



# Education Agency Agreement

**Commencement Date:**

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**Termination Date:**

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## BETWEEN

Acute Education Pty Ltd T/As Berry International College (hereinafter referred to “college”)  
Level 1 190 Queen Street Melbourne Vic 3000, Australia.

## AND

Agency Business  
Name

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Australian Business  
Number (ABN)

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Address

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Phone /Mobile

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Fax

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Email

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Website

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Education Agent Agreement   V: Jun 2023	Acute Education Pty Ltd T/As Berry International College
RTO Code: 46030    CRICOS CODE: 04145F	<a href="mailto:admissions@berrycollege.edu.au">admissions@berrycollege.edu.au</a>   <a href="http://www.berrycollege.edu.au">www.berrycollege.edu.au</a>

## 1. BACKGROUND TO AGREEMENT

- 1.1 College wants to recruit full time overseas students to study at the College.
- 1.2 The Education Services for Overseas Students Act 2000 (“the ESOS Act”) imposes certain obligations and requirements on the providers of education and training courses to overseas students and those Providers’ Education Agents, including the obligations set out in the National Code established under the ESOS Act (“National Code”).
- 1.3 College is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) as part of the ESOS Act requirements under CRICOS Code No. 04145F.
- 1.4 The Education Agent provides services of recruiting suitable prospective students for enrolment and study in Australia.
- 1.5 College wants to engage the Education Agent as its representative in the Territory.
- 1.6 The Education Agent is aware of the requirements of the ESOS Act and has agreed to comply with those requirements.

## 2. AGREEMENT

### 2.1 DEFINITIONS

In this Agreement the following definitions are applied:

- a) **‘Education Agent’s Commission’** means the commission calculated under Item 3 of Schedule 1.
- b) **‘Marks’** means logos, trademarks, designs, and crests that belong to or carry the name of college.
- c) **‘PRISMS’** means the Provider Registration and International Students Management System (the electronic system that holds CRICOS and the electronic confirmation of enrolment);
- d) **‘Program Fee’** means the tuition and other fees set by College for the Programs.
- e) **‘Programs’** means the full-time registered programs offered by College and registered on **CRICOS**;
- f) **‘Prospective student’** means a person (whether within or outside Australia) who intends to become, or who has taken any steps towards becoming a Student at College
- g) **‘Services’** means the services described in clauses 3 and 4;
- h) **‘Student’** means an 'overseas student' as defined in the ESOS Act;
- i) **‘Term’** means the period set out in Item 1 of Schedule 1
- j) **‘Territory’** means the countries or regions set out in Item 2 of Schedule 1.

2.2 In this Agreement, unless the contrary intention appears:

- a) Headings are for ease of reference only and do not affect the meaning of this agreement;

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- 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 expressions have corresponding meanings;
- d) money is in Australian dollars unless otherwise stated and a reference to 'A\$', 'AUD', '\$A', 'dollar' or '\$' is a reference to Australian currency; and
- e) Schedule 1 to this Agreement forms part of the Agreement, but if there is any conflict between a clause of this Agreement and the Schedule, the clause of this Agreement will prevail.

### **3. ENGAGEMENT OF THE EDUCATION AGENT**

- 3.1 College engages the Education Agent to be its representative to perform the Services in the Territory for the Term.
- 3.2 This is a non-exclusive agreement College may appoint other Education Agents in the Territory.
- 3.3 The Representative cannot promote College outside the Territory or perform the services outside the Territory, without college prior written consent.
- 3.4 If the Representative wishes to expand the Territory the Representative must make a written submission to college, no later than thirty (30) days before the recruitment of Prospective Students in the new territory is planned to start. College is under no obligation to recognise the Representative's new territory or accept applications for enrolment from Prospective Students recruited by the Representative in the new territory.
- 3.5 The College must not accept students from an education agent or enter into an agreement with an education agent if it knows or reasonably suspects the education agent to be (Standard 4.3):
  - a) engaged in, or to have previously been engaged in, dishonest practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under Standard 7 (Transfer between registered providers);
  - b) facilitating the enrolment of a student who the education agent believes will not comply with the conditions of his or her student visa
  - c) using Provider Registration and International Students Management System (PRISMS) to create Confirmations of Enrolment for other than bona fide a student; or
  - d) providing immigration advice where not authorised under the Migration Act 1958 to do so

