



Schedule 1

General Terms & Conditions

Recitals

- a. The University and the College wish to recruit international students for courses offered by the University and the College.
- b. The Agent has agreed to act as an agent for the recruitment of students for the University and the College according to the terms of this Agreement.

Agreement

1. Definitions

"**Attachment A**" means Attachment A - Details of Agency Agreement which is attached to the Authorised Representative Agreement.

"**College**" means Wollongong University College, a Division of ITC (Education) Limited.

"**Confidential Information**" means

- (a) any information that a party claims is confidential to itself, but
- (b) does not include information to the extent that information is:

- (i) independently developed or known by the other party (including because it is in the public domain); or
- (ii) required to be disclosed by law.

"**Course**" means a single course of study.

"**Intellectual Property Rights**" or "**IPR**" means all Intellectual Property Rights, including but not limited to:

- (a) patents, copyright in circuit layouts, registered designs, trade marks and any right to have Confidential Information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in (a).

"**Prospective Student**" means a person in the Territory to whom the Agent provides documentation or Agent's Promotional Materials and who may be eligible to enrol in a course of the University and/or the College.

"**Recruitment Target**" means the Agent's target total of commencing student enrolments at the University or the College during a Year.

"**Termination Date**" means the date specified in Attachment

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A.

"**Territory**" means the territory specified in Attachment A.

"**University**" means University of Wollongong.

"**Year**" means the period from 1st January of one year to 31st December of the same year.

2. Appointment

The University and the College appoint the Agent to recruit students in the Territory.

3. Agent's Responsibilities

3.1 Activities regarding prospective students.

The Agent agrees:

(a) to recruit students for the University and College;

(b) to promote the University and the College by:

(i) attending to inquiries from prospective students by providing accurate information about:

- (A) course availability;
- (B) course objectives; and
- (C) course entry requirements

(ii) distributing promotional material, information brochures, relevant publications and other material which:

- (A) are provided by the University or the College (**'Documentation'**); or
- (B) are prepared by the Agent and in respect of which the Agent has complied with **Clause 4.3 ('Agents Promotional Materials')**

(iii) placing advertisements (where final artwork is approved in writing in advance by the University or College);

(iv) conducting information seminars;

(c) to assist students

- (i) to comply with formal requirements involved in applying for admission to courses; and
- (ii) if successful in their application, to obtain necessary travel and other documents; and
- (iii) to communicate with the University or the College (as appropriate);

(d) to ensure the authenticity of all documents submitted in support of a student's application to the University of Wollongong.

(e) to ensure that all information required in an application is complete and that the documents sent are either originals or

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certified copies of original documents.

(f) to obtain certified copies of all documents required in an application, from one of the following

- an authorised officer from the institution that originally issued the documents
- an employee of an Australian diplomatic post or an Australian Education Centre
- an authorised University representative

(g) to assist personnel of the University or the College who are visiting the Territory to administer tests and conduct interviews and seminars relating to the recruitment of students for courses;

(h) to ensure that its staff involved in recruiting students are suitably skilled and trained; and

(i) to provide to the University or the College all information in the Agent's knowledge or possession which relates to

- (i) the activities of actual or potential competitors of the University or the College; or
- (ii) developments in the areas of education and the provision of educational products and services and which is not confidential to a third party.

3.2 Liaison with Public Authorities

The Agent may liaise with the representatives of the Government of the Territory, and with other public officials of the Territory, as required in order for the Agent to fulfil its obligations under this Agreement.

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3.3 Keeping and Inspection of Records

The Agent agrees to keep accurate and complete records of the Agent's activities carried out under this **Clause 3** and to allow the University or the College to examine such records, or to furnish a copy of such records to the University or the College, upon the University or the College making a request in relation to the records by giving the Agent at least seven (7) days notice in writing.

3.4 The Agent agrees to be bound by the Australian Vice-Chancellors' Committee (AVCC) "[Code of Ethical Practice In The Provision of Education To International Students By Australian Universities](#)".

3.5 The Agent agrees to be bound by the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (The National Code) which is available at <http://www.detya.gov.au/esos/#Code>

4. Agent Limitations

4.1 The Agent acknowledges that he or she may not assess applicants for admissions nor make offers of admission.

4.2 The Agent may not certify any academic documents as original and genuine unless authorised to do so in writing.

4.3 The Agent agrees:

- a. not to carry out any activity on behalf of the College or University, other than activities specified in **Clause 3**, without prior consultation with and written approval of the relevant University or College nominee;
- b. that it may only carry out the activities specified in **Clause 3** in the Territory;
- c. that it has no authority to bind the University or College in contract or otherwise at law, and must not represent that it has;
- d. that nothing in this Agreement constitutes a relationship of employer and employee or partnership between the University or the College and the Agent; and
- e. that it must take all action reasonably required by the University or the College so that the public is notified of the nature and limits of the relationship between the University or the College and the Agent.

