

# Appointment of Overseas Education Agent Agreement

**BETWEEN** Australian College of Technical Studies (the Provider)

(ABN 97 657 234 207, RTO Code 46254 and CRICOS Code 04273J)

Suite 4, Level 3, 41-45 Rickard Rd, Bankstown NSW 2200

**AND**

<insert Agents Business Name> and <insert MARA//QEAC Registration Number>

<insert Address>

**Dated** <insert date>

## BACKGROUND

- A. The provider is located at 427 Docklands Drive, Docklands VIC-3008 ABN
- B. 49 610 560 597 wishes to attract full time students from outside and within Australia to study at its Institution located at Geelong – Victoria - Australia.
- C. Australian law requires providers of education and training courses to overseas students to be registered and sets out other requirements with which the Provider and its Agents must comply.
- D. The law is known as the *Education Services for Overseas Students 2000* (ESOS Act) which makes requirements and includes obligations under the national Code which is made under and forms part of the ESOS Act (the National Code).
- E. the Provider is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) as part of the ESOS requirements. Its CRICOS provider number is XXXXXX.
- F. <insert Agents Business Name> (The Agent), provides services of finding suitable prospective students in the regions of Worldwide ('the Territory') for enrolment and study in Australia.
- G. The Provider wants to engage the Agent as its representative in the Territory to find such students for study at the Institution.
- H. The Agent has been made aware of the requirements of the ESOS act by the Provider including that the provider is responsible at all times for compliance with the ESOS Act and National Code 2018 and has agreed to comply with those requirements.
- I. The Agent agrees that it has knowledge of the Australian International Education and Training Code of Ethics<sup>1</sup>

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<sup>1</sup> <https://internationaleducation.gov.au/News/Latest-News/Documents/Australian%20International%20Education%20and%20Training%20-%20Agent%20Code%20of%20Ethics.pdf>

## 1. DEFINITIONS

### 1.1 In this Agreement:

**‘THE PROVIDER’** means **Australian College of Technical Studies** RTO Code 46254 and CRICOS Code 04273J;

**‘Courses’** means the full-time registered courses offered by the Provider and registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS);

**‘Course Fee’** means the tuition fees for Courses set by the Provider;

**‘CRICOS’** means the Commonwealth Register of Institutions and Courses for Overseas Students;

**‘Full time study’** means the amount of study for a particular Course which is approved by the Provider, or as defined in 7.1 and 7.3 of the National Code;

**‘Marks’** means logos, trademarks, designs, and crests that belong to or carry the name the Provider;

**‘Non-tuition fees’** means various administrative and material fees that are payable in addition to the course fees for each course.

**‘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 any steps towards becoming a ‘overseas student’ as defined by the ESOS Act;

**‘Services’** means the services described in clause 3 and clause 4;

**‘Student’** means a person (whether within or outside Australia) who holds a student visa and is a ‘overseas student’ as defined by the ESOS Act; and

**‘Territory’** means the countries or regions as specified in Item 2 of Schedule

### 1.2 In this Agreement, unless the contrary intention appears:

- (a) Headings are for the 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 of defined words or expression 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 ‘\$AUD’, ‘\$A’, ‘dollar’ or ‘\$’ is a reference to Australian currency

- (f) The Schedules to this Agreement form part of the Agreement, but if there is any conflict between a clause of this Agreement and the Schedules, the clause of this Agreement will prevail.

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

- 2.1 The Provider engages the Agent to be its representative to perform services as per the terms set out in this agreement for the period commencing from the date of the signed agreement <insert date>, this agreement is subject to a probationary period of four months.
- 2.2 This is a non-exclusive agreement, and the Provider can appoint other Agents in the Territory as it so chooses.

## **3. RESPONSIBILITIES OF THE AGENT**

- 3.1 Under this Agreement the Agent must:
- (a) Promote the Provider and its courses of study for the purposes of recruiting students from outside Australia
  - (b) Identify prospective students with suitable skills, knowledge and experience to undertake courses offered by the Provider
  - (c) Recruit and assist in the recruitment of students in accordance with the Provider procedures and requirements established under Australian law
  - (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 the Provider.
  - (e) Perform other services and provide reports or information requested by the Provider or required by this Agreement.

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

- 4.1 In performing the Services, the Agent must:
- a) Only undertake promotional and marketing activities that are connected to or make reference to the Provider that are expressly authorised by the Provider.
  - b) Promote the Courses with integrity and accuracy and recruit students in an honest, ethical and responsible manner.
  - c) Inform prospective students accurately about the requirement of Courses. This can be done by reference to the material provided by the Provider.
  - d) Ensure any advertising of the Provider VET training products must include the full name of the Provider and its registration codes.