### **4. MAIN RESPONSIBILITIES OF THE EDUCATION AGENT**

- 4.1 Under this Agreement, the Education Agent must:
  - e) At all times act honestly and in good faith, and in the best interests of the student
  - f) Promote College and the Programs in the Territory in accordance with relevant College's policy and procedures in the recruitment of prospective students to undertake the Programs

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- g) Show appropriate levels of confidentiality and transparency in their dealings with overseas students or prospective overseas students
- h) Provide prospective students with all necessary information about the Programs, College facilities and services and assistance in completing and submitting application forms to College
- i) Arrange for English language testing of prospective students under the relevant Australian migration regulations; and
- j) Perform any other services and provide any reports or information requested by College or required by this Agreement.
- k) Cooperate with ASQA by providing information where requested and in the conduct of audits.
- l) declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider

## 5. DETAILED OBLIGATIONS OF THE EDUCATION AGENT

5.1 In performing the Services, the Education Agent must:

- a) promote the Programs with integrity and accuracy and recruit prospective students in an honest, ethical and responsible manner;
- b) inform prospective students accurately about the requirements of Programs using only material provided by College;
- c) assist to uphold the high reputation of College and of the Australian international education sector;
- d) take reasonable steps in confirming the accuracy of the information provided by prospective students in the application;
- e) ensure that only signed and completed enrolment applications/ agreements are submitted to College;
- f) assist prospective students to complete visa applications;
- g) ensure that relevant fees and charges and supporting documentation accompany each application and acceptance of offer documents;
- h) provide any offer documents received from College to the prospective student within 24 hours of receiving the offer documents;
- i) provide College with market intelligence about the recruitment of prospective students in the Territory; and
- j) Only undertake promotional and marketing activities involving College that have been approved by College
- k) Provide pre-training review for all prospective students of College in regards to learning needs and other diverse range of needs such but not limited to physical capabilities, career aspirations and cultural needs
- l) Act with integrity at all times and comply with the requirements of Standard 4 of the National Code which is set out in Schedule 2 of this agreement;
- m) Act in accordance with College policies and procedures and directions given by College

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5.2 Before prospective students complete an enrolment application the Education Agent must give them information provided to the Education Agent by College about:

- a) College and its facilities, equipment and learning resources;
- b) the Programs, including course content and duration, qualifications offered, modes of study;
- c) the minimum level of English language ability and educational qualifications required for acceptance into the Program;
- d) visa requirements which must be satisfied by the student including English language proficiency levels;
- e) the Program Fees and refund policy; and
- f) living in Australia and the local environment of the relevant campus, including information about campus location and costs of living;

5.3 The Education Agent must advise prospective students that:

- a) Students who come to Australia on a student visa must have a primary purpose of studying and are expected to complete the course within the expected duration; and
- b) Any accompanying school age dependents must pay any relevant fees if enrolling in either government or non-government schools.

5.4 The Education Agent must not:

- a) engage in any dishonest practices, including suggesting to prospective students that they may come to Australia on a student visa with a primary purpose other than full time study;
- b) facilitate applications for prospective students who do not comply with visa requirements;
- c) provide prospective students with 'IMMIGRATION advice' as defined in the Migration Act 1958 unless the Education Agent is separately registered under that Act;
- d) give a prospective student inaccurate information about:
  - I. the Program Fee payable to College or
  - II. his or her acceptance into a Program;
- e) receive or bank the Program Fee payable to College by a prospective student or deduct any amount from the Program Fee payable by the prospective student;
- f) make any representations or offer any guarantees to prospective students about the likelihood of obtaining a student visa;
- g) engage in false or misleading advertising or recruitment practices;
- h) make any false or misleading comparisons with any other education provider or their programs or make any inaccurate claims regarding any association between College and other education providers;
- i) Undertake any advertising or promotional activity about the Programs or College without the prior written consent of College

