>Approval Date of Last Revision</b>	1/04/2020
<b>Approval Date</b>	15/12/2017	<b>Effective Date of Last Revision</b>	1/04/2020
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