4.4 The Agent must not use the name or logo of the University or College in any Agent's Promotional Materials without the prior written consent of the University or College, and the University or the College may in its absolute discretion withhold such consent.

5. Responsibilities of the University and the College

5.1 Documentation

The University and the College agree to provide documentation to the Agent for use by the Agent in accordance with the terms of this Agreement.

5.2 Referral fee and commission

The University and the College agree to pay the Agent a referral fee or commission for each Prospective Student who is recruited:

- a. in accordance with Attachment A or as otherwise varied from time to time in writing by consent of the parties; and
- b. where the University or College receives the invoice from the agent in the form required by the University or College, and in any case, a separate invoice number for each student and a separate page for each invoice.

6. Payment of Fees

Unless otherwise agreed in writing with the University and the College, where the Agent receives fees from the Prospective Students in connection with any courses of the University or the College, the Agent must:

- (a) immediately remit all such fees directly to the University or College (as appropriate) prior to the commencement of the course; and
- (b) make its remittance either payable to:
 - (i) the College by telegraphic transfer, bank cheque, bank draft or any other agreed method; or
 - (ii) the University by bank cheque, bank draft or any other agreed

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method as appropriate.

7. Confidential Information

The Agent agrees:

- (a) to protect any Confidential Information of the University and/or the College and not disclose such information without the prior written consent of the University and/or the College;
- (b) not to improperly acquire or misuse the Confidential Information of a third party; and
- (c) to ensure that its employees comply with **Clause 8.2 (a) and (b)**

8. Intellectual Property

8.1 The Agent acknowledges that apart from the right granted to the Agent to use the Documentation in accordance with Clause 3, this Agreement does not grant the Agent any Intellectual Property Right (IPR) subsisting in the documentation.

8.2 The Agent must, if requested to do so by the University or the College:

- (a) assign all Intellectual Property Rights in the Agent's Promotional Materials to the University and/or the College; and
- (b) execute all documents and do all other things necessary to ensure that the assignment under **Clause 9.1(a)** is valid and enforceable.

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9. Agent's Warranty and Indemnity

9.1 The Agent indemnifies the University and the College against all liabilities, losses, expenses, damages and costs (on a full indemnity basis) suffered or incurred by or awarded against the University and/or the College arising out of:

- (a) any breach of this Agreement by the Agent;
- (b) any negligent, wilful or unlawful act or omission of the Agent; or
- (c) any false, misleading or deceptive conduct of the Agent

10. Exclusion and Limitation of Liability

Except where to do so would contravene any statute or cause any part of this Agreement to be void, the University and the College:

- (a) exclude all implied conditions and warranties;
- (b) limit their liability (whether that liability arises in contract, negligence or statute) to the Agent for claims or proceedings to the amount of commission paid to the Agent in the Year in which the claim or proceedings arise or are commenced.

11. Resolution of Disputes

11.1 The parties record their intention that, if any dispute or difference arises out of or in relation to this Agreement, it will be resolved in a spirit of good faith and on a commercially realistic basis by negotiation or mediation.

11.2 In the event that a more formal method for dispute resolution is necessary, the parties agree:

- (a) to submit the dispute to arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce; and
- (b) that, unless the rules require otherwise:

- (i) the appointing and administering body will be the Australian Centre for International Commercial Arbitration;
- (ii) the language of the arbitration will be English; and
- (iii) the place of arbitration will be Sydney

12. Term of Agreement

12.1 This Agreement will commence on the date that it is received by the University or the College, duly signed by all parties.

12.2 This Agreement will terminate on the Termination Date prior to which the parties will review the Agreement in good faith and decide whether:

- (a) to extend the Agreement for a further term;
- (b) to amend the Agreement and extend it for a further term; or
- (c) to terminate the Agreement, either by consent or by the operation of the Termination Date.

12.3 A party may, by advising the other parties in writing, immediately terminate this Agreement prior to the Termination Date if:

- (a) another party breaches this Agreement; and
- (b) fails to rectify such breach within 14 days after the first-mentioned party has given a written request for the breach to be rectified;
- (c) another party has breached the "AVCC Code Of Ethical Practice In The Provision Of Education To International Students By Australian Universities".
- (d) another party has breached the "National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (The National Code)"

12.4 In addition to the above paragraphs of **Clause 12**, a party has the right to terminate this Agreement in any case by giving ONE (1) month written notice to the other parties.