College must refund the student's fee, with the exception of the registration and administration fees, and obtain a mailing address (not the Agent's address) from students and forward this address to the Provider.

- f) At all times comply with the requirements of Standard 4 of the National Code 2018 which is set out at Schedule 2.
  - g) declare in writing any conflicts of interest and take reasonable steps to avoid such conflicts of interest.
  - h) confirm in writing that it has current knowledge of the Australian International Education and Training and will continue maintain this currency at least annually
- 4.2 The Agent must give to prospective students, before they complete an application, information provided to the Agent by the Provider about:
- (a) The Provider and its facilities, equipment and learning resources.
  - (b) The Courses.
  - (c) The Course fees and refund conditions.
  - (d) Living in Australia and the local environment, including information about costs of living.
  - (e) The minimum level of English language proficiency required for acceptance into a Course.
  - (f) Visa requirements which must be satisfied by the student.
- 4.3 The Agent must tell prospective students that student who come to Australia on a student visa must have a primary purpose of studying and must study on a full-time basis.
- 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 representations 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 the Provider with any other education provider.
- (g) Give inaccurate information to a prospective student about acceptance into the course for which they applied or into any other Course.
- (h) Undertake any advertising or promotional activity about the Courses, of the Provider without the prior written consent of the Provider.
- (i) Give inaccurate information to a prospective student about the fees and charges payable to the Provider.
- (j) provide students with migration advice unless that Agent is authorized to do so under *Migration Act 1958 (Cth)*.

4.5 The Agent is not permitted to:

- (a) Commit the Provider to accept any prospective student into a Course and must not make any representations to the contrary.
- (b) Use or access PRISMS, the Australian Government electronic enrolment system, to issue a Certificate of Enrolment without the approval of the Provider.
- (c) Promote or market activities that are connected to or make reference to the Provider without the approval of the Provider.
- (d) Deliberately attempt to recruit a student where this conflicts with the obligations of registered providers under Standard 7 (Overseas student transfers)

4.6 The Agent must cooperate with the VET Regulator:

- (a) By providing accurate and factual responses to information requests from the VET Regulator relevant to the delivery of services.
- (b) In the conduct of audits and the monitoring of its operations.

## **5. THE REGISTERED PROVIDER'S RESPONSIBILITY**

5.1 The Provider will:

- (a) Give the Agent sufficient information and provide training in the Provider's training products and enrolment requirements (if required) to enable the Agent to conduct the services.
- (b) Help the Agent to access information about visa requirements and about the process of applying for an Australian student visa.
- (c) Duly process all completed applications but is under no obligation to accept any prospective student referred by the Agent.

- (d) Monitor the Agent's activities in representing the Provider and ensure the Agent is providing students accurate and up-to-date information on the Provider services quarterly.
- (e) Implement any corrective action required in accordance with its process outlined in this agreement.

## **6. PERFORMANCE MONITORING OF THE AGENT**

6.1 The Provider's Marketing Manager and/or their nominee(s) is responsible for monitoring the Agent's activities and ensuring that the Agent operates ethically, in the best interest of the student and in accordance with its responsibilities and obligations under this agreement as well as the requirements of the ESOS Act and National Code. The process includes conducting student surveys, communicating with the Agent, and undertaking quarterly Agent performance review.

### **6.2 Student Survey:**

Each student will be asked to complete a survey relating to the performance of their agent during Orientation session. The survey responses will be analysed and reported to the Marketing Manager.

Feedback from students that indicates that the Agent is not providing accurate and up-to-date information or there is dissatisfaction with the Agent's level of service will be followed up with the student and the Agent.

All follow-up and any actions will be recorded in the Agent's file.

### **6.3 Communication with Agent:**

The Marketing Manager or their nominee(s) will maintain regular and ongoing contact with the Agent via email, newsletter, telephone, written communication, or visits to the Agent's office to provide updates and information on courses and marketing materials including advice on course changes, admission requirements change, course intake dates update, changes to the Provider policies, and other relevant information about the Provider.

The Marketing Manager or their nominee(s) will also provide context specific training to the Agent during visits to its officers or online via Skype as required. The Agent will also be invited to visit the Provider to undertake training sessions and familiarise themselves with the Provider, its training products, services and facilities.

All communication will be recorded in the Agent's file.

### **6.4 Performance review:**

The performance review will be undertaken quarterly and will occur in the first week of the quarter. It will be conducted by the Marketing Manager and/or their nominee(s) in person, by telephone and/or in writing using the Agent Performance Review Checklist (see Schedule 4 for details).

