



UNIVERSITY OF

WINCHESTER

Agents Contractual Agreement

Between

The University of Winchester

And

XXXXXX

AGENTS CONTRACTUAL AGREEMENT

DATE: XXXX

PARTIES:

1. **'The University'**: The University of Winchester, a private charitable company limited by guarantee in England and Wales number 5969256. Registered Office: Sparkford Road, Winchester, Hampshire SO22 4NR
2. **'The Agent'**: "XXXXXX" a company incorporated and registered in XXXX at XXXX

RECITALS:

- A. The University wishes to promote its educational services to potential students resident outside the UK.
- B. The Agent has extensive marketing experience in the field of educational services and is willing to act as a marketing representative of the University in this regard on the terms set out below.

OPERATIVE PROVISIONS:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

'Academic Year'	defined by the term dates of the University as listed on the University's own website
'Contractual Year'	means the period of twelve months commencing the date of this agreement.
'Educational Services'	means the full-time courses of study offered by the University.
'Enrolled Student'	means any student who completes the enrolment process with the University for a full time course of study referred by the Agent. In accordance with the notification process in clause 4.8
'Net Tuition Fee'	this is the fee paid to the University by the student. This fee is the final result after any deductions made by the University such as discounts or scholarships or similar have been made.
'Territory'	the country, area or region in which the agent operates and has a physical presence (such as an office).
'Course'	may be a 'Programme', an approved curriculum which leads to an award from the University of Winchester, or a 'Pre-sessional English Course', designed to prepare non-native English speakers for studying in English at University.

2. Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales, and each party hereby submits to the non-exclusive jurisdiction of the Courts operating under these laws (England and Wales).

3 Appointment of Agent

- 3.1 The University hereby appoints the Agent as its non-exclusive marketing representative to assist the University in the marketing and promotion of its Educational Services in the Agent's Territory. The Agent hereby agrees to act in that capacity subject to the terms and conditions of this Agreement.
- 3.2 The University will remain free to market and promote its Educational Services directly or indirectly (and each element thereof) without the involvement of the Agent.

- 3.3 The University reserves the right at any time to exclude any course from the Educational Services. The University will take all reasonable steps to offer an alternative course, where possible.

4 Agent's Duties

- 4.1 The Agent will market and promote the University's Educational Services with due care and diligence, and seek to project the image of the University and improve the University's reputation in the Territory. To comply with all reasonable and lawful instructions of the University, from time to time concerning the marketing of the Educational Services in the Territory, to act within the limits of its authority and generally to carry out its agency in such manner as it thinks best to promote the interest of the University. To act conscientiously and in good faith towards the University
- 4.2 The Agent shall comply with all the provisions of the 'University Agents Policy' available from the University's website.
- 4.3 The Agent shall, within 20 working days of the end of each month, notify the University in writing of all applications made to the University by individuals for whom the agent will anticipate receiving commission payment from the University.
- 4.4 The Agent shall keep the University fully informed, via email of its marketing and promotional activities, and translated materials must be approved by the University before publication.
- 4.5 The Agent shall immediately inform the University of any complaint or actual or threatened legal proceedings concerning the University. The Agent shall not take part in any dispute or commence or defend any court or other dispute proceedings or settle or attempt to settle or make any admission concerning any such proceedings, without prior reference to the University or unless formally directed to do so by the University.
- 4.6 The Agent shall be responsible for advising the University of, and assisting the University with obtaining, any licences, permits and approvals which are necessary or advisable in the Territory and otherwise for the marketing and promotion of the Educational Services.
- 4.7 The Agent shall comply with all applicable laws and regulations in the Territory and otherwise relating to the marketing and promotion of the Educational Services.
- 4.8 The Agent shall submit to the University an invoice in respect of referred students as soon as possible after the commencement of the Academic Year in which the student registers
- 4.9 The Agent will undertake an initial review of any application made by a student to determine whether that application may meet the entry requirements of the University.
- 4.10 The Agent will ensure that it will only submit applications from students who will meet UKVI regulations and comply with all UK Immigration Rules. The Agent shall ensure that recruitment is compliant with current UKVI regulations and guidelines, and the agent will undertake all training and research necessary to keep abreast of the UKVI guidelines and regulations. The Agent will fully assist and cooperate with the University in ensuring that enquiries from the UKVI are dealt with swiftly and efficiently
- 4.11 The Agent will understand that the University will monitor the performance of the Agent with regard to the number of visa refusals, the number of students who fail to enrol or complete the course; and that the University will issue one formal written warning and/or terminate its agreement with the agent if it does not meet the University's standards in these areas.
- 4.12 The Agent shall comply with the following **Code of Professional Standards and Ethics**:
- a) The Agent shall, at all times, conduct itself with integrity and in a manner that will

contribute to the positive image of the University as a reliable and trustworthy provider of high quality education and training.

