



Australian Learning Group  
Education Agency Agreement

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## Australian Learning Group Education Agency Agreement

Commencement  
Date:

Parties

**Australian Learning Group Pty Limited**

ACN 112 741 723; RTO 91165; CRICOS 03071E

of

Level 1, 333 Kent Street, Sydney, NSW 2000

**(ALG)**

|                                  |  |
|----------------------------------|--|
| Education Agent<br>Legal Name:   |  |
| Education Agent<br>Trading Name: |  |
| Registration Number/<br>ABN      |  |
| Education Agent<br>Address:      |  |

**(Education Agent)**

Recitals

- A. ALG is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
  - B. The Education Agent is in the business of international student recruitment and promotion of education providers.
  - C. ALG wants to engage the Education Agent as its representative to recruit such students for study with ALG.
  - D. Under the ESOS Act, ALG must ensure that its education agents act ethically, honestly and in the best interest of overseas students and uphold the reputation of Australia's International education sector.
  - E. Both parties recognise their responsibility to adhere to the principles of the ESOS Act, the National Code, the requirements of the Australian Quality Training Framework (AQTF) and the Standards.
  - F. This Agreement sets out the terms and conditions on which the parties agree to work together in relation to the recruitment of international students.
-

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

## 1. Definitions and interpretation clauses

### 1.1 Definitions

In this Agreement:

|                                 |   |
|---------------------------------|---|
| <b>ASQA</b>                     | Means the Australian Skills Quality Authority, the national regulator for Australia's vocational education and training sector.   |
| <b>AQF</b>                      | Means the Australian Quality Framework, the national policy for regulated qualifications in Australian education and training.  |
| <b>Commencement Date</b>        | Means the date of execution of this Agreement.  |
| <b>Commission</b>               | Means the amount payable by ALG to the Education Agent pursuant to clause 10.   |
| <b>Confidential Information</b> | <p>Means all information (whether of technical, business, financial nature or otherwise) and records of a party, in whatever form, but does not include information that:</p> <ul style="list-style-type: none"> <li>(a) as at the Commencement Date is publicly available;</li> <li>(b) subsequent to the Commencement Date, becomes publicly available without breach of this Agreement;</li> <li>(c) is obtained by a party from a third party without breach by that third party of any obligation of confidence concerning that information;</li> <li>(d) was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party;</li> <li>(e) a party can prove beyond reasonable doubt has been developed independently by an employee or broker/agent of the party who has not had access to any Confidential Information; or</li> <li>(f) is required to be disclosed by law.</li> </ul> |

|  |   |
|--|---|
| <p><b>Confirmation of Enrolment</b></p>        | <p>Means an electronic confirmation of an overseas student's enrolment in a course generated by PRISMS.</p>   |
| <p><b>CRICOS</b></p>                           | <p>Means the Commonwealth Register of Institutions and Courses for Overseas Students.</p>   |
| <p><b>Education Agent</b></p>                  | <p>Means the agent that is a signatory to this Agreement.</p>   |
| <p><b>Enrolled Student</b></p>                 | <p>Means a person who is or becomes enrolled in a Study Program.</p>  |
| <p><b>ESOS Act</b></p>                         | <p>Means the <i>Education Services for Overseas Students Act 2000</i> (Cth), which sets out the legal framework governing delivery of education to international students in Australia on a student visa.</p>   |
| <p><b>Genuine Temporary Entrant or GTE</b></p> | <p>Means in relation to a prospective overseas student, that he or she:</p> <ul style="list-style-type: none"> <li>(a) has a genuine intention to successfully complete a course, and does not intend to seek permanent residency or another visa following arrival to Australia;</li> <li>(b) has the requisite English language proficiency skills to undertake the course;</li> <li>(c) satisfies all other ALG criteria relating to qualifications for entry into the course;</li> <li>(d) has the resources to study and live in Australia for the duration of the course.</li> </ul>  |
| <p><b>Intellectual Property Rights</b></p>     | <p>Means all present and future intellectual property rights and related rights, anywhere in the world, registered or unregistered, conferred by statute, common law or equity including but not limited to the following rights:</p> <ul style="list-style-type: none"> <li>(a) patents, copyright (including software), rights in circuit layouts, registered designs, trade marks, know-how, business and domain names, inventions, the right to have confidential information kept confidential and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields; and</li> <li>(b) any application or right to apply for registration of any of the rights referred to in sub-clause (a) above.</li> </ul> |