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- j) commit College to accept any prospective student into a Program;
- k) use or access PRISMS without the prior written consent of College
- l) use or access PRISMS to create a confirmation of enrolment for other than a bona fide student
- m) Use any registered or unregistered Mark without the prior written consent of College
- n) actively recruit, or attempt to recruit, Prospective Students that the Representative knows to have engaged the services of another official representative of College or
- o) Sign or encourage or allow others to sign, official documents such as the application form, on behalf of a prospective Student or Student. The Student's signature that appears on all official documents must be the same signature as that which the Prospective Student used when signing the College's application form.

5.5 Unless College otherwise agrees, the Education Agent must bear the cost of advertising and promotional activities undertaken by the Education Agent under this Agreement.

5.6 The Education Agent must terminate any agreement with an employee if the Education Agent becomes aware of, or reasonably suspect, dishonest practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under National Code Standard 7 (Transfer between registered providers, whereby a receiving registered provider must not knowingly enroll the student wishing to transfer from another registered provider's course prior to the student completing six months of his or her principal course of study) or any of the other dishonest practices outlined above.

## 6. WHAT COLLEGE MUST DO?

6.1 The college is responsible at all times for compliance with the ESOS Act and National Code 2018

6.2 College must:

- a) give the Education Agent sufficient information to enable the Education Agent to undertake the Services;
- b) Assess completed applications from prospective students within a reasonable time of receipt.
- c) Act with integrity at all times and comply with the requirements of Standard 4 of the National Code which is set out in Schedule 2 of this agreement;

6.3 College is not required to accept any prospective student referred by the Education Agent and college will immediately take corrective action or terminate the agreement with the Education Agent

- a) if it becomes aware of the Education Agent being negligent, careless or incompetent or being engaged in false, misleading or unethical advertising and recruitment practices, including practices that could harm the integrity of Australian education and training.

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- b) if it becomes aware of, or reasonably suspects dishonest practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under National Code Standard 7 (Transfer between registered providers, whereby a receiving registered provider must not knowingly enroll the student wishing to transfer from another registered provider’s course prior to the student completing six months of his or her principal course of study) or any of the other dishonest practices outlined above.

6.4 College required that its education agents:

- a) Must declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider.
- b) Must have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.

6.5 College will notify the regulator

- a) Of any written agreement entered into under Clause 2.3 for the delivery of services on its behalf within 30 calendar days of that agreement being entered into or prior to the obligations under the agreement taking effect, whichever occurs first, and
- b) Within 30 calendar days of the agreement coming to an end.’

**7. CONFIDENTIALITY:**

The Education Agent must keep confidential all information provided by College, other than to the extent disclosure is required to perform the Services in accordance with this Agreement; and the terms of this Agreement.

**8. EDUCATION AGENT’S Commission:**

- 8.1 Subject to the other provisions of this clause, College must pay the Education Agent’s commission for each student who:
  - a) is recruited by the Education Agent;
  - b) is enrolled in a Program; and
  - c) has paid the Program Fee to College; and
  - d) has commenced the Program; and
  - e) Who has not, subsequent to commencing the program, been fully refunded the program fees.

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- 8.2 An Education Agent is regarded as having recruited a student under this Agreement if the Education Agent submits the student's application for enrolment and that application also bears the Education Agent's name.
- 8.3 An Education Agent's commission is not paid where the student applies to enroll directly to College.
- 8.4 No Education Agent's commission is payable unless the Education Agent has submitted an invoice in a form approved by College
- 8.5 College must pay the commission's payable under this clause within 30 days of receipt of a valid invoice from the Education Agent.

**9. TERMINATING THIS AGREEMENT:**

- 9.1 Either party may terminate this Agreement at any time by giving the other party 30 days prior written notice.
- 9.2 If the Education Agent breaches any provision of this Agreement, College may terminate this Agreement at any time and with immediate effect by giving written notice to the Education Agent.
- 9.3 On termination of this Agreement, the Education Agent must:
  - a) submit all applications and commissions from prospective students received up to the termination date; and
  - b) Immediately cease using any advertising, promotional or other material supplied by College and return all material to College by registered mail or a reputable international courier.
- 9.4 The termination of this Agreement by either party does not affect any accrued rights or remedies of either party.