6.5 Where any practices by an Agent are identified as not complying with its responsibilities and obligations under this written agreement, the Marketing Manager will take immediate corrective action proportionate to the level of correction required process as outlined in this agreement and in line with its corrective action.

## **7. CONFIDENTIALITY AND TRANSPARENCY**

7.1 The Agent must:

- (a) Ensure it applies appropriate levels of confidentiality and transparency in all their dealings with overseas students or prospective overseas students.
- (b) Keep confidential of all information provided by the Provider, other than to the extent disclosure is required to perform the Services in accordance with this Agreement.
- (c) Keep confidential of the terms of this Agreement.

## **8. AGENT'S FEES**

8.1 Subject to other provisions of this clause 7, the Provider must pay the Agent a fee calculated in accordance with Item 3 of Schedule 1 for each student who:

- (a) is recruited by the Agent
- (b) is enrolled in a Course
- (c) has paid Course fees to the Provider
- (d) CoE has commenced.

8.2 An Agent will not be regarded as having recruited a student under this Agreement unless the Agent submits the student's application for enrolment and that application also bears the Agent's name.

8.3 The Agent is required to submit an invoice to the Provider after the provisions of clause 7.1 have been met and must contain the family and given names of the student, course studying, fee paid, and agent's fee earned.

## **9. Corrective Action**

The Provider will immediately communicate and engage with the agent in relation to any identified corrective action(s) as soon as they become aware of the agent, its employee(s) or subcontractor(s) of the Agent not complying with its responsibilities and obligations under this written agreement.

This may include, but not limited to:

- correcting the actions
- providing additional training
- requiring the Agent to terminate its relationship with the employee or subcontractor who engaged in breach of the agreement and ensure that they are reminded of their responsibilities and obligations under this agreement.

If the agent's non-compliant behaviors do change and pose no ongoing significant risks, the Provider will continue to work with the agent under the terms of this agreement but will undertake additional monitoring proportionate to the behavior over the next twelve months.

If after twelve months no further issues are identified, the Provider will return to its normal quarterly monitoring arrangement of the agent's agreement.

If the agent's non-compliant behaviors do not change, the Provider will terminate this agreement and report the change and its reasons to the Department of Home Affairs if required to do so.

## **10. TERMINATING THIS AGREEMENT**

- 10.1 Either party can terminate this Agreement at any time by giving the other party 60 days prior written notice.
- 10.2 The Provider can terminate this Agreement at any time and with immediate effect by giving notice to the Agent if the Agent, its employee(s) or subcontractor(s) of the Agent breaches any provision of this Agreement.
- 10.3 When this Agreement terminates, the Agent must:
  - (a) Submit all applications and fees from prospective students received up to the date of termination.
  - (b) Immediately cease to use any advertising, promotional or other material supplied by the Provider and return all such material to the Provider.
- 10.4 The termination of this Agreement by either party does not affect any accrued rights or remedies of either party.
- 10.5 The Agent's information on the Provider website, PRISMS and ASQAnet will be updated upon termination to show the termination.

## **11. ASSIGNMENT AND SUBCONTRACTING**

- 11.1. The Agent must not assign this Agreement or any right under this Agreement without the prior written consent of the Provider (which may be withheld at its discretion).
- 11.2 The Agent must not subcontract to any person the performance of any of its responsibilities and obligations under this Agreement without the prior written consent of THE PROVIDER (which may be withheld at its discretion).
- 11.3 Notwithstanding any subcontract, the Agent remains fully responsible for performing its responsibilities and obligations under this Agreement.

## **12. THE PROVIDER REPRESENTATIVE**

12.1 The representative of the Provider for the purposes of this Agreement is set out in more detail in Item 4 of schedule 1. The representative may delegate aspect of the Provider's responsibilities under this agreement to other staff within the Provider.

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

13.1. This Agreement, its schedules and annexures:

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

### **14. VARIATION**

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

### **15. GOVERNING LAW**

15.1 This Agreement is governed by and construed in accordance with the laws of Australia.

15.2 The parties submit to the non-exclusive jurisdiction of the courts of Australia.

### **16. PRIVACY STATEMENT**

You agree to your personal information being:

- a) Recorded in the Provider's Registration and International Student Management System (PRISMS). This may include your name, business email address, phone number and address.
- b) Accessed by Australian Government Departments such as the Commonwealth Department of Education and Training, the Department of Home Affairs and other Commonwealth or State or Territory agencies that access PRISMS.
- c) Used to administer or monitor compliance with the Commonwealth legislation e.g. Education Services for Overseas Students Act 2000, Migration Act 1958.
- d) Disclosed by the Commonwealth Department of Education and Training to other Commonwealth or State or Territory entities (including, but not limited to ASQA), education institutions and publicly under certain circumstances.
- e) Shared by the Commonwealth Department of Education and Training of 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 institutions and other Commonwealth or State or territory entities.
- f) Disclosed where required to do so by Australian Law.