|                             |   |
|-----------------------------|---|
| <b>National Code</b>        | Means the National Code of Practice for Providers of Education and Training to Overseas Students, a set of nationally consistent standards that governs the protection of international students and delivery of courses to those students by providers registered on CRICOS. |
| <b>Personal Information</b> | Has the same meaning as in the <i>Privacy Act 1988</i> (Cth).   |
| <b>PRISMS</b>               | Means the Providers Registrations and International Students Management System (the electronic system that holds CRICOS and the electronic Confirmation of Enrolment).  |
| <b>Prospective Student</b>  | Means a person who intends to become, or who has taken any steps towards becoming, enrolled in a Study Program.   |
| <b>RTO Standards</b>        | Means the Standards for Registered Training Organisations (RTOs) 2015, part of the VET Quality Framework, a system which ensures the integrity of nationally recognised qualifications.   |
| <b>Services</b>             | Means the services described in clause 4.1.   |
| <b>Student</b>              | Means the international student who intends to attend all classes and abide by the ESOS Act.  |
| <b>Study Program</b>        | Means the accredited courses or qualifications listed on ALG's CRICOS registration and offered by ALG from time to time.  |
| <b>Sub-Contracting</b>      | Means use of sub-agents and sub-contract has a corresponding meaning.   |
| <b>Tagged Student</b>       | Has the meaning in clause 10.1.   |
| <b>Total Fees</b>           | Means the Tuition Fee and other fees (including without limitation enrolment application fees, administration fees, course material fees, exam re-sitting fees and late fees) applicable to the relevant Study Program as set by ALG from time to time.                       |
| <b>Tuition Fee</b>          | Means the tuition fees applicable to the relevant Study Program set by ALG from time to time and disclosed in a Prospective Student's letter of offer.  |

## 2. Interpretation

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2.1 In this Agreement, unless the contrary intention appears:

- (a) Monetary references are references to Australian currency;
- (b) The clause and sub clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) A cross reference to a clause number is a reference to all its sub clauses;
- (d) Words in the singular include the plural and vice versa;
- (e) A reference to a person includes an individual, company, partnership, joint venture, association, corporation or other body corporate and a governmental agency;
- (f) A reference to a clause, sub clause, paragraph or schedule is a reference to a clause, sub clause, paragraph or schedule of this Agreement;
- (g) A reference to legislation includes any amendments to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (h) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (i) A reference to this Agreement or any other instrument includes any variation, supplement to, or replacement or novation of such Agreement or documents; and
- (j) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## 3. Engagement of the Education Agent

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- 3.1 In consideration of payment of the Commission, ALG engages the Education Agent from the Commencement Date to be its representative to perform the Services until this Agreement is terminated in accordance with its terms.
- 3.2 The Education Agent acknowledges this is a non-exclusive agreement and ALG may appoint other agents to perform the same or similar services (including as to the terms of any such appointments) as the Education Agent provides under this Agreement at ALG's absolute discretion.

## 4. Responsibilities of the Education Agent

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4.1 Under this Agreement the Education Agent must:

- (a) adhere to the principles of the ESOS Act, the National Code and the RTO Standards, as applicable;



- (b) demonstrate knowledge of the Australian education system and the AQF;
- (c) promote ALG courses to prospective students within the territories the Education Agent operates in;
- (d) ensure current and accurate pre-enrolment information is provided and ensure that all information provided to Prospective Students meets the requirements of ALG;
- (e) recruit and assist in the recruitment of Prospective Students in accordance with the policies of ALG;
- (f) assist Prospective Students to become Enrolled Students and for that purpose provide Prospective Students with all necessary information about Study Programs and provide Prospective Students with assistance in completing forms or applications and in submitting these to ALG;
- (g) perform other services and provide reports or information requested by ALG or required by this Agreement;
- (h) cooperate with ASQA by providing accurate and factual responses to information requests from ASQA or in the conduct of audits of ALG and the monitoring of ALG's operations by ASQA; and
- (i) comply with the ALG 'Education Agents' policy published on ALG's website at all times.

