

Referring Partner Agreement

Parties

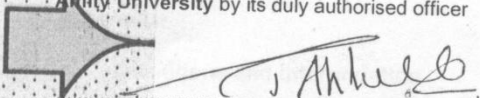
Amity University
Sector-125, Noida, India
(Referring Partner)

Deakin University
ABN 56 721 584 203
of 1 Gheringhap Street,
Geelong, Victoria, 3220
(Deakin)

Execution

**SIGN
HERE**

Signed for and on behalf of
Amity University by its duly authorised officer



Signature of authorised officer

Dr Gurinder Singh

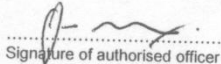
Name of authorised officer

Group Vice-Chancellor

Office held

Date: 2 December 2016

Signed for and on behalf of Deakin University
by its duly authorised officer



Signature of authorised officer

Mr John Molony

Name of authorised officer

Pro Vice-Chancellor (International)

Office held

Date: 2 December 2016



Registrar
Amity University Madhya Pradesh
Gwalior

Referring Partner Agreement

Background

- A. The parties share an understanding of the value of international educational experience to the creation of intercultural links and the expansion of knowledge.
- B. The parties wish to establish a relationship which will:
 - (a) enable the Referring Partner to assist students seeking to apply for admission into Deakin and to study in Australia; and
 - (b) recognise the value to Deakin of the Referring Partner's assistance by way of a Referral Fee.
- C. The parties agree that their relationship will be governed by the terms and conditions set out in this Agreement.

Agreement

1. Definitions and Interpretation

Definitions

1.1 In this Agreement:

Course means a CRICOS-registered program of tertiary study at Deakin leading to the conferral of a Deakin award.

CRICOS means the Commonwealth Register of Institutions and Courses for Overseas Students.

Student means a person who seeks to study a Course at Deakin (either onshore or offshore).

Interpretation

1.2 In this Agreement, unless the context requires otherwise, a reference to:

- (a) a clause or schedule, is a reference to a clause of or schedule to this Agreement;
- (b) 'this Agreement' includes any schedules and attachments to this Agreement;
- (c) a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (d) a person, includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (e) 'dollars' or '\$' is a reference to Australian dollars;
- (f) a business day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria;

- (g) any law or legislation includes any statutory modification, amendment or replacement of that law or legislation and any subordinate legislation or regulations made under that law or legislation;
 - (h) writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form;
 - (i) the word 'include' or 'including' is to be interpreted without limitation;
 - (j) the singular includes the plural and the plural includes the singular; and
 - (k) a gender includes all genders.
- 1.3 If a word or phrase is given a defined meaning, other grammatical forms of that word or phrase have a corresponding meaning.
- 1.4 Headings are for reference only and do not affect the meaning of this Agreement.
- 1.5 This Agreement may not be interpreted adversely to a party only because that party was responsible for preparing it.

2. Term

This Agreement will come into effect on the date it is executed in accordance with **clause 14.8** and will continue until it is terminated by either party in accordance with **clause 11**.

3. Referring Partner Assistance

3.1 The Referring Partner will:

- (a) assist Students to complete applications for admission to a Course at Deakin;
- (b) submit applications to Deakin on behalf of Students, in the manner advised by Deakin;
- (c) if requested by Deakin, permit Deakin to offer information sessions and deliver presentations at the Referring Partner's premises and allow Deakin to assist Students to prepare and submit applications for admission into Deakin;
- (d) provide Deakin with appropriate facilities to conduct the information sessions set out in **clause 3.1(c)**; and
- (e) refer Students to an education agent approved by Deakin, to make their application for an Australian visa to study in Australia.

3.2 Deakin undertakes to note on each application prepared pursuant to **clause 3.1(c) that the application originated with the Referring Partner.**

3.3 The parties acknowledge that Deakin is responsible for payments owing to education agents providing services as contemplated by **clause 3.1(e).**

3.4 This is a non-exclusive Agreement. Nothing in this Agreement is intended to prevent Deakin from accepting applications for admission from Students directly, through other educational institutions or through education agents acting on behalf of Students.

