

Professional Experience Agreement

The Crown in right of the State of New South Wales acting through the Department of Education
ABN 40 300 173 822

[Insert University full name]
ABN [00 000 000 000]

Agreement Details

Parties	The Crown in right of the State of New South Wales acting through the Department of Education (ABN 40 300 173 822) (Department)	
	and [Insert name of University] (ABN [insert]) of [insert registered address] (University).	
Background to Agreement	<p>A. Professional Experience is a critical aspect of initial teacher education and provides a crucial opportunity for initial teacher education providers (ITEPs) and schools to work together to share knowledge, expertise and passion for teaching in order to prepare the next generation of teachers. This experience should expose Pre-service Teachers to a range of schools and make them aware of the opportunities, challenges and realities of classrooms and the diversity that exists in NSW public schools.</p> <p>B. Implementing high quality Professional Experience is a key commitment for the Department.</p> <p>C. The Department wishes to enter into professional experience agreements, underpinned by the Policy or AITSL Professional Experience Participant Roles and Responsibilities, with ITEPs to clearly articulate how schools, the Department and the ITEPs will cooperate to provide high quality Professional Experience in NSW public schools.</p> <p>D. ITEPs should refer to the relevant policies as set out in the Terms and Conditions, based on the accreditation bodies for their ITE programs. For ITE programs accredited by NESA, ITEPs should refer to NESA policies. For ITE programs not accredited by NESA, ITEPs should refer to AITSL policies.</p> <p>E. A key function of the professional experience agreements is to provide better alignment of the provision of Professional Experience places to foreseeable demand for teachers in different learning areas and stages of schooling.</p> <p>F. The University is an ITEP whose students undertake supervised Professional Experience as part of an ITE Program.</p> <p>G. The Department has agreed to provide Professional Experience placements for Pre-service Teachers enrolled at the University on the terms and conditions set out in this Agreement.</p> <p>H. This Agreement applies to Professional Experience placements in NSW public schools for Pre-service Teachers undertaking ITE Programs at the University.</p>	
Commencement Date	The date on which the last Party signed this Agreement.	
Term	The Term continues until 31 December 2027.	
Insurance	<i>Professional Indemnity:</i>	\$10,000,000 per claim with one automatic reinstatement.
	<i>Public Liability:</i>	\$20,000,000 per claim and in the aggregate.

Workers' compensation: As required by law, including the law of New South Wales.

Personal Accident: As required to cover university students who are not employees or workers for the purpose of workers' compensation legislation.

Department division	<i>Division:</i> School Workforce, People Group
	<i>Address:</i> 105 Phillip Street, Parramatta NSW 2150
Department Agreement Liaison Officer	Kylie Campbell, Acting Executive Director, School Workforce
	0472834644
	kylie.campbell33@det.nsw.edu.au
University Agreement Liaison Officer	[Insert name and title of University Agreement Liaison Officer]
	[Insert phone number]
	[Insert email address]

Signing Page

By executing this Agreement, the Parties acknowledge that they have read, and accept and agree to be bound by, the Terms and Conditions attached below.

Executed by the Parties as an agreement.

Signed for and on behalf of the **Crown in right)**
of the State of New South Wales acting)
through the **Department of Education** by its)
duly authorised delegate but not so as to incur
personal liability in the presence of:

Signature of witness

Signature of delegate

Full name of witness

Full name and title of delegate

Date

By entering into this Agreement, the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of **[insert University name]** (ABN **[insert]**) of **[insert address]**.

Signed for and on behalf of the **[Insert)**
University name] by its authorised signatory in)
the presence of:)

Signature of witness

Signature of authorised signatory

Full name of witness

Full name and title of authorised signatory

Date

Terms and Conditions

The Parties agree:

1. Definitions and interpretation

1.1 In this Agreement:

Agreement means this agreement, including the Agreement Details, these Terms and Conditions and any schedules or attachments.

Agreement Details means the section of this Agreement headed 'Agreement Details'.

Agreement Liaison Officer means, in relation to the relevant Party, the person specified in the Agreement Details as the Agreement Liaison Officer for that Party (or any replacement person notified in writing to the other Party from time to time).