4.2 In performing the Services, the Education Agent must:

- (a) take all reasonable steps to avoid conflicts of interests with its duties to ALG as an education agent, including but not limited to conflicts where:
  - (i) the Education Agent charges services fees to both Prospective Students and ALG for the same service;
  - (ii) the Education Agent has a financial interest in a private education provider; or
  - (iii) an employee of the Education Agent has a personal relationship with an employee of ALG;
- (b) be transparent in its dealings with Prospective Students;
- (c) promote the Study Programs with integrity and accuracy and recruit Prospective Students in an honest, ethical and responsible manner and to always act in good faith and in the best interests of Prospective Students;
- (d) ensure the Education Agent, its staff and any representatives have appropriate knowledge and understanding of the 'Australian International Education and Training - Agent Code of Ethics' (published on ALG's website) and the requirements that ALG must follow as an education provider under the ESOS Act and National Code in order to enable ALG to comply with its obligations thereunder;
- (e) ensure that all staff, branches and sub-contractors of the Education Agent are aware of the terms and conditions of this Agreement;
- (f) give ALG regular access to the Education Agent, its staff and any representatives to update them with new or updated information about its Study Programs or policies;

- (g) provide an accurate list of Education Agent contact information and provide updates to that information in a timely manner when any changes have been made;
- (h) promptly provide to ALG completed applications by Prospective Students and ensure that only fully completed applications are submitted;
- (i) accurately inform Prospective Students about ALG using only material provided or approved by ALG;
- (j) take reasonable steps to confirm the accuracy of information provided by Prospective Students in their enrolment applications and advise ALG as soon as it becomes aware of any fraudulent information or documentation submitted in or with any Prospective Student application;
- (k) only collect Total Fees or Tuition Fees (as the case may be) from the Prospective Student as outlined in the applicable letter of offer prepared by ALG; and
- (l) treat as confidential information relating to Prospective Students and Enrolled Students and only collect, use or disclose Personal Information in accordance with the *Privacy Act 1988* (Cth) and privacy laws in the country from which each student is recruited.

4.3 The Education Agent must give to Prospective Students, before they complete an application, information provided to the Education Agent by ALG about:

- (a) ALG, its campus locations and a general description of facilities, equipment, and learning resources available to students;
- (b) the relevant Study Programs for which the Prospective Student is applying;
- (c) the Total Fees and Tuition Fees (as the case may be) applicable to the relevant Study Programs including refund conditions;
- (d) minimum English language proficiency requirements, educational qualifications and work experience required for acceptance into the Study Programs and whether course credit may be applicable.
- (e) the course content and duration, timetable, qualification offered if applicable, modes of study and assessment methods;
- (f) information about the grounds on which the student's enrolment may be deferred or suspended; and
- (g) relevant information on living in Australia, including indicative costs of living and accommodation options.

4.4 The Education Agent must not:

- (a) engage in false or misleading advertising or recruitment practices including misleading comparisons with any other education provider or their courses or inaccurate claims regarding any association or comparison between ALG and any other education provider;
- (b) provide migration advice, unless they are a qualified migration Education Agent under the *Migration Act 1958* (Cth);

- (c) engage in dishonest recruitment practices, including the deliberate attempt to recruit a Prospective Student where this would be in conflict with ALG's obligations under the National Code;
- (d) facilitate applications for Prospective Students who the Education Agent suspects may not comply with their visa requirements;
- (e) charge any Prospective Student a fee in relation to their application or acceptance of an offer;
- (f) recruit or attempt to recruit a student currently studying with another Australian education provider;
- (g) assign its obligations under this Agreement to any third party unless the Education Agent has obtained the prior written consent of ALG;
- (h) suggest that a student come to Australia on a student visa for any reason other than for full time study;
- (i) recruit or attempt to recruit a Prospective Student who the Education Agent knows to have engaged the services of another representative of ALG;
- (j) sign or encourage others to sign documents, such as the application form and letter of offer, on behalf of a Prospective Student;
- (k) deduct any amount from Tuition Fees or Total Fees payable to ALG that the Education Agent receives from either a Prospective Student or Tagged Student, except in accordance with clause 10.6; or
- (l) discount or modify in any way the pricing or fee structure of any part or the whole of the Tuition Fees or Total Fees set and advertised by ALG for any of the Study Programs.