13. Continuing Obligations

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13.1 On termination of this Agreement:

(a) the Agent's appointment as agent terminates and the Agent must immediately:

- (i) stop performing the activities set out in **Clause 3** of this Agreement;
- (ii) return to the University or the College all documents (including the documentation) and Confidential Information of the University or the College which is in a material form; and
- (iii) if requested by the University or the College, confirm by letter signed by a director of the Agent that it has complied with all of its obligations under Clause 13.1

(b) unless the University or the College has terminated the Agreement as a result of breach by the Agent, the Agent is entitled to payment for services provided up to the effective date of termination and is not entitled to any compensation for early termination.

13.2 Clauses 4 (Agent Limitations); **9** (Agent's Warranty and Indemnity); **10** (Exclusion and Limitation of Liability); and **11** (Resolution of Disputes) continue to apply to the parties to this Agreement (in addition to any permitted assignee) after assignment or termination of this Agreement.

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14. General

14.1 The Agent may not assign, subcontract or otherwise transfer any right or obligation arising out of this Agreement without the prior written consent of the University or the College.

14.2 If part or all of any clause of this Agreement is illegal or unenforceable:

- (a) it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement; and
- (b) the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' commercial objective.

14.3 If a party:

- (a) has a right arising from another party's non-performance of an obligation under this Agreement; and
- (b) delays in exercising or does not exercise that right, that delay in exercising or failure to exercise is not a waiver of that right or any other right.

14.4 This Agreement is governed by the laws applicable in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that state.

14.5 This Agreement including its schedules and attachments:

- (a) constitutes the entire Agreement between the parties as to its subject matter;
- (b) in relation to that subject matter, supersedes any prior understanding between the parties and party; and
- (c) may only be amended in writing signed by both parties.

14.6 To the extent that any variations to the clauses in this Agreement are applicable, these variations are detailed in the Agency Agreement. To the extent of any conflict between clauses in the schedules and other clauses of the Agreement, the clauses in the Agency Agreement will prevail.

14.7 The Agent must comply with the University's Privacy Policy (<http://www.uow.edu.au/about/privacy/>) and the Information Protection Principles contained in the *Privacy Act (Cth)* and the *Privacy and Personal Information Act 1988 (NSW)* to the extent that those principles apply to the activities undertaken under this Agreement.

15. Notices

For the purposes of providing notices, the following contact details will be used:

- (a) **University of Wollongong**, NSW 2522, Australia.
- (b) **ITC (Education) Limited**, Locked Bag 8812, South Coast Hwy, Scone, NSW 2521, Australia.
- (c) **Agent** - address as specified in Attachment A

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16. Conditions Relating to Payment of Referral Fees or Commissions

16.1 The commission rates or referred fees payable are specified in the Agency Agreement.

16.2 Claims for a referral fee or commission must be received by the University or College within nine (9) months of the commencement date of the student's course. If a claim is made after this time, no referral fee or commission will be payable.

16.3 A referral fee or commission is payable only in the name of the Agency name which appears in this Agreement. Payment of a referral fee or commission will not be made to a third party and will not be deposited in a third party's bank account.

16.4 A referral fee or commission will only be paid if:

- (a) two copies of the Agency Agreement have been returned to the University and the College at **UniAdvice, University of Wollongong, NSW, 2522, Australia.**
- (b) the ABN Number is provided (where the Agreement is with a company operating in Australia).
- (c) if the University or College receives the

invoice from the agent in the form required by the University or College, and in any case, a separate invoice number for each student and a separate page for each invoice.

16.5 The Agent will remit all fees received and the commission will be paid by the University or the College upon receipt of an appropriate invoice.

16.6 All fees must be received by the University or the College as appropriate prior to the commencement of the course, or prior to the arrival of the student in Australia, whichever is the earlier.

16.7 Where an Agent recruits a student, it is the Agent's responsibility to verify that the student has not been enrolled in a prior course at the University or College by another agent. In cases where a dispute arises as to whom the student is commissionable, the commission will be paid to the agent who enrolled the student in the first course undertaken by the student at the University or College.

16.8 Where an Agent recruits a student it is the Agent's responsibility to verify that the student is not being counselled or has not been counselled by another agent. The agent to whom the commission is paid will be judged by the University or the College as the agent who has carried out the more extensive and effective counselling and service on behalf of the student, as evidenced in the University or the College copy of the student file.

16.9 The receipt of a letter signed by a student to state that s/he wishes another agent to deal with her/his enrolment does NOT entitle the nominated agent to payment of commission for that student.

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16.10 Refund of Commissions already paid to the Agent or deducted by the Agent: where the University or the College makes a determination under 16.10.1, 16.10.2 or 16.10.3 (below), the Agent must refund to the University or the College (whichever is appropriate), any portion of commission relating to the portion of the course which is refunded or transferred.