AITSL means the Australian Institute of Teaching and School Leadership.

AITSL Accreditation Standards means the Accreditation of Initial Teacher Education Programs in Australia: Standards and Procedures as published by AITSL and updated from time to time.

AITSL Professional Experience Guidelines means the AITSL Professional Experience Guidelines as published by AITSL and update from time to time.

AITSL Professional Experience Participant Roles and Responsibilities means the AITSL Professional Experience Participant Roles and Responsibilities as published by AITSL and updated from time to time.

AITSL Professional Teacher Standards means the Australian Professional Standards for Teachers as published by AITSL and updated from time to time.

Business Day means a day that is not a Saturday, Sunday or any other day which is a gazetted public holiday in NSW.

Child Protection Laws means:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Child Protection (Working with Children) Regulation 2013*;
- (c) *Children (Education and Care Services) National Law* (NSW);
- (d) *Children and Young Persons (Care and Protection) Act 1998* (NSW); and
- (e) any other applicable legislation with similar objectives concerning child protection.

Classroom means a physical environment where learning takes place, including classrooms in schools, rooms in early childhood education and care services, and other areas where teaching and learning occurs.

Commencement Date means the commencement date of this Agreement as set out in the Agreement Details.

Commissioner means the relevant 'Information Commissioner' or 'Privacy Commissioner' (or similar authorities) under applicable laws.

Confidential Information means, in relation to a Party, all information related to or connected with that Party and its affairs, including IP Rights, financial information, the existence or terms of any contract (including this Agreement), Personal Information and any other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible, or received before or after the date of this Agreement), including (in the case of the Department) the Department Data and Department Materials, but not including any information that:

- (a) is in the public domain other than as a result of a breach of any obligation of confidentiality (for clarity, a combination of information will not be taken to be in the public domain merely because it contains some information which is in the public domain); or
- (b) the Recipient independently knew other than as a result of a breach of any obligation of confidentiality.

Consequential Loss means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach.

Department Data means all data and information relating to the operations, facilities, customers, students, teachers, clients, Personnel, assets and programmes of the Department in whatever form that information may exist and whether collected, entered into, stored in, generated by or processed as part of the performance of the Agreement.

Department Material means any material which is owned or licensed by the Department, and provided or made available by the Department to the University under this Agreement, including Department Data, and any development, modification, enhancement, improvement or adaptation of such materials.

Department Policies means the Department's policies notified to the University by the Department from time to time.

Discloser means the relevant Party which discloses, or makes available, its Confidential Information.

Eligible Data Breach has the meaning given to the term in the Privacy Laws.

Health Information has the meaning contained in the *Health Records and Information Privacy Act 2002* (NSW).

Intellectual Property Rights or IP Rights includes all rights anywhere in the world in relation to copyright, inventions, plant varieties, trademarks, designs, patents and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including trade secrets and know-how (whether registered or unregistered, and including applications for any of the foregoing).

ITE Program means Initial Teacher Education Program, which is an entry level teaching qualification completed at the undergraduate or postgraduate level that is accredited by

- NESA through meeting the requirements set out in the NESA Accreditation Standards, or

- AITSL through meeting the requirements set out in the AITSL Accreditation Standards

ITEP means Initial Teacher Education Provider, which is an educational institution that offers one or more ITE Programs.

Loss includes claims, actions, proceedings, losses, damages, liabilities, costs and expenses (including legal expenses on a full indemnity basis).

Materials means all property, materials, documents, information and items in whatever form, and includes equipment, hardware, computer software, concepts, approaches, tools, methodologies, processes, know-how, data, documentation, manuals and anything else which is the subject matter of IP Rights.

NESA means the NSW Education Standards Authority, which is responsible for approving ITE Programs for NSW.

NESA Accreditation Standards means the Accreditation of Initial Teacher Education Programs in NSW: Policy and Procedures as published by NESA and updated from time to time

Party means either of the Department or the University (and **Parties** means both of them).

Personal Information has the meaning given to