## SCHEDULE 1

**Item 1:** The agreement will commence from the date it is signed by both parties.

**Item 2:** The territory covered by this agreement includes Territory

**Item 3:** The commission payable to the Agent will be calculated on the following basis:

3.1 the Provider will pay the Agent a commission of **##%** plus GST (if applicable) of the student fee for each student.

3.2 the Provider will recognise the Education Agent, a person or organisation (in or outside Australia) who contributes to student's payment as eligible for collecting commission. This clause is to be read in conjunction with the '**schedule 3**'.

3.3 Tuition fees only claimable for commissions, as listed on original Letter of Offer or any agreed changes in conjunction with Education Agent.

3.4 the Provider will not pay commission to the Agent under the circumstances where:

i) the Provider advised the Agent of the engagement with Debt Collection Agency to collect student's outstanding fees. The fees collected by Debt Collection Agency will not be commissionable by the Agent.

ii) Any fee charged to student is classified as non-tuition fees.

3.5 Commissions will only be paid once a student's CoE has commenced, status is studying, and fees are no longer in advance. Fees are considered unearned by both the Provider and the Agent until CoE start date at the Provider has elapsed. Agent can claim earned commission once CoE has commenced. Any packaged offer packaged with the Provider, commissions can only be claimed upon CoE start date at the Provider.

3.6 In the event a student successfully withdraws and is entitled to a refund from the Provider, any refund of course fees (including any refund monies to the Provider of claimed commission) will be calculated and the Provider will invoice the Agent for refund of commissions paid.

3.7 Any variation to the commission rate would be subject to a separate written agreement.

**Item 4: Address for notices**

**THE PROVIDER (THE REGISTERED PROVIDER)**

Australian College of Technical Studies

Address: Suite 4, Level 3, 41-45 Rickard  
Rd, Bankstown, NSW 2200

Phone No: 1800002287

Email: [info@actstudies.edu.au](mailto:info@actstudies.edu.au)

Website: [www.actstudies.edu.au](http://www.actstudies.edu.au)

Agent: <insert name of agent>

MARA/QEAC: <insert registration number(s) as applicable>

Attention: <insert contact name>

Address: <insert address>

Phone No: <insert phone number>

Email: <insert email address>

Website: <insert web address>

## **SCHEDULE 2 - Standard 4, Education Agents, of the National Code 2018**

4.1 The provider must enter into a written agreement with each education agent it engages to formally represent it, and enter and maintain the education agent's details in PRISMS.

4.2 The written agreement must outline:

4.2.1 the responsibilities of the registered provider, including that the provider is responsible at all times for compliance with the ESOS Act and National Code 2018

4.2.2 the registered provider's requirements of the agent in representing the provider as outlined in Standard 4.3

4.2.3 the registered provider's processes for monitoring the activities of the education agent in representing the provider, and ensuring the education agent is giving students accurate and up-to-date information on the registered provider's services

4.2.4 the corrective action that may be taken by the provider if the education agent does not comply with its obligations under the written agreement including providing for corrective action outlined in Standard 4.4

4.2.5 the registered provider's grounds for termination of the registered provider's written agreement with the education agent, including providing for termination in the circumstances outlined in Standard 4.5

4.2.6 the circumstances under which information about the education agent may be disclosed by the provider and the Commonwealth or state or territory agencies.

4.3 A registered provider must require its education agent to:

4.3.1 declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the provider

4.3.2 observe appropriate levels of confidentiality and transparency in their dealings with overseas students or intending overseas students

4.3.3 act honestly and in good faith, and in the best interests of the student

4.3.4 have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.

4.4 Where the provider becomes aware that, or has reason to believe, the education agent or an employee or subcontractor of that education agent has not complied with the education agent's responsibilities under standards 4.2 and 4.3, the provider must take immediate corrective action.

4.5 Where the provider becomes aware, or has reason to believe, that the education agent or an employee or subcontractor of the education agent is engaging in false or misleading recruitment

practices, the provider must immediately terminate its relationship with the education agent or require the education agent to terminate its relationship with the employee or subcontractor who engaged in those practices.