16.10.1 Commission will not be paid by the College or University in respect of any student who, for whatever reason, withdraws from a course prior to the commencement of the course. In assessment of eligibility for a total or partial refund, the College and University will follow the conditions for refund as they appear on the application form which the student signed.

16.10.2 Commission will not be paid on students who have applied for, or enrolled in, University courses AND receive a total or partial refund. In assessment of eligibility for a total or partial refund, the University will follow the current Australian Vice-Chancellors' Committee (AVCC) "Guidelines for Fee Refunds: International Students", as contained in the "Code of Ethical Practice in the Provision of Education to International Students by Australian Universities".

16.10.3 Further to this, the University or College may determine that a refund is payable in

circumstances which include, but are not limited to these situations:

- (a) a student achieves a satisfactory English Language proficiency score which qualifies the student to enter a formal course at the University or College BEFORE the original course finishing date
- (b) a student fast-tracks in a College course

16.10.4 Where a student enrolls in less than a full-time load over the first two sessions of study, or the first 48 credit points of study, OR withdraws from a course during the first two sessions of study and fails to enrol in subjects to the value of 48 credit points, a partial refund may be made by the Agent or this amount will be deducted from the agent's next commission claim.

The commission refund payable by the Agent under other circumstances relating to withdrawal from a course is subject to negotiation.

16.11 Commission payment calculations and schedule:

For Each Enrolment in	Amount of Commission	Method by which commission is payable
Wollongong University College - English Language Courses	AGREED PERCENTAGE of the relevant tuition fees on the original course length and any extension of the ELICOS course	Commission is payable against invoice, within 4 weeks of the student's enrolment in the first course of study. Commission is payable on extensions in ELICOS within 4 weeks of the student commencing their extension course, by automatic payment from the College.
Wollongong University College - All Other Courses	AGREED PERCENTAGE of the relevant tuition fee for ALL sessions that a student enrolls at the College	Commission is payable on the student's first session of study, against pro-forma agent invoice, within 4 weeks of the student's enrolment in the first session of study, where the student pays in advance for one session of study only. Commission is payable on the student's first TWO (2) sessions of study, against invoice, within 4 weeks of the student's enrolment in the first session of study, where the student pays in advance for TWO (2) sessions of study. Commission is payable on each subsequent session of study within 4 weeks of the student's enrolment in each subsequent session of study, by automatic payment by the College.

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University of Wollongong	AGREED PERCENTAGE of the relevant academic tuition fee for the first Year of study (based on a program comprising subjects with a value of 48 credit points.	For students commencing courses in autumn and spring intakes commission is payable, against invoice, no later than 4 weeks after the relevant student audit dates. The audit dates are normally 31 March for Autumn Session and 31 August for Spring Session. Commissions for students commencing outside these times (including intakes A, B, C, D and summer session) are payable against invoice within 8 weeks of the course commencement date.
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16.12 Payment of commission on package courses

- Where the Agent recruits a student for an English language course and
 - (a) submits an application form for, and prior to the student's course commencement date in the English language course, gains a conditional offer letter for a pathway course at the College (i.e. a course for which the offer letter contains a conditional offer for a degree course); and
 - (b) the student proceeds to that other course type at the College; and
 - (c) the student proceeds to a degree course within NINE (9) months of completing the College course then the other course at the College is commissionable AND the degree course is commissionable
- Where the Agent recruits a student for a pathway course at the College (ie. a course for which the offer letter contains a conditional offer for a degree course) and the student proceeds to a degree course within NINE (9) months of completing the College course then the degree course is commissionable
- Where an Agent recruits a student for an English language course and;
 - (a) submits an application form for, and prior to the student's course commencement date in the English language course, gains a conditional offer letter for a degree course; and
 - (b) the student proceeds to a degree course within NINE (9) months of completing the English language course then the degree course is commissionable

16.13 Deduction of commissions

Where commission is deducted, the Agent will be required to repay the commission deducted in circumstances described in clause 16.10 (in "General Terms and Conditions").

Where an agent is required under Australian law to charge the College with GST on a commission payment, and the agent has deducted commission for that student, the agent must deduct an amount equivalent to the commission rate allowable

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under the contract AND the applicable GST, and must supply the College with a GST-compliant tax invoice no later than the day on which fees are received by the College.

17. Applications for Accommodation & Airport Pick-up

All applications for accommodation organised by the University or College must be made on the official University or College application form(s).

Where the agent has a student complete and sign a University or College accommodation application form or airport pick-up request form, the agent may not engage a subcontractor to perform this service.

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