3.5 Deakin does not, by virtue of this Agreement, appoint the Referring Partner as its agent.

4. Deakin Obligations

- 4.1 Deakin will provide sufficient copies of application forms to enable the Referring Partner to assist Students to complete applications.
- 4.2 Deakin will provide the Referring Partner with access to up-to-date and accurate information about its Courses and relevant information on living in Australia.

5. Credit for Prior Learning

Students who have previously undertaken post-secondary education will be eligible to apply for credit for prior learning on admission into Deakin. Subject to any articulation or credit transfer agreements in place between Deakin and the Referring Partner, including those identified in Item 2 of the Schedule, Deakin does not guarantee that credit for prior learning will be granted, and all applications for credit for prior learning will be assessed pursuant to Deakin's policies and procedures in place at the time of a Student's admission into Deakin.

6. Referral Fee and Invoicing

Interpretation

- 6.1 For the purposes of this clause and the Schedule:

Census Date means the date in each Deakin trimester on which enrolments at Deakin are finalised, being also the last date by which a student may withdraw from study without being liable for the full Tuition Fee and without reference appearing on the student's academic transcript.

Referral Fee means the fee set out in Item 1 of the Schedule.

Student Commencement means a Student who:

- (a) is assisted to apply for a Course by the Referring Partner or recruited by Deakin at the Referring Partner's premises in the manner set out in clause 3.1(c);
- (b) continues to be enrolled in the Course after the relevant Census Date; and
- (c) has paid the relevant Tuition Fee for the Course to Deakin. Students must pay their Tuition Fees directly to Deakin and Deakin will not accept payment of Tuition Fees from the Referring Partner.

Tuition Fee means the fee per unit of a Course as set by Deakin.

Referral Fee

- 6.2 In consideration for the assistance provided by the Referring Partner under clause 3.1, Deakin will pay the Referring Partner the Referral Fee for each Student Commencement.
- 6.3 The Referring Partner will not be entitled to payment for a Student Commencement unless it submits the Student's application for admission in the manner set out in clause 3.1(b) and that application bears the Referring Partner's name.

Invoices

- 6.4 Invoices for payment of Referral Fees under this Agreement will be issued by Deakin and not by the Referring Partner.

- 6.5 After each Census Date Deakin will determine the Referral Fees owing to the Referring Partner and will issue an invoice to the Referring Partner electronically within 28 days of making that determination.
- 6.6 Deakin will pay the amount due under an invoice into the Referring Partner's nominated bank account no later than 60 days after the relevant Census Date.
- 6.7 On receipt of an invoice from Deakin, the Referring Partner has 14 days to advise Deakin if it believes the invoice needs amending. If Deakin is not advised within this timeframe, it will be assumed that the Referring Partner agrees with the content of the invoice.

7. Prohibitions

In providing assistance to Deakin, the Referring Partner must not:

- (a) commit Deakin to accept any Student into a Course or represent to any Student that they have been accepted into a Course;
- (b) commit Deakin to grant credit for prior learning or represent to any Student that they will be entitled to credit for prior learning other than as set out in **clause 5**;
- (c) attempt to recruit a Student who has enrolled in a course offered by another Australian registered provider before the student has completed six months of their course at that other provider;
- (d) make any representations or offer any guarantees to Students about whether they will be granted a student visa;
- (e) give false or misleading information or advice to Students about a Course or outcomes associated with a Course, including employment prospects on completion;
- (f) make any false or misleading comparisons with any other education provider or their courses;
- (g) make any inaccurate claims of association between Deakin and any other education provider;
- (h) bank any fees and charges payable to Deakin by a Student or deduct any amount from such fees and charges;
- (i) charge any fee to a Student for their application or acceptance of offer; and/or
- (j) use the name or any registered or unregistered mark of Deakin without the prior written consent of Deakin.