- b) The Agent shall promote itself in a professional and ethical manner and shall ensure that its marketing activities reflect best practice.
- c) The Agent shall promote itself fairly and without recourse to unfavourable or negative comparisons of other institutions, with the University or otherwise employing unfair or unprofessional practice to damage the interests of other institutions.
- d) The Agent shall be honest in communicating information about itself and the University in published, oral or any other form. They shall not knowingly or by a failure of professional standards provide or disseminate false, incomplete or misleading information.
- e) The Agent shall act, at all times, in the best interests of students in relation to the University and shall offer counselling and advice to achieve this.

4.13 The Agent shall not:-

- a) Use any advertising, promotional or selling materials in relation to the University except those supplied or approved in writing by the University.
- b) Engage in any conduct, which, in the reasonable opinion of the University, is likely to be prejudicial to the University's business, educational reputation or the marketing of the Educational Services generally.
- c) Present itself, or permit any person or persons to present themselves, as being authorised to bind the University in any way.

4.14 The Agent shall:

- a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c) have and shall maintain in place throughout the term of this agreement its own policies and procedures to ensure compliance with the Bribery Act 2010 (Relevant Requirements) and the Relevant Policies, and will enforce them where appropriate;
- d) promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Agent in connection with the performance of this agreement;
- e) ensure that any person associated with the Agent who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Agent in this agreement. The Agent shall be responsible for the observance and performance by such persons, and shall be directly liable to the University for any breach by such persons of any of the Agent Agreement.

4.15 Breach of this clause shall be deemed a material breach:

For the purpose of this clause the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause **(9.3.1)**, a person associated with the Agent includes [but is not limited to] any subcontractor of the Agent.

5. Duties of the University

- 5.1 The University shall, at its own expense, supply the Agent with a reasonable quantity of the University's student application forms and such promotional literature and information as the Agent may require for the purposes of counselling students appropriately and accurately in relation to the University.
- 5.2 The University reserves the right, in its absolute discretion to reject any potential student notified or introduced to it by the Agent. All such decisions are solely the responsibility of the University.
- 5.3 The University will provide appropriate training and guidance to Agents to support them in discharging their duties and responsibilities

6. Financial Provisions

- 6.1 In consideration of the duties undertaken by the Agent, and subject to other provisions of this clause 6, the University shall subject to the Agent performing its obligations under this Agreement, pay the Agent a commission of **XX%** of the Net Tuition Fees received by the University in respect of each Enrolled Student in the first year of their attendance at the University. A net tuition fee means the fee paid by the student to the University after any prompt payment discounts, which may include scholarship and related payments (eg Alumni discounts).
- 6.2 In the event that the agent successfully recruits **X** or more students for the academic year, the University shall subject to the Agent performing its obligations under this Agreement, pay the Agent a commission of **XX%** of the Net Tuition Fees received by the University in respect of each Enrolled Student in the first year of their attendance at the University for every additional student registered above the initial **X**. A net tuition fee means the fee paid by the student to the University after any prompt payment discounts, which may include scholarship and related payments (eg Alumni discounts).
- 6.3 In the event that the agent successfully recruits **XX** or more students for the academic year, the University shall subject to the Agent performing its obligations under this Agreement, award the agent a scholarship for the student of their choice that registers at the University.
- 6.4 Commission payments (described in 6.1 above) shall be payable in sterling by the University within 30 days of the receipt of invoice subject to the student having completed the enrolment process and having paid the tuition fees in full.
- 6.5 Commission will only be payable to the Agent in respect of students recruited to courses delivered by the University in Winchester and where those students are deemed to be resident outside the UK.
- 6.6 All sums payable under this Agreement are inclusive of any value added tax or other applicable tax and duties.
- 6.7 Commission is not payable on courses where the student is making a standard progression. Commission is payable when the student progresses from a foundation course to an undergraduate course, but not when the student progresses from year 1 or 2 of a degree onto year 2 or 3 of that degree, or when the student progresses from a Top-Up course to a Postgraduate course.