## 5. Marketing and Promotion

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- 5.1 In undertaking any advertising or promotional activity about ALG or any Study Programs the Education Agent must:
- (a) ensure that any such advertising or promotional activity is in accordance with this Agreement;
  - (b) comply with ALG's Marketing Partner advertising guidelines;
  - (c) ensure that all electronic and printed marketing material that is produced by the Education Agent and refers to ALG has been approved by ALG prior to publication;
  - (d) follow ALG's written directions from time to time, having regard at all times to ALG's Intellectual Property Rights under clause 7.
- 5.2 Unless ALG agrees otherwise in writing, the cost of advertising and promotional activities undertaken by the Education Agent will be borne by the Education Agent.
- 5.3 ALG must ensure that the Education Agent has access to up-to-date and accurate marketing information and materials.

- 5.4 ALG must notify the Education Agent of significant alterations or updates to marketing materials as soon as practical. Outdated materials must not be used and must be immediately replaced with updated materials.

## 6. Education Agent Information and Reporting

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- 6.1 The Education Agent acknowledges ALG will record and maintain the Education Agent's details in PRISMS. This may include the Education Agent's name, business email address, phone number and address. The Education Agent acknowledges and agrees that it is their obligation to maintain the accuracy of this information (including their bank account details) in accordance with clause 4.2(g).
- 6.2 The Education Agent acknowledges that any Education Agent information or data ALG has on file, may be accessed by the Australian Government Department of Education and Training, Department of Home Affairs and other Commonwealth agencies that access PRISM to administer or monitor compliance with the Commonwealth legislation (e.g. ESOS Act or *Migration Act 1958* (Cth)).

## 7. Intellectual Property

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- 7.1 The Education Agent may only use any logo or trademarks of ALG in accordance with any guidelines published on its website and/or otherwise provided to the Education Agent from time to time.
- 7.2 The Education Agent acknowledges that:
- (a) ALG owns and retains all Intellectual Property Rights in all materials provided to the Education Agent to facilitate the delivery of the Services pursuant to this Agreement; and
  - (b) Intellectual Property Rights in all output produced directly or indirectly from the Services by the Education Agent ("Output") hereby vest in ALG and will be freely available for ALG to use in its absolute discretion. All Output will be provided to ALG by the Education Agent in such forms or formats as ALG reasonably requires and without fetter or restriction by password or code or otherwise.
- 7.3 The obligations contained in this clause 7 shall survive the expiration or termination of this Agreement.

## 8. Confidentiality

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- 8.1 The parties acknowledge and agree that the terms of this Agreement, and any Confidential Information provided by one party to the other in relation to this Agreement, are confidential. Both parties must take, or cause to be taken, reasonable precautions necessary to maintain the secrecy and confidentiality of any Confidential Information and to prevent disclosure of that information.
- 8.2 A party must not without the prior written consent of the other party disclose any Confidential Information to any person unless the disclosure is to a party's officers, employees, consultants or advisers, on a "need to know" basis.
- 8.3 The Education Agent acknowledges and agrees that a copy of this Agreement will not be provided to any third party except for its employees, agents, contractors, financiers and legal, financial or other expert

advisers as are reasonably required to receive a copy of this Agreement for the purpose of the operation of this Agreement.

8.4 The obligations contained in this clause 8 shall survive the expiration or termination of this Agreement.

## 9. Responsibilities of ALG

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9.1 ALG agrees to provide the Education Agent with information to enable the Education Agent to provide the Services including:

- (a) Minimum level of English language proficiency required for acceptance into ALG courses;
- (b) Acceptance requirements for students applying to ALG;
- (c) Duration of provider courses;
- (d) Teaching and assessment methods used in ALG courses;
- (e) Information about the qualification and accreditation gained upon completion of ALG courses;
- (f) Information about the ALG campuses including location, and access to public transport;
- (g) Tuition Fees information and refund policies of ALG;
- (h) Student related policies of ALG;
- (i) Appropriate Training for the Education Agent to explain the ALG's application process and continuously update Education Agent with any changes regarding courses, fees, etc; and
- (j) up-to-date and accurate marketing materials.