4.6 The provider must not accept students from an education agent if it knows or reasonably suspects the education agent to be:

4.6.1 providing migration advice, unless that education agent is authorised to do so under the Migration Act

4.6.2 engaged in, or to have previously engaged in, dishonest recruitment practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under Standard 7 (Overseas student transfers)

4.6.3 facilitating the enrolment of a student who the education agent believes will not comply with the conditions of his or her visa

4.6.4 using PRISMS to create CoEs for other than bona fide students.

### **SCHEDULE 3 - Request to change an agent.**

Between

Australian College of Technical Studies  
RTO Code 46254; CRICOS Code 04273J  
Suite 4, Level 3, 41-45 Rickard Rd, Bankstown NSW 2200

And

<Insert Agent Name >  
<insert address>

This schedule is in relation to students' requesting to change an agent, which are not covered in the current agreement. The schedule 3 comes into effect retrospectively as at the <XX-XXX-XXXX date> or as agreed by both parties.

A student may request to change to another agent for number of reasons. In these situations, the Provider ('the Registered Provider) will give priority to the agent that first submitted a valid application for the student. Requests to change agents will be granted only if exceptional circumstances can be demonstrated and does not disadvantage the student.

To apply to change agents the student will need to complete and sign the Change of Agent Nomination Form and forward this to the Provider admission office. The new, preferred agent can also submit the form on the student's behalf; however, it must be agreed and signed by the student.

Once the provider receives the above form, the Administration Manager will process this request in accordance with the contract agreement that is currently in place for both agents involved. After decision has been made by the Provider, both agents will be notified of the outcome commission amounts involved, 10% for each agent. Exceptions to this will only be at the discretion of the Provider's CEO and/or their nominee upon receipt of a written request to review.

Commission payments are subjects to the clause 7 in the Overseas Education Agents Agreement.

All information received regarding the service of an agent will initially be considered by the Administration Manager.

## SCHEDULE 4 - Performance Review of Agent Checklist

Agent Name	
Agent Address	
Agent Subbranches	
Contract Expiry Date	
Contract signed / expired	
Territory	
Reviewer's name	
Reviewer's signature	

	Review Date	Reviewers General Comments
Quarter 1		
Quarter two		
Quarter three		
Quarter 4		

Performance Criteria (KPIs)	Met/Failed to meet	Additional Comments
Number of applications forwarded for consideration	Yes/No	
Number of enrolments accepted	Yes/No	
Analysis of visa grants and refusals for the Provider in comparison to other relevant providers	Yes/No	
<b>Students Feedback</b>		
The Agent provides up-to-date and accurate information	Yes/No	
Students are satisfied with the services provided by the Agent	Yes/No	
<b>Compliance</b>		
Compliance with ESOS Act and National Code	Yes/No	
Compliance with THE PROVIDER responsibilities and obligations	Yes/No	
Compliance with Migration Act	Yes/No	
<b>Feedback on the Agent's Practice</b>		
Adherence to the Provider's admissions processes	Yes/No	
Responsiveness of the Agent to communications with Admission team is acceptable	Yes/No	
Responsiveness of the Agent to communications with Marketing team is acceptable	Yes/No	
The Agent has shown knowledge of the international education system in Australia	Yes/No	
The Agent has shown knowledge of student visa requirements	Yes/No	
Submission of commission invoices in the format as set out in clause of the Agreement is acceptable	Yes/No	

The agent has disclosed any conflicts or potential conflicts of interest	Yes/No	
The agent has maintained all privacy and confidentiality requirements	Yes/No	
The agent has not required any corrective action since last performance review	Yes/No	
<b>Marketing and Promotions</b>		
The use of marketing material is appropriate	Yes/No	
The outcomes of any specific promotional activities have been met	Yes/No	
The marketing budget has been used in accordance with expectations	Yes/No	
<b>Incentives</b>		
The agent has qualified for any incentives	Yes/No	
<b>Quality of the Students Recruited by the Agent</b>		
The academic progress and performance of students recruited by the Agent is acceptable	Yes/No	
The conduct of students recruited by the agent is acceptable	Yes/No	
<b>Feedback from the Agent</b>		
Are there any comments or feedback from the Agent concerning partnership?	Yes/No	
<b>Area of Improvement Required of the Agent</b>		
Are there any comments or feedback to the Agent about areas suggested or requiring improvement?	Yes/No	

Signed for the Provider

Signed for the Agent

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Signature of Authorised Person/ General Manager

.....

Signature by or on behalf of Agent

.....

Name of CEO / General Manager

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Name of Director