7. Confidentiality

- 7.1 The Agent shall keep strictly confidential at all times except as permitted in clause 7.3 (nor disclose to any third party) any information relating to the Educational Services or to the affairs and business of the University.
- 7.2 The agent shall not disclose information about applicants or students to any third party for any reason.
- 7.3 The Agent may disclose the confidential information:
- a) to its employees, officers, representatives, and advisors, which need to know such information for the purposes of carrying out the party's obligations under this agreement. The Agent shall ensure that its employees, officers, representatives, and advisors comply with this clause 7.
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. The University should be notified immediately of any such requirement.

8. Ownership

- 8.1 All intellectual property rights arising from carrying out the contract shall become the property of the University unless agreed in writing.

The Agent accepts that:

- a) It is only permitted to use the intellectual property for the purposes of and during the term of this agreement and only as authorised by the University in this agreement;
- b) other than to that extent, it has and shall have no right to use or to allow others to use the intellectual property or any part of it. It shall not seek to register any intellectual property on behalf of the University without the University's express consent;
- c) it shall not use any trade marks, trade names or get-up which resemble the University's trade marks, trade names or get-up and which would therefore be likely to confuse or mislead the public or any section of the public;
- d) it shall not do or omit to do, or authorise or permit any third party to do or to omit to do, anything which could invalidate or be inconsistent with the intellectual property; and
- e) it shall include a statement in any advertising material and promotional literature produced by or for it in connection with the marketing and promotion of the Educational Services as to the ownership of any relevant intellectual property used or referred to therein.

9. Duration and Termination

- 9.1 This Agreement shall commence on the date given on page 1 of this agreement, and shall continue in force for a period of 2 contractual years.
- 9.2 Without affecting any other right or remedy available to it either party shall be entitled to terminate this Agreement forthwith by giving to the other not less than 90 days' notice in writing (couriered letter, email or fax).
- 9.3 Without affecting any other right or remedy available to it The University shall be entitled to terminate this Agreement immediately by written notice to the Agent if at any time:-
- a) The Agent commits any breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within 14 days' of receipt of written

notice requiring the breach to be remedied;

- b) The Agent fails in an Academic Year to recruit an agreed number of Enrolled Students;
 - c) The Agent's company is liquidated, or otherwise becomes insolvent, or the Agent cannot pay their debts.
- 9.4 Termination of this Agreement shall be subject to any rights and remedies, obligation or liabilities either party may have under this Agreement or in law.
- 9.5 Within 30 days of termination of this Agreement, the Agent shall return to the University all promotional literature, information and other material relating to the Educational Services.
- 9.6 The Agent shall have no claim against the University for compensation for loss of agency rights, loss of goodwill or any similar loss, except in respect of commission payments, which are due to the Agent. On termination the Agent will cease to promote, market, advertise the Educational Services. The agent will cease to describe itself as an agent of the University and cease to use all trade-marks, trade names and brand names of the University

10. Notices

- 10.1 Any notice required to be served shall be in writing, and shall be served by couriered letter, email or fax to the other party.
- 10.2 Any notice sent by courier post shall be deemed to have been served 14 days after despatch. In providing service of the notice, it will be sufficient to prove that such notice was recorded by the courier.

11. Data Protection/GDPR

11.1 Subject matter of this Data Processing Agreement: This section of the Agents Contractual Agreement applies to the processing of personal data subject to EU Data Protection Law. The term EU Data Protection Law shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

The terms used in this Data Processing clause that have meanings ascribed to them in the EU Data Protection law, including but not limited to "Processing", "Personal Data", "Data Controller" and "Processor," shall carry the meanings set forth under EU Data Protection Law.

11.2 The Data Controller and the Data Processor - Subject to the provisions of the Agents Contractual Agreement, to the extent that the Data Processor's data processing activities are not adequately described in the Agents Contractual Agreement, the Data Controller (The University of Winchester) will determine the scope, purposes, and manner by which the Personal Data may be accessed or processed by the Data Processor (The Agent).

The Data Processor will process the Personal Data only as set forth in Data Controller's written instructions and no Personal Data will be processed unless explicitly instructed by the Controller.

The Data Processor will only process the Personal Data on documented instructions of the Data Controller to the extent that this is required for the provision of the Services. Should the Data Processor reasonably believe that a specific processing activity beyond the scope of the Data Controller's instructions is required to comply with a legal obligation to which the Data Processor is subject, the Data Processor shall inform the Data Controller of that legal

obligation and seek explicit authorization from the Data Controller before undertaking such processing.