9.2 ALG agrees to:

- (a) assess completed applications from Prospective Students within a reasonable time of receipt, provided that ALG is under no obligation to accept any Prospective Students referred by the Education Agent into any of its courses; and
- (b) pay the agreed Commission in respect of Enrolled Students in accordance with this Agreement.

9.3 ALG agrees to undertake all operations related to the provision of education and training to its students in a way to maintain compliance with the *ESOS Act the National Code* and the *Standards for Registered Training Organisations (RTOs) 2015*.

9.4 ALG retains the absolute discretion to establish fees, charges, terms and conditions relating to its courses.

9.5 ALG will systematically monitor the Education Agents' performance periodically and review the activities of the Education Agent representing in accordance with clause 13 of this Agreement, to ensure that the

Education Agent is giving students accurate and up-to-date information on the ALG's services, in line with ESOS Act, National Code and as required by the RTO Standards.

## 10. Education Agent's Fees

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- 10.1 Subject to the provisions of this clause 10, ALG must pay to the Education Agent a Commission for each student who:
- (a) was recruited by the Education Agent; and
  - (b) has been provided a letter of offer by ALG (which letter of offer may be provided at ALG's sole discretion) and has accepted and met the conditions of any such offer; and
  - (c) is enrolled in a Study Program; and
  - (d) has paid a Tuition Fee to ALG.
- (a "Tagged Student").
- 10.2 Subject to the provisions of this clause 10, the amount of Commission payable by ALG to the Education Agent on each Tagged Student is calculated as 25% of the Tuition Fees paid by that Tagged Student.
- 10.3 For the purposes of this Agreement, the Education Agent is regarded as having recruited the Tagged Student under this Agreement if the Education Agent submits the Tagged Student's application for enrolment and that application also bears the Education Agent's name. In the event ALG has already received an application from another Education Agent for the same student, the previously recorded Education Agent will be entitled to any commission payable, subject to clause 11.
- 10.4 No Commission is payable where a Prospective Student applies directly to ALG.
- 10.5 Commission will continue to be payable to the Education Agent for so long as the Tagged Student is undertaking consecutive Study Programs (including where a Tagged Student elects to change Study Programs), unless a Change of Agent request is approved.
- 10.6 ALG permits the Education Agent to forward Total Fees collected from a Tagged Student net of the applicable Commission, provided the Education Agent submits a Tax Invoice to ALG which complies with the requirements in clause 10.7(b) stating that the respective Commission has been paid in full.
- 10.7
- (a) The Education Agent agrees that ALG is permitted to issue a Recipient Created Tax Invoice ("RCTI") for any Taxable Supplies the Education Agent makes under this Agreement. If a RCTI is created by ALG, the Education Agent is not required to submit a Tax Invoice for payment of the Commission to which the Recipient Created Tax Invoice relates.
  - (b) In the event that RCTI is not created by ALG, the Education Agent is required to submit a Tax Invoice to ALG to be eligible for payment. Minimum information required in such a Tax Invoice includes the Education Agent's ABN (if based in Australia), the Education Agent's name, the date of the Tax Invoice, the full name of each Tagged Student to whom the Tax Invoice relates, the Study Program and the period of study to which the payment relates.
  - (c) The Education Agent agrees it will notify ALG in writing of any changes to the Education Agent's GST status that occur during the term of this Agreement.



- (d) The terms 'GST', 'Recipient Created Tax Invoice', 'Taxable Supplies' and 'Tax Invoice' have any of the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), including any relevant legislation, regulations, or applicable rulings by the Australian Taxation Office.
- 10.8 Subject to sub-clauses 10.1(d) and 10.6, ALG must pay the Commission no later than 30 days after receipt of a valid Tax Invoice from the Education Agent or creation of a Recipient Created Tax Invoice.
- 10.9 For the purpose of calculating the Commission, the Commission is chargeable on Tuition Fees only.
- 10.10 It is the Education Agent's responsibility to adjust Tax Invoices issued by the Education Agent to ALG in the case of reduced Tuition Fees.
- 10.11 In the event ALG is required and/or chooses to refund a Tagged Student his/her Tuition Fees, ALG will pay the entire sum of Tuition Fees directly to the Tagged Student. In this situation, where the Education Agent has already been paid a Commission in respect of the Tagged Student, the Education Agent agrees to repay the commission to ALG within 10 days of being notified by ALG of the Tuition Fee refund. ALG may set off any amounts owing to the Education Agent against any amounts owed to it under this clause 10.
- 10.12 The Education Agent agrees to comply with ALG's policies and procedures regarding the collection of Total Fees as outlined in the ALG Student Handbook and referenced in each Prospective Student's letter of offer.
- 10.13 The Education Agent acknowledges and agrees that ALG may pay the Commission to the Education Agent by electronic funds transfer.

