



TERMS & CONDITIONS

for Lead
Referral
Services

JANUARY 2020

Terms and Conditions for Lead Referral Services

These Terms and Conditions for Lead Referral Services (“Terms and Conditions”) form part of the contract between Open Universities Australia Pty Ltd (“OUA”, “we” or “us”) and each New Provider or Continuing Provider (“Provider” or “you”).

1. Definitions

Agreement means:

- a. in relation to a New Provider, the contract comprised by the Application, these Terms and Conditions and the Notice of Acceptance; and
- b. in relation to a Continuing Provider, the particulars of the Continuing Provider’s Degree and Subject Catalogue (including any pricing and availability of degrees and subjects) as agreed between the parties during the previous Catalogue Rollover, and these Terms and Conditions (as amended).

Application means an application to OUA to become a university participant on the OUA Platform.

Catalogue Rollover means the process described in clause 10a.

Catalogue Rollover Date means the last business day before 2 October each year.

Chargeable Lead means a Lead that results in an Enrolment within 12 months of the Lead being provided to the University by OUA.

Commencement Date means:

- c. in relation to a New Provider, the date specified in the Application; or
- d. in relation to a Continuing Provider, the previous Catalogue Rollover Date.

Continuing Provider means a University that has:

- e. participated in at least one Catalogue Rollover under a previous agreement with OUA;
- f. at least one subject or degree displayed on the OUA Website (by agreement with OUA) in connection with the Services as at completion of the previous Catalogue Rollover; and
- g. not given notice of termination of this Agreement or any previous agreement with OUA in relation to the Services.

Enrolment means the process by which a prospective student becomes (and remains after the relevant Census Date) enrolled directly by the University as a student undertaking a degree offered by the University.

Fee means the fee per Chargeable Lead:

- h. for a New Provider, as set out in the Application; or
- i. for a Continuing Provider, as agreed at the end of the previous Catalogue Rollover.

Lead means a prospective student’s unique contact details generated from a prospect contacting OUA (via website or phone) to enquire about a University’s advertised subject / degree.

New Provider means a University that has submitted an Application to OUA and received a Notice of Acceptance, but has not yet become a Continuing Provider.

OUA Platform means the digital marketplace operated by OUA that brings together prospective students, students, Universities and other suppliers that amongst other things, provides advertising and a transactional base for student application and / or enrolments into a University’s degree.

Provider means a New Provider or a Continuing Provider.

Services means the lead referral services of OUA whereby OUA will provide Leads (including Chargeable Leads) to the University.

Term means the period from the Commencement Date until the next Catalogue Rollover Date.

Expressions (such as “Census Date” and “EFTSL”) which are defined in the Higher Education Support Act 2003 have the same meaning when used in the Agreement.

2. Term

The Agreement commences on the Commencement Date and continues for the Term. At the end of each Term, unless either party gives written notice to the other party of its intention not to renew at least 90 days before the end of a Term, the Term will automatically renew for successive twelve (12) month periods.

3. Services

Subject to the payment of the Fees, OUA will provide the Services to the University on the terms of the Agreement.

4. Fees and Payment

- a. The University must pay to OUA a Fee in respect of each Chargeable Lead.
- b. The Fees are exclusive of all taxes, which if applicable will be borne by the University.
- c. OUA may render invoices in respect of the Fees monthly in arrears.
- d. The University must pay each invoice within 14 days of the date of the invoice.

5. Warranties

- a. OUA warrants and represents to the University that:
 - i. it is entitled to enter into the Agreement and the entry into the Agreement does not caused it to be in breach of any applicable law or any agreement with a third party;
 - ii. it will perform its obligations under the Agreement in accordance with all applicable laws and with reasonable care and skill; and
 - iii. the OUA personnel providing the Services possess and will use the skills, qualification and experience required for the Services.
- b. The University represents and warrants to OUA that it:
 - i. has full legal capacity and power to enter into and to perform its obligations under this Agreement;
 - ii. is, and will use its best endeavours to remain during the term of the Agreement, a Higher Education Provider and a Registered Higher Education Provider;
 - iii. will comply with all of its obligations as a Higher Education Provider under the Higher Education Support Act 2003.

6. Compliance and Audit

- a. Each party to the Agreement must comply with all Privacy Laws in respect of all personal information collected, used, disclosed and otherwise handled by them under or in connection with the Agreement.
- b. In this clause, "Personal Information" means personal information as defined in the Privacy Act 1988 (Cth).
- c. The University must maintain records of all Leads received from OUA, including Leads that result in an Enrolment.
- d. Within 7 days after the end of each Census Date during the term of the Agreement, the University must provide a report to OUA listing each Enrolment which resulted from a Lead.
- e. During the Term and for a period of 1 year afterwards OUA may (by itself or through a professional advisor) carry out an inspection and audit to determine whether the University has properly complied with its obligations to pay OUA a Fee in respect of each Chargeable Lead under this Agreement.