The Data Processor shall never process the Personal Data in a manner inconsistent with the Data Controller's documented instructions. The Data Processor shall immediately notify the Data Controller if, in its opinion, any instruction infringes this Regulation or other Union or Member State data protection provisions. Such notification will not constitute a general obligation on the part of the Data Processor to monitor or interpret the laws applicable to the Data Controller, and such notification will not constitute legal advice to the Data Controller.

The Parties have entered into an Agreement in order to benefit from the capabilities of the Processor in securing and processing the Personal Data for the purposes set out in the Agents Contractual Agreement. The Data Processor shall be allowed to exercise its own discretion in the selection and use of such means as it considers necessary to pursue those purposes, provided that all such discretion is compatible with the requirements of this clause 11 (on Data Protection/GDPR) and this Agents Contractual Agreement and in particular the Data Controller's written instructions.

The Data Controller warrants that it has all necessary rights to provide the Personal Data to the Data Processor for the Processing to be performed in relation to the Services, and that one or more lawful bases set forth in EU Data Protection Law support the lawfulness of the Processing.

11.3 Confidentiality - without prejudice to any existing contractual arrangements between the Parties, the Data Processor shall treat all Personal Data as confidential and it shall inform all its employees, agents and/ or approved sub-processors engaged in processing the Personal Data of the confidential nature of the Personal Data. The Data Processor shall ensure that all such persons or parties have signed an appropriate confidentiality agreement, are otherwise bound to a duty of confidentiality, or are under an appropriate statutory obligation of confidentiality.

11.4 Security - Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Controller and Data Processor shall implement appropriate technical and organisational measures to ensure a level of security of the processing of Personal Data appropriate to the risk. Both the Data Controller and the Data Processor shall maintain written security policies that are fully implemented and applicable to the processing of Personal Data.

At the request of the Data Controller, the Data Processor shall demonstrate the measures it has taken pursuant to this clause 11.4 ('Security') and shall allow the Data Controller to audit and test such measures. Unless otherwise required by a Supervisory Authority of competent jurisdiction, the Data Controller shall be entitled on giving at least 30 days' notice to the Data Processor to carry out, or have carried out by a third party who has entered into a confidentiality agreement with the Data Processor, audits of the Data Processor's premises and operations as these relate to the Personal Data. The Data Processor shall cooperate with such audits carried out by or on behalf of the Data Controller and shall grant the Data Controller's auditors reasonable access to any premises and devices involved with the Processing of the Personal Data. The Data Processor shall provide the Data Controller and/or the Data Controller's auditors with access to any information relating to the Processing of the Personal Data as may be reasonably required by the Data Controller to ascertain the Data Processor's compliance with this Data Processing Agreement.

11.5 - Improvements to Security - The Parties acknowledge that security requirements are constantly changing and that effective security requires frequent evaluation and regular improvements of outdated security measures. The Data Processor will therefore evaluate the measures as implemented in accordance with clause 11.4 on an on-going basis in

order to maintain compliance with the requirements set out in clause 11.4.

11.6 - Information Obligations and Incident Management - when the Data Processor becomes aware of an incident that has a material impact on the Processing of the Personal Data that is the subject of the Services Agreement, it shall promptly notify the Data Controller about the incident, shall at all times cooperate with the Data Controller, and shall follow the Data Controller's instructions with regard to such incidents, in order to enable the Data Controller to perform a thorough investigation into the incident, to formulate a correct response, and to take suitable further steps in respect of the incident.

The Data Processor shall at all times have in place written procedures which enable it to promptly respond to the Data Controller about an incident. Where the incident is reasonably likely to require a data breach notification by the Data Controller under EU Data Protection Law, the Data Processor shall implement its written procedures in such a way that it is in a position to notify the Data Controller without undue delay after the Data Processor becomes aware of such an incident.

11.7 Contracting with Sub-Processors - the Data Processor shall not subcontract any of its Service-related activities consisting (partly) of the processing of the Personal Data or requiring Personal Data to be processed by any third party without the prior written authorisation of the Data Controller.

Notwithstanding any authorisation by the Data Controller within the meaning of the preceding paragraph, the Data Processor shall remain fully liable vis-à-vis the Data Controller for the performance of any such sub-processor that fails to fulfill its data protection obligations.

