

Student Placement Agreement General Terms



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 Limited having regard to Tertiary Education Commission requirements and signed by the Student, UCOL Limited and You.

“Office of the Chief Executive” means the Chief Executive of UCOL Limited, 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 Limited 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 Limited” means a Crown entity subsidiary of the New Zealand Institute of Skills and Technology (“NZIST”), the individual, firm or body corporate named in the Agreement and includes their executors, administrators, legal successors and permitted assigns.

“UCOL Limited Academic Representative” or **“UAR”** means the UCOL Limited staff member or UCOL Limited contractor named in Schedule 1 as amended by UCOL Limited 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 Limited.

“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 Limited to the maximum extent permitted by law for any liability or loss incurred, or which may be incurred, by UCOL Limited 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 Limited may have to You (including any liability that UCOL Limited 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 Limited may have to You is incapable of exclusion by contract, but may be limited You acknowledge that UCOL Limited’s maximum aggregate liability is limited to \$100,000 however that liability arises.

3. **Facilities**

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. **Health and Safety**

4.1 You will comply, at Your cost, 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 Limited staff, when attending Your premises and anywhere else You undertake Your Activities.

4.2 You acknowledge that You are responsible for ensuring the health and safety of Students and UCOL Limited Staff when UCOL Limited Staff, UAR, or those Students have access under this Agreement to Your premises or at another workplace controlled by You.

4.3 You will provide all relevant health and safety information to UCOL Limited Staff and Students as required under the HSWA, including, but not limited to:

- (a) Learning experience - specific health and safety information;

- (b) Instruction on the Your premises health and safety policy and rules;
 - (c) Hazard/risk identification and management relating to Your premises including environment, tasks, processes, or any hazards that may arise out of Student clinical learning and/or UCOL Limited Staff activities;
 - (d) Accident and reporting management for incidents (including near misses) that may occur while at Your premises;
 - (e) Emergency procedure management, including but not limited to fire evacuation and accidents and any other identified emergency situations that may arise at Your premises and/or clinical learning experience; and
 - (f) The name and contact details of Your Health and Safety Manager to whom health and safety concerns can be directed.
- 4.4 If each of the parties has a duty in relation to the same matter under the HSWA, then each party will comply with all of their respective duties under the HSWA including (without limitation) their respective duties under Section 34 of the HSWA to, as far as is reasonably practicable, consult, cooperate and coordinate activities with each other.
- 4.5 You will promptly provide UCOL Limited with all information that UCOL Limited requests in respect of health and safety matters.
5. **Children's Act 2014**
- 5.1 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 You and Your staff.
- 5.2 If You have children's workers providing regulated services and You are a specified organisation as defined in the Children's Act 2014 then You agree that You will give written notice to UCOL Limited that You have children's workers providing a regulated service in a specified organisation.
- 5.3 UCOL Limited agrees that where it has received notice from You pursuant to 5.2 UCOL Limited will conduct a safety check in accordance with the Children's Act 2014 on Your behalf for every Student before they are placed with You and UCOL Limited will also conduct a safety check of the UAR before they have access to Your premises for the purposes of this Agreement.
- 5.4 If after a safety check it is UCOL Limited's view:
- (a) that the Student and the 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;
 - (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 Limited 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 concerned 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.

5.5 Where the Children's Act 2014 applies:

- (a) before any Student placement first starts UCOL Limited 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 Limited will provide You with the person's full name and a scanned photograph identification.

5.6 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 Limited undertook a safety check.

6. **Termination**

6.1 Notwithstanding the Term either party may terminate this Agreement without cause on 3 months written notice to the other.

6.2 Termination of this Agreement is without prejudice to either party's rights against the other howsoever accrued before termination.

6.3 Termination or expiry of this Agreement does not affect those clauses that are implicitly or expressly intended to survive termination or expiry.

6.4 You will promptly on termination or expiration of this Agreement and at UCOL Limited's request at any other time, return to UCOL Limited all UCOL Limited property (if any).

7. **Dispute Resolution**

7.1 Subject to clauses 7.3 and 7.4, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Act 1996 for the time being in force.

7.2 The seat of the arbitration shall be Palmerston North, New Zealand. The Tribunal shall consist of one arbitrator. If we 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. The parties agree that the provisions of Schedule 2 of the Arbitration Act 1996 shall not apply. The language of the arbitration shall be English.

7.3 Nothing in clauses 7.1 and 7.2 precludes either party from applying to the High Court for urgent relief.

7.4 Despite clauses 7.1 and 7.2 UCOL Limited may elect, by notice in writing to You, at any time before an Arbitrator is appointed, that the dispute be settled by a Court of competent jurisdiction in New Zealand.

8. **Notices**

8.1 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.

9. **Self-Reliance**

9.1 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. **Unavoidable Delays**

10.1 If any party to this Agreement cannot perform its obligations under this Agreement by reason of a Force Majeure Event, that party shall give written notice specifying the Force Majeure Event (“force majeure notice”) to the other party, and then both parties shall be released from their obligations under this Agreement while the Force Majeure Event continues, but without prejudice to any pre-existing claim or pre-existing liability in respect of this Agreement.

10.2 If any Force Majeure Event subsists for more than 20 days either party may terminate this Agreement summarily by written notice to the other.

11. **Governing Law**

11.1 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 to non-exclusive New Zealand jurisdiction.

12. **General**

12.1 Except as expressly stated in this Agreement, no amendment to this Agreement will be effective unless it is in writing and signed by the parties.

12.2 You may not assign, transfer or subcontract any of Your rights or obligations under this Agreement without the prior written consent of UCOL Limited which will not be unreasonably withheld or delayed.

12.3 UCOL Limited’s rights or obligations under this Contract may be assigned or transferred without the other Party’s consent where the Education and Training Act 2020 provides for such assignment or transfer, including but not limited to the following circumstances:

- a) upon the dissolution of UCOL Limited by resolution of NZIST’s council and transfer of some or all of UCOL Limited’s rights, assets, or liabilities to another Crown entity subsidiary of NZIST; or
- b) upon the dissolution of UCOL Limited and vesting of all of UCOL Limited’s rights, assets, and liabilities in NZIST.

Commercial in Confidence

- 12.4 No failure or delay by a party to exercise any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude the further exercise of that right. No waiver will be effective unless in writing and signed by the relevant party.
- 12.5 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision(s), which will be deemed deleted.
- 12.6 This Agreement contains all of the terms, representations and warranties made between the parties on the subject matter and supersedes all prior discussions and agreements on the subject matter.
- 12.7 Nothing in clause 12.6 relieves either of us from our obligations to each other which have not been fulfilled or which apply after termination in respect of any prior written signed agreement between us.
- 12.8 Pursuant to Section 13 of the Contract and Commercial Law Act 2017 this Agreement does not create an obligation enforceable by any person except the parties.
- 12.9 This Agreement relates to Practicums. If You are to provide other services to UCOL Limited then they must be the subject of a separate signed written agreement between us.
- 12.10 You warrant that before entering into this Agreement You obtained independent legal advice.
- 12.11 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.