

Student Placement Agreement



Schedule 3

General Terms

1. Defined terms

1.1 In this Agreement (unless the context otherwise requires):

"Attendance Record" means written record prepared by You showing the dates and times the Student attends You.

"Facilities" includes plant, equipment, materials, infrastructure and consumables.

"Force Majeure Event" means riot, earthquake, volcanic activity, fire, storm, operation of law or other like cause beyond the control of a party.

"Learning Plan" means the document specified by UCOL having regard to Tertiary Education Commission requirements and signed by the Student, UCOL and You.

"Office of the Chief Executive" means the Chief Executive of UCOL, a Deputy Chief Executive of UCOL, the Chief Financial Officer of UCOL, or their duly authorised delegate.

"Practicum(s) Commencement Date" means the date specified in Schedule 1 or such other date notified to You by the UAR from time to time being the date the Student(s) is expected to commence their Practicum(s).

"Practicum(s) Duration" is the length of time one Student is expected to spend carrying out the Practicum with You.

"Programme" means the Programme in Schedule 1.

"Student" means the UCOL Student or Students named in Schedule 1 and in respect of successive Students as amended and notified to You from time to time in writing by the UAR.

"UCOL Academic Representative" or "UAR" means the UCOL staff member or UCOL contractor named in Schedule 1 as amended by UCOL from time to time by notice in writing to You.

"Writing" includes post, facsimile or email.

"You / Your" means the legal entity named in Schedule 1 and includes Your employees and Your contractors.

"Your Representative" means the person named in Schedule 1 as amended by You from time to time by You by notice in writing to UCOL.

"Your Activities" means the business or other undertaking of You and includes any premises or other place in which You undertake your business or other undertaking.

1.2 A reference to a **"clause"** is a reference to a clause in this Agreement.

1.3 Reference to any **legislation** or to any provision of any legislation shall include any modification or re-enactment of that legislation or any legislative provision substituted for it, and all regulations and statutory instruments issued under, such legislation or provision.

2. **Liability**

2.1 You indemnify UCOL to the maximum extent permitted by law for any liability or loss incurred, or which may be incurred, by UCOL in respect of any action or any claim or any cost or any expense arising directly or indirectly out of any act or omission of You.

2.2 To the maximum extent permitted by law, any and all liability UCOL may have to You (including any liability that UCOL may have for any act or omission of the Student) howsoever arising (whether in contract, quasi-contract, tort, statute, equity or otherwise) is excluded.

2.3 To the extent that any liability UCOL may have to You is incapable of exclusion by contract, but may be limited You acknowledge that UCOL's maximum aggregate liability is limited to \$100,000 however that liability arises.

3. **Facilities and Services**

3.1 Unless otherwise stated in Schedule 1, You will, at Your cost, provide all Facilities and Your staff required for the Practicum(s).

4. **Assignment and Variations**

4.1 You may not assign or otherwise deal with Your rights and obligations under this Agreement without the prior written consent of UCOL (which will not be unreasonably withheld).

4.2 This Agreement may be varied by signed agreement between You and UCOL. Except as expressly stated in this Agreement, no variation to this Agreement will be legally enforceable unless it is in writing and signed by You and the Office of the Chief Executive.

5. **Health and Safety**

5.1 Without derogation from any other provision in this Agreement You will comply with the Building Act 2004, Vulnerable Children Act 2014 and the Hazardous Substances and New Organisms Act 1996, during the Practicum(s) irrespective of the location.

5.2 You will comply with all of Your duties under the Health and Safety at Work Act 2015 ("HSWA") in relation to;

(a) The Students, when those Students are attending the Practicum; and

(b) The UAR and UCOL staff, when either of them is attending Your premises and anywhere else You undertake Your Activities,

including (without limitation) Your duty under Section 34 of the HSWA to, as far as is reasonably practicable, consult, cooperate and coordinate health and safety activities in relation to all such Students and the UAR.

5.3 You agree to provide UCOL with all information UCOL requests in respect of health and safety matters.

6. **Vulnerable Children Act 2014 ("VCA")**

6.1 If any of the Student(s) undertaking the Practicum(s) are under 17 years old You agree to comply with any additional requirements advised to You by the UAR in respect of Your staff.

- 6.2 If You have children's workers providing regulated services and You are a specified organisation as defined in the VCA then You agree that You will give written notice to UCOL that You have children's workers providing a regulated service in a specified organisation.
- 6.3 UCOL agrees that where it has received notice from You pursuant to 6.2 UCOL will conduct a safety check in accordance with the VCA on Your behalf for every Student before they are placed with You and UCOL will also conduct a safety check at the UAR before they have access to Your premises for the purposes of this Agreement.
- 6.4 If after a safety check it is UCOL's view:
- (a) that the Student or UAR will not pose an undue risk to children's safety, then the Student will be placed with You and the UAR shall have access to Your premises in accordance with this Agreement; OR
 - (b) that the Student or UAR does not pose an undue risk to children's safety, but the safety check/risk assessment has raised some concern, then UCOL will provide You with the relevant information and You make an informed decision about whether or not to allow the placement of the Student concerned and/or access of the UAR to Your premises;
 - (c) that the Student or UAR poses an undue risk to children's safety, then the Student will not be placed with You and the UAR will not have access to Your services and/or premises under this Agreement.
- 6.5 Where the VCA applies:
- (a) before any Student placement first starts UCOL will give You the full name of the Student that will be placed with You and a scanned photograph;
 - (b) before the UAR has access to Your premises under this Agreement UCOL will provide You with the person's full name and a scanned photograph identification.
- 6.6 You agree to require each Student and the UAR to produce one form of photograph identification the first time the Student presents for practicum or UAR seeks access, so that You can ensure the person presenting is the same person in respect of whom UCOL undertook a safety check.