The Data Processor shall ensure that the sub-processor is bound by data protection obligations compatible with those of the Data Processor under this Data Processing Agreement, shall supervise compliance thereof, and must in particular impose on its sub-processors the obligation to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of EU Data Protection Law.

The Data Controller may request that the Data Processor audit a Third Party Sub-processor or provide confirmation that such an audit has occurred (or, where available, obtain or assist customer in obtaining a third-party audit report concerning the Third Party Sub-processor's operations) to ensure compliance with its obligations imposed by the Data Processor in conformity with this Agreement.

11.8 - Returning or Destruction of Personal Data - upon termination of this Agents Contractual Agreement, upon the Data Controller's written request, or upon fulfillment of all purposes agreed in the context of the Services whereby no further processing is required, the Data Processor shall, at the discretion of the Data Controller, either delete, destroy or return all Personal Data to the Data Controller and destroy or return any existing copies.

The Data Processor shall notify all third parties supporting its own processing of the Personal Data of the termination of the data processing under this Agents Contractual Agreement and shall ensure that all such third parties shall either destroy the Personal Data or return the Personal Data to the Data Controller, at the discretion of the Data Controller.

11.9 - Assistance to Data Controller - the Data Processor shall assist the Data Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights under the EU Data Protection Law.

Taking into account the nature of processing and the information available to the Data Processor, the Data Processor shall assist the Data Controller in ensuring compliance with

obligations pursuant to clause 11.4 (Security), as well as other Data Controller obligations under EU Data Protection Law that are relevant to the Data Processing described in this Agents Contractual Agreement, including notifications to a supervisory authority or to Data Subjects, the process of undertaking a Data Protection Impact Assessment, and with prior consultations with supervisory authorities.

The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the Data Processor's obligations and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.

11.10 - Liability and Indemnity - the Data Processor indemnifies the Data Controller and holds the Data Controller harmless against all claims, actions, third party claims, losses, damages and expenses incurred by the Data Controller arising out of a breach of the Data Processing responsibilities under clause 11 and/or the EU Data Protection Law by the Data Processor.

The Data Controller indemnifies the Data Processor and holds the Data Processor harmless against all claims, actions, third party claims, losses, damages and expenses incurred by the Data Processor arising out of a breach of the Data Processing responsibilities under clause 11 and/or the EU Data Protection Law by the Data Controller.

11.11 - Data Protection/GDPR and Duration and Termination of the Agents Contractual Agreement - termination or expiration of the Agents Contractual Agreement shall not discharge the Data Processor from its confidentiality obligations pursuant to clause 11.3. The Data Processor shall process Personal Data until the date of expiration or termination of the Agents Contractual Agreement, unless instructed otherwise by the Data Controller, or until such data is returned or destroyed on instruction of the Data Controller.

12. General

12.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or the relationship of employer and employee between the parties.

12.2 This Agreement contains the entire agreement between the parties with the respect of the subject matter and supersedes all previous agreements and understandings between the parties whether written or oral, relating to the subject matter. .

12.3 If any provision of this Agreement is held by any Court or other competent authority to be void or unenforceable in whole or in part, the other provisions within this Agreement shall continue to be valid.

12.4 This Agreement may not be modified except by a written request, which is agreed and signed by both parties. A new Agreement will be issued if any modifications are agreed in writing.

12.5 The Agent shall not assign, transfer, charge or in any way make over or purport to assign, transfer, and charge or make over this Agreement or its rights and/or obligations hereunder.

12.6 The Agent may use the services of sub-agents provided that:

- a) the terms of the Agent's arrangements with the sub-agents shall be in writing and the Agent shall, on the request of the University, produce a copy of the agreement with each sub-agent to the University;
- b) the agreement entered into by the Agent with sub-agents shall contain terms compatible with this Agreement and no less protective to the University than this Agreement;
- c) the Agent shall immediately notify the University in writing of the name and address of each sub-agent with whom an agreement is entered into and shall

provide to the University such other information as the University may reasonably request from time to time in relation to the sub-agent;

- d) the acts and/or omissions of each sub-agent shall for the purposes of this agreement be deemed to be the acts and/or omissions of the Agent.

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first above written.

SIGNED BY: -----

Director of Communications and External Relations
The University of Winchester

DATED: -----

Duly authorised for and on behalf of The University of Winchester

SIGNED BY: -----

DATED: -----

Duly authorised for and on behalf of XXXXX