7. Confidentiality

- a. "Confidential Information", in relation to a party (Discloser), means the terms of the Agreement and all information of any nature and in any form concerning the operations, dealings, organisation, personnel, business strategies, customers, technology, intellectual property rights, trade secrets or know-how of the Discloser and/or any customer, supplier of the Discloser party, disclosed or made available to the other party (Recipient), disclosed after the date of the Agreement, but does not include information which:
 - i. is or becomes part of the public domain other than by breach of the Agreement;
 - ii. was already known to it at the time of disclosure by the Discloser;

- iii. the Recipient acquires from a source other than the Discloser.

- b. A Recipient will not, during the term of the Agreement or after, disclose the Confidential Information of the other party Discloser to any third party except:
 - i. with the Discloser's prior written consent;
 - ii. as required by law; or
 - iii. to its employees, officers, professional advisers or other agents (Agents) on a need to know basis for the purposes of the Agreement.
- c. The Recipient will ensure that Agents keep the Confidential Information confidential on the terms provided in this clause.
- d. If the Recipient becomes aware of a suspected or actual breach of this clause by the Recipient or an Agent, the Recipient will immediately notify the Discloser.
- e. The Recipient will only use the Discloser's Confidential Information for performing its obligations or exercising its rights under the Agreement.
- f. The Recipient will return or destroy (at the Discloser's direction) all Confidential Information when it is no longer required by the Recipient.
- g. The obligations of this clause survive termination of the Agreement.

8. Intellectual Property

The University grants to OUA a non-exclusive, royalty free licence for the term of the Agreement to reproduce the course information and display the trademarks of the University for the purpose of providing the Services.

9. Limitation of Liability

- a. To the extent permitted by law, OUA's liability for failure to comply with any condition, warranty or guarantee implied or applied in the Agreement by legislation is limited (at OUA's option) to the supplying of the services again or the payment of the cost of having the services supplied again.
- b. To the extent permitted by law, OUA excludes all liability (whether in contract, tort (including negligence), statute or otherwise) for any and all consequential loss.
- c. OUA's liability to the University arising in any manner related to the Agreement, for all acts or omissions occurring under or in connection with the Agreement, is limited in the aggregate to the total amount of Fees paid by the University during the previous 12 months.

10. Catalogue Rollover

- a. If the Provider wishes to renew the Agreement and continue to participate on the OUA Platform and receive the Services in the following academic year, the Provider must cooperate in the following process administered by OUA and known as "Catalogue Rollover":
 - i. The process begins in late July each year during the Term and continues until the Catalogue Rollover Date.

- ii. OUA will commence the process by inviting the Provider to update the list of subjects and degrees that are subject to the Services for the following academic year. OUA will specify the information required, the format of the information and the deadlines for submission.
 - iii. The Provider must provide updated information to OUA about its Degree and Subject Catalogue, including any changes to pricing and availability of degrees and subjects for the following academic year.
 - iv. The Provider may add or remove degrees and subjects to its Degree and Subject Catalogue during the process.
 - v. OUA may advise the Provider, by giving notice in writing at least 30 days' before the end of Catalogue Rollover, of any change to the Fees for the Services in the following academic year.
 - vi. OUA may advise the Provider, by giving notice in writing at least 3 months' before the end of Catalogue Rollover, of any variations to these Terms and Conditions which will apply to all Provider Participants on the OUA Platform after the end of Catalogue Rollover.
- b. If either party ("first party") objects to the amendments to the Agreement proposed by the other party during Catalogue Rollover, the first party may give notice in writing of the objection to the other party ("Notice of Objection") no later than 7 days before the end of Catalogue Rollover. OUA may stop providing the Services in respect of any degrees or subjects that are the subject of a Notice of Objection.
 - c. In the absence of a Notice of Objection served under clause 10b, all amendments to the Agreement proposed by the other party during Catalogue Rollover are deemed to be agreed and take effect after 5 pm on the last day of the Term.

11. Termination

Either party may immediately terminate the Agreement by notice in writing to the other party if the other party:

- a. is wound up, dissolved, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed;
- b. commits a material breach of the Agreement that is incapable of remedy; or
- c. commits a material breach of the Agreement but does not remedy the breach within 30 days of receiving written notice of the breach from the other party.

12. GST

- a. Terms used in this clause have the meaning given to them in the GST Act.
- b. All amounts stated in and payable under the Agreement do not include GST unless otherwise indicated. Where GST is payable by an entity in relation to a supply that it makes under or in connection with the Agreement, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.
- c. The amount of GST will be calculated at the prevailing GST rate.

- d. Where GST applies to any supply made under the Agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time payment for the supply is required.

13. Miscellaneous

- a. The Agreement is governed by and must be construed according to the law applying in Victoria, Australia.
- b. The Agreement may only be varied by a document signed by or on behalf of each party.
- c. Failure to exercise or enforce a right under the Agreement by a party does not operate as a waiver of that right. A waiver or consent given by a party under the Agreement is only effective if confirmed in writing by that party.
- d. Each party must promptly do all things (including executing all documents) reasonably necessary to give effect to the Agreement.
- e. The relationship between the parties created by the Agreement is that of independent contractors, and nothing in the Agreement creates any partnership, joint venture or any form of fiduciary relationship or contract of employment between the parties.
- f. No party may assign its rights under the Agreement without the prior consent of the other party.