8. Confidentiality

- 8.1 For the purposes of **this clause**:

Confidential Information means any information existing prior to the commencement of this Agreement or created during the term of this Agreement which is designated by a party as confidential and disclosed as confidential, or information which the receiving party knows or ought to know is confidential, provided that no information will be regarded as confidential if it:

- (a) is or becomes public knowledge other than by breach of this Agreement;

- (b) is received by a party from a third party where the recipient has no reason to believe that there has been a breach of any obligation of confidentiality owed to the discloser;
 - (c) is independently developed by an employee or agent of the receiving party having no knowledge of the information the subject of the disclosure;
 - (d) is agreed in writing by the parties to no longer constitute Confidential Information.
- 8.2 The parties agree to keep confidential all Confidential Information of the other party. The parties will not, without the written consent of the party to whom Confidential Information belongs:
- (a) use the Confidential Information other than for the purposes of this Agreement; or
 - (b) directly or indirectly disclose the information to any third party.
- 8.3 A party will not be in breach of **clause 8.2** where Confidential Information is required by law or regulation to be disclosed, provided that the party required to make disclosure promptly notifies the party who has made the Confidential Information available, to allow the latter party to assert whatever exclusions or exemptions may be available to it under such law or regulation.
- 8.4 Subject to **clause 8.5**, on termination or expiry of this Agreement each party must:
- (a) at the option of the owner of any Confidential Information in a party's possession or control, return all copies of that Confidential Information to the owner or securely and permanently destroy all such copies; and
 - (b) permanently delete all such Confidential Information stored electronically.
- 8.5 A party may retain one copy of any Confidential Information where that party is required to do so in order to meet its professional or legal obligations or the party's obligations under this Agreement. Any Confidential Information retained under **this clause** remains subject to a party's obligations of confidentiality under this Agreement.
- 8.6 Each party will assume responsibility for the actions of its employees, agents and sub-contractors who have access to the Confidential Information from time to time and must ensure that they are aware of and strictly bound by the confidentiality obligations created under this Agreement.

9. Privacy

- 9.1 For the purposes of **this clause**:

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

- 9.2 Where a party is required to collect or create Personal Information in the performance of this Agreement it will comply with all applicable privacy legislation.

- 9.3 Without limiting the scope of **clause 9.2**, each party will:

- (a) only use that Personal Information for purposes directly related to the performance of this Agreement or with the consent of the individual who is the subject of the Personal Information;

- (b) protect that Personal Information from misuse, loss, and unauthorised access, modification and disclosure;
- (c) not disclose that Personal Information to any other person except to the extent required to enable performance of this Agreement, where the individual has given express consent or where required by law;
- (d) keep Personal Information it holds secure and immediately notify the other party if it becomes aware of an actual, threatened or alleged breach of any obligation concerning security, use and disclosure of Personal Information (**Breach**); and
- (e) take such action and cooperate fully with the other party to mitigate the consequences of a Breach and to investigate the Breach.

10. Notices

- 10.1 A notice, demand or consent (**notice**) given to a party under this Agreement is only effective if it is in writing and is delivered by hand or sent by prepaid post, facsimile or electronic message to the recipient's address specified in **Item 3** of the **Schedule**.
- 10.2 Subject to **clause 10.3**, a notice given for any purpose under this Agreement is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, seven (or in the case of a notice sent to another country, ten) business days after the date of posting;
 - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
 - (d) if sent by electronic message, when the sender receives an automated message confirming delivery or eight hours after the message has been sent, unless the sender has received an automated message that the electronic message was not delivered or the sender knows or should reasonably know that there is a network failure which may have resulted in non-delivery.
- 10.3 If any notice is given on a day that is not a business day or after 5.00 pm on a business day, in the place of business of the receiving party, it is to be treated as having been given at the beginning of the next business day.
- 10.4 If a party gives the other party three business days' notice of a change of its address, fax number or email address a notice is only effective if it is given to that party at the latest address, fax number or email address.