**10. MONITORING OF AGREEMENT:**

- 10.1 College shall monitor the Education Agent activities to ensure the Education Agent is acting in the best interests of the college, the student, and the Australian education system. This monitoring process is outlined as follows:
  - a) All education agents must comply with its obligations under this written agreement
  - b) All Education Agents must submit a report of their activities once per 6 months. This report is to outline the promotional activities that have been undertaken on behalf of

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College and include any students that have been contacted or recruited to enroll with College

- c) All Education Agents will be required to undertake an annual review. Where practical a face to face meeting will be organised to review the agent’s activities but will normally only occur with onshore agents based in Melbourne and Victoria. Where a face to face meeting is not appropriate College will conduct an internal review of the agent’s activities.

The reviews will include:

- Overview of current practices and relationship with College Ensuring current marketing materials are being used
- Ensuring representation of College is appropriate
- Discussion of any issues or concerns with the agent or appropriate staff

- d) The review will be undertaken by the CEO. Minutes of any meetings or notes of internal reviews will be taken and kept on the agents file.
- e) Further monitoring of Education Agents activities and conduct with prospective students will be gained through feedback collected from students upon enrolment. Through the course orientation students will be asked to complete a survey in relation to their dealings with Education Agents that represent College.
- f) This process ensures that any issues relating to Education Agents providing misleading or dishonest information to prospective students is identified and can be addressed.

10.2 College must take immediate **corrective action** if they are aware that or believe the education agent or its employee or subcontractor, have not complied with the education agent’s responsibilities under Standard 4. Corrective actions may include:

- a) Where ever required a proper training or professional development would be conducted with the agents to bring them update and address any issues.
- b) Any issues that are identified will be discussed in the Senior Management Meetings and with the particular Education Agent. This meeting / discussion will to be documented and kept on the Education Agents file.
- c) providing education agents with additional information or targeted training on expectations of the agent.
- d) If a college becomes aware or has reason to believe that an education agent is engaging in false or misleading recruitment practices, they must immediately terminate their relationship with the agent.
- e) If the false or misleading recruitment practices were engaged in by an employee or subcontractor of the education agent, the college must require the education agent to terminate its relationship with those individuals.
- f) College must not accept students from education agents if they believe the education agent is engaging in unethical recruitment practices. This includes education agents that provide migration advice to overseas students when they are not authorised to do so under the Migration Act 1958.

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- g) College must not accept overseas students from education agents that engage in, or have previously engaged in, dishonest recruitment practices. This includes education agents knowingly recruiting an overseas student in conflict with the registered providers' obligations under Standard 7 (Overseas Student Transfers).
- h) College must not accept overseas students from education agents if they believe the education agent is creating Confirmation of Enrolments (CoEs) in PRISMS for non bona fide overseas students or facilitating the enrolment of overseas students while knowing that the overseas student will not comply with the conditions of their visa.

**11. ASSIGNMENT AND SUBCONTRACTING:**

- 11.1 The Education Agent must not assign this Agreement or any right under this Agreement without the prior written consent of College (which may be withheld at its discretion).
- 11.2 The Education Agent must not subcontract to any person the performance of any of its obligations under this Agreement without the prior written consent of College (which may be withheld at its discretion). Despite any subcontract, the Education Agent remains liable for performing its obligations under this Agreement.
- 11.3 The Education Agent must terminate any agreement with a sub-contractor if they become aware of, or reasonably suspect, dishonest practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under National Code Standard 7 (Transfer between registered providers, whereby a receiving registered provider must not knowingly enroll the student wishing to transfer from another registered provider's course prior to the student completing six months of his or her principal course of study) or any of the other dishonest practices outlined above

**12. NOTICES:**

- 12.1 A notice under this Agreement must be in writing and sent by prepaid airmail, facsimile, or electronic mail to the party at the address set out set out in Item 4 of Schedule 1, or other address notified under this clause.
- 12.2 A party changing its address, facsimile number or electronic mail address must give notice of that change to the other party.