## 11. Change of Education Agents

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- 11.1 ALG recognises that Enrolled Students may wish to change their Education Agents in some circumstances. Conversely, ALG acknowledges that Education Agents incur expenses including through the allocation of resources to secure enrolments for ALG.
- 11.2 Once an Offer Letter has been issued to a Student, the Student cannot change their Education Agent unless:
- (a) the student completes the Study Program and enrolls into a new Study Program at ALG, and nominates a new Education Agent prior to the commencement of the new Study Program; and/or
  - (b) the student provides evidence to ALG that the Education Agent has acted negligently.

## 12. Assignment and Sub-contracting

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- 12.1 The Education Agent must not assign this Agreement or any right under this Agreement without the prior written consent of ALG.
- 12.2 The Education Agent must not sub-contract to any person the performance of any of its obligations under this Agreement without the prior written consent of ALG.

12.3 Despite any sub-contract, the Education Agent remains liable for performing its obligations and responsibilities under this Agreement.

## 13. Monitoring Education Agents

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### 13.1 Monitoring activities

- (a) The performance of the Education Agent under this Agreement will be monitored and reviewed by ALG on a regular basis. This may include but is not limited to:
- (i) scheduled face-to-face or telephone meetings with the Education Agent;
  - (ii) information obtained from third parties such as alerts from ASQA;
  - (iii) spot checks by ALG (e.g. observing the Education Agent at work at education seminars, exhibitions and student fairs);
  - (iv) direct questioning and surveying of Prospective Students and Enrolled Students recruited by the Education Agent;
  - (v) monitoring Prospective Students and Enrolled Student grievances and complaints where these matters are related to the Education Agent's performance (such as where a student claims to have been misinformed by the Education Agent about a Study Program);
  - (vi) monitoring visa refusals of Prospective Students recruited by the Education Agent;
  - (vii) ad-hoc review of agency practices and marketing;
  - (viii) analysis of volume and quality of applications from Prospective Students;
  - (ix) analysis of conversion rates from applications lodged to Enrolled Students; and
  - (x) adherence to ALG admissions processes.

### 13.2 Corrective Action

- (a) If, at any point during the term of this Agreement, ALG believes or reasonably suspects that the Education Agent or its employees or subcontractors are not abiding by the terms of this Agreement in such a manner as to cause ALG to be unable to comply with its obligations under Standard 4 of the National Code, ALG may take immediate corrective action.
- (b) Corrective action may include but is not limited to:
- (i) training the Education Agent or its employees or subcontractors;
  - (ii) requiring the Education Agent or its employees or subcontractors to complete the AEI online Education Agent Training Course (or other similar course); and
  - (iii) conducting Prospective Student recruitment under closer supervision for a period of time.



- (c) If ALG becomes aware, or has reason to believe, that the Education Agent is being negligent, careless or incompetent or is engaged in false, misleading or unethical advertising or recruitment practices, ALG may:
  - (i) terminate this Agreement immediately in its absolute discretion; or
  - (ii) if the false or misleading recruitment practices were engaged in by an employee or subcontractor of the Education Agent, require the Education Agent to terminate its relationship with those entities or individuals.
- (d) The Education Agent agrees that ALG may keep any record of the Education Agent's performance and any corrective actions taken by ALG under this clause.