11. Termination

- 11.1 Either party may terminate this Agreement at any time by giving the other party 28 days prior written notice.
- 11.2 Deakin may terminate this Agreement at any time and with immediate effect by giving notice to the Referring Partner if the Referring Partner breaches any provision of this Agreement.
- 11.3 If this Agreement is terminated:
- (a) the Referring Partner must submit all applications from Students that it holds at the date of termination within 28 days of the date of termination;

- (b) the Referring Partner must immediately cease to use any advertising, promotional or other material supplied by Deakin and return all such material to Deakin by registered mail or a reputable international courier; and
- (c) refer all enquiries for application to Deakin received after the effective date of termination to Deakin.

11.4 The termination of this Agreement by either party does not affect any accrued rights or remedies of either party.

11.5 The provisions of clauses 7, 8, 9 and 11.3 to 11.5 will survive the termination of this Agreement.

12. Dispute Resolution

12.1 If a dispute arises between the parties concerning this Agreement the parties must undertake the procedure outlined in this clause before commencing any legal proceedings.

12.2 A party alleging a dispute must give the other party a notice in writing setting out all details of the dispute. The parties must negotiate in good faith in an attempt to resolve the dispute within 20 days of the date on which the notice is received.

12.3 Where a dispute is not resolved under **clause 12.2** the dispute must be referred to mediation. The mediator is to be selected by agreement between the parties or, failing such agreement, shall be the nominee of the Chairperson of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia.

12.4 If the dispute is not resolved within 60 days of referral to a mediator, then a party may commence legal proceedings.

12.5 Despite the existence of a dispute the parties must continue to perform their obligations under this Agreement, in so far as they do not relate to the matters in dispute.

12.6 Nothing in **this clause** prevents a party from seeking interlocutory relief.

13. Nature of Relationship

13.1 This Agreement does not create any relationship between the parties in the nature of a partnership, principal and agent, joint venture or fiduciary.

13.2 Each party agrees that its employees, students, officers, volunteers and agents will not by virtue of this Agreement be deemed to be those of the other party and must not represent themselves as such.

14. Miscellaneous

Entire Agreement

14.1 This Agreement constitutes the entire agreement between the parties as to its subject matter. It supersedes all prior understandings or agreements between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in connection with that subject matter.

Variation

14.2 This Agreement may only be altered or varied in writing signed by each of the parties.

Waiver

- 14.3 A waiver of any right under this Agreement must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach or an implied waiver of that obligation on any other occasion.
- 14.4 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

Assignments and Transfers

- 14.5 A party must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

Severability

- 14.6 Part or all of any clause of this Agreement that is illegal or unenforceable in any jurisdiction will be severed in the relevant jurisdiction and the remaining provisions of this Agreement will continue in force. The legality or enforceability of the provision in any other jurisdiction will not be affected.

Costs

- 14.7 Except as otherwise set out in this Agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

Execution of Separate Documents

- 14.8 This Agreement is properly executed when;
- (a) each party executes this document; or
 - (b) if the parties execute separate but identical documents, when those separately executed documents are exchanged between the parties, including by mail, facsimile transmission or electronically.

Governing Law

- 14.9 This Agreement is governed by the laws of the State of Victoria and the parties submit to the jurisdiction of the courts of that state.

Schedule

Item 1 – Referral Fee

Referral Fee per Student Commencement	13 % of Deakin's published annual international student Tuition Fee in the year of the Student Commencement
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Item 2 –Articulation Agreements- none in effect at the signing of agreement

Date of Agreement	Referring Partner Course	Deakin Course
N/A	N/A	N/A

Item 3 – Addresses for Service of Notices

Deakin:	Attention: Pro Vice-Chancellor (International) Deakin International Deakin University Melbourne Campus at Burwood 221 Burwood Highway Burwood, Victoria, 3125 AUSTRALIA Facsimile Number: +61 3 9244 5094 Email: director-di@deakin.edu.au CRICOS: 00113B
Referring Partner:	Attention: Group Vice Chancellor Amity University Sector-125, Noida INDIA Facsimile Number: N/A Email: gsingh@abs.amity.edu