**13. ENTIRE AGREEMENT:**

- 13.1 This Agreement and its schedules constitute the complete and full agreement between the parties as to its subject matter; and
- 13.2 In relation to that subject matter, replaces and supersedes any prior arrangement or agreement between the parties.

**14. VARIATION:**

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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 law in force in the State of Victoria, Australia.
- 15.2 The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and the Federal Court of Australia.

**16. PRIVACY STATEMENT**

You agree to your personal information being:

- 16.1 recorded in PRISMS. This may include your name, business email address, phone number and address;
- 16.2 accessed by the Australian Government Department of Education and Training, Department of Immigration and Border Protection and other Commonwealth agencies that access PRISMS;
- 16.3 used to administer or monitor compliance with the Commonwealth legislation e.g. Education Services for Overseas Students Act 2000, Migration Act 1958; and
- 16.4 disclosed by the Australian Government Department of Education and Training to other Australian Government entities (including, but not limited to ASQA and TEQSA), education institutions and publically. The Australian Government Department of Education and Training will share individual agents' performance publically as aggregated data (but will not identify agent – provider relationships). Agent-provider relationships will only be identified when data is shared with education providers and other Australian Government entities.
- 16.5 You agree to avoid conflicts of interest with your duties as an education agent.
- 16.6 You agree to observe appropriate levels of confidentiality and transparency in your dealings with overseas students or intending overseas students. This behavior includes acting honestly, in good faith and the best interests of the student.
- 16.7 You agree to have adequate and appropriate knowledge and understanding of Standard 4.3.4 of the National Code 2018 of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics <https://internationaleducation.gov.au/>

**SIGNED** for College by CEO

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Signature of CEO

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## Agent

Attention: \_\_\_\_\_

MARA/QEAC Number: \_\_\_\_\_ Mobile Number: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

## **Company (Agent) Bank Details**

Account Name: \_\_\_\_\_

Bank Name: \_\_\_\_\_ Bank Branch: \_\_\_\_\_

BSB Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

Swift Code \_\_\_\_\_

## **SCHEDULE 2**

### Standard 4 of the National Code

4.1 The registered provider must enter into a written agreement with each education agent it engages to formally represent it. The agreement must specify the responsibilities of the education agent and the registered provider and the need to comply with the requirements in the National Code. The agreement must also include:

- a) Processes for monitoring the activities of the education agent, including where corrective action may be required; and
- b) Termination conditions, including providing for termination in the circumstances outlined in Standard 4.4.

4.2 The registered provider must ensure that its education agents have access to up-to-date and accurate marketing information

4.3 The registered provider must not accept Students from an education agent or enter into an agreement with an education agent if it knows or reasonably suspects the education agent to be:

- a) Engaged in, or to have previously been engaged in, dishonest practices, including the deliberate attempt to recruit a Student where this clearly conflicts with the obligations of registered providers under Standard 7 (Transfer between registered providers);

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- b) Facilitating the enrolment of a Student who the education agent believes will not comply with the conditions of his or her Student visa;
- c) Using Provider Registration and International Students Management System (PRISMS) to create Confirmations of Enrolment for other than bona fide a Student; or
- d) Providing immigration advice where not authorised under the Migration Act 1958 to do so.

4.4 Where the registered provider has entered into an agreement with an education agent and subsequently becomes aware of, or reasonably suspects, the engagement by that education agent, or an employee or subcontractor of that agent, of the conduct set out in Standard 4.3, the registered provider must terminate the agreement with the education agent. This paragraph does not apply where an individual employee or subcontractor of the education agent was responsible of the conduct set out in Standard 4.3 and the education agent has terminated the relationship with that individual employee or sub-contractor.

4.5 The registered provider must take immediate corrective and preventative action upon the registered provider becoming aware of an education agent being negligent, careless or incompetent or being engaged in false, misleading or unethical advertising and recruitment practices, including practices that could harm the integrity of Australian education and training.

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