## 14. Duration and Termination of Agreement

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- 14.1 This Agreement commences on the Commencement Date indicated on page 3 of this agreement and continues until terminated in accordance with this clause 14.
- 14.2 Either party may terminate this Agreement for any reason by delivering written notice of termination to the other party no less than thirty (30) days before the effective date of termination, which date will be specified in the notice of termination.
- 14.3 ALG can terminate this Agreement at any time and with immediate effect if the Education Agent breaches any provision of this Agreement, including without limitation if ALG becomes aware of or reasonably believes that the Education Agent has breached, or causes ALG to breach, any provision in Standard 4 of the National Code.
- 14.4 On termination of this Agreement, the Education Agent must:
  - (a) submit all applications and fees from Prospective Students and or Enrolled Students received up to the termination date;
  - (b) immediately cease advertising and promoting ALG or any Study Program and destroy any advertising, promotional or other material supplied by ALG; and
  - (c) return to ALG any Confidential Information supplied by ALG within 7 days.
- 14.5 On termination of this Agreement, ALG:
  - (a) must continue to pay Commission on any Tagged Students following termination of this Agreement, unless clause 11 applies;
  - (b) will pay any outstanding fees owing to the Education Agent at the time of termination; and
  - (c) may consider any student applications submitted by the Education Agent that have not yet been processed.
- 14.6 This Agreement will be immediately terminated if ALG becomes aware of or reasonably suspects that the Education Agent is:

- (a) engaged in, or to have previously been engaged in, dishonest practices, including the deliberate attempt to recruit a student where this conflicts with the obligations of registered providers under Standard 7 of the National Code;
- (b) providing misleading advice regarding ALG and its Study Programs including Total Fees and Tuition Fees, and/or promoting a Study Program for a lesser amount than approved by ALG, including by offering to rebate any part of the Commission payable by ALG to the Education Agent to Prospective Students;
- (c) facilitating the enrolment of a student in a Study Program that will not comply with the conditions of his or her student visa; or
- (d) providing immigration advice where not authorised under the *Migration Act 1958* (Cth) to do so.

## 15. Indemnity

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15.1 To the maximum extent permitted by law, the Education Agent indemnifies (and must at all times keep indemnified) ALG and its employees and officers from and against all loss and liability which it or they may incur or suffer, and all claims which may be brought or made against it or them by any third party, arising out of or in connection with this Agreement and:

- (a) the provision of, or failure to provide, the Services by the Education Agent;
- (b) any act or omission of the Education Agent, its employees, officers and agents in connection with this Agreement;
- (c) any breach by the Education Agent of any obligation under this Agreement (including breach of any warranty given under this Agreement) or at law;
- (d) any negligent, fraudulent, reckless, wilfully wrongful, unlawful or other wrongful act or omission of the Education Agent, its employees, officers and agents;
- (e) the loss of any property or data;
- (f) the death of, disease or injury to any person; and
- (g) any infringement, or alleged infringement, of an Intellectual Property Right by the Education Agent, its employees, officers and agents, where infringement or alleged infringement occurs directly or indirectly as a result of or in connection with this Agreement.

15.2 This clause 15 shall survive and continue despite the expiration or termination of this Agreement.

## 16. Variation

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16.1 ALG may in its absolute discretion vary this Agreement by 7 days' notice in writing to the Education Agent.

## 17. General

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### 17.1 Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement.

### 17.2 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with clause 17.2(a):
  - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
  - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this Agreement nor is it to be construed as a waiver of any other obligation or breach.

### 17.3 Severance

If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.

### 17.4 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed under the laws in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 17.5 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this Agreement and the transactions contemplated by it.

### 17.6 No reliance

Neither party has relied on any statement by the other party which has not been expressly included in this Agreement.

17.7 Entire agreement

- (a) This Agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

17.8 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this Agreement may exchange that counterpart with another party by faxing or emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this Agreement is not affected if the party who has faxed or emailed the counterpart delays in delivering or does not deliver it by hand or by post.

17.9 Relationship of parties

- (a) The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship.
- (b) Neither party shall be liable in any way for an act or omission by the other party or its employees, agents or contractors. In no event will either party be liable for special, indirect, incidental or consequential damages to the full extent such as may be disclaimed by law even if that party has been advised of the possibility of such damages.
- (c) Nothing in this Agreement gives a party authority to bind any other party in any way.

17.10 Exercise of rights

- (a) Unless expressly required by the terms of this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

17.11 Remedies cumulative

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.