7. Termination

- 7.1 Notwithstanding the Term either party may terminate this Agreement without cause on 3 months written notice to the other.
- 7.2 Termination of this Agreement is without prejudice to either party's rights against the other howsoever accrued before termination.
- 7.3 Termination or expiry of this Agreement does not affect those clauses that are implicitly or expressly intended to survive termination or expiry.
- 7.4 You will promptly on termination or expiration of this Agreement or at UCOL's request at any other time, return to UCOL all UCOL property (if any).

8. Dispute Resolution

- 8.1 Subject to clauses 8.3 and 8.4, the parties will attempt to resolve disputes informally between them by negotiation. Unless the dispute is resolved informally the same shall be submitted to arbitration of one arbitrator who shall conduct the proceedings in accordance with the Arbitration Act 1996 (including all amendments and substitution Acts). If the parties are unable to agree on the arbitrator an arbitrator shall be appointed by the President of the New Zealand Law Society which appointment shall be binding and not subject to appeal.

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- 8.2 The parties also agree that, except as set out in clause 8.3, any dispute between them not arising out of or in connection with this Agreement shall also follow the dispute resolution process in clause 8.1.
- 8.3 Nothing in clauses 8.1 or 8.2 precludes the parties from applying to the High Court for urgent relief.
- 8.4 Notwithstanding anything to the contrary in clauses 8.1 and 8.2 and if informal negotiations are unsuccessful UCOL may elect, by notice in writing to You, at any time before an arbitrator is appointed, require that the dispute be settled by a court of competent jurisdiction.

9. **Notices**

- 9.1 Any notice given under this Agreement that is required to be given in writing may be posted or sent by facsimile or email at the relevant address, facsimile number or email address specified in Schedule 1 which may be amended from time to time by written notice. This clause survives termination of this Agreement.

10. **Entire Agreement**

- 10.1 Except as expressly provided in this Agreement, each party to this Agreement agrees that it has entered into this Agreement in reliance on its own skill and judgement and not in reliance on the skill and judgement of any other party to this Agreement.
- 10.2 This Agreement constitutes the entire agreement between the parties in respect of the Practicums and contains all of the representations, undertakings, warranties, covenants and agreements of the parties except to the extent that:
- (a) provisions in Schedule 1 are varied by notice as provided for in this Agreement;
 - (b) UCOL provides details of assessment requirements and/or specific learning outcomes to You;
 - (c) A Learning Plan or similar is signed under this Agreement.
- 10.3 This Agreement supersedes all prior negotiations, contracts, arrangements and understandings in respect of the Practicum.
- 10.4 This Agreement relates to Practicums. If You are to provide other services to UCOL then they must be the subject of a separate signed written agreement.

11. **Partial Invalidity and Non-waiver**

- 11.1 If any clause(s) in this Agreement are found by any court or arbitrator to be void, invalid, illegal or otherwise not binding on the parties then such clause(s) shall be severed from this Agreement.

12. **Force Majeure**

- 12.1 If any party to this Agreement cannot perform its obligations under this Agreement by reason of any Force Majeure Event, that party shall give written notice specifying the Force Majeure Event to the other parties to this Agreement, and then that party shall be released from its obligations under this Agreement if and to the extent that such party is prevented or delayed from performing its obligations by reason of that Force Majeure Event but without prejudice to any pre-existing claim or pre-existing liability in respect of this Agreement.
- 12.2 If any Force Majeure Event subsists for more than seven days UCOL may terminate this Agreement summarily by written notice.

13. **Authority**

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13.1 This Agreement or any waiver or any variation is not binding on UCOL until signed by the Office of the Chief Executive.

13.2 Whoever is signing this Agreement on behalf of You personally undertake to UCOL that they have the authority to bind You.

14. **Governing Law**

14.1 This Agreement is governed by New Zealand law in every particular including formation and interpretation and shall be deemed to have been made in New Zealand. The parties hereby submit exclusively to New Zealand jurisdiction except that nothing in this clause prevents UCOL from enforcing a decision by a Court or Arbitrator outside New Zealand.

15. **Independent Advice**

15.1 You acknowledge that prior to entering into this Agreement You were provided with sufficient opportunity to seek and obtain independent legal advice.

16. **Counterparts**

16.1 This Agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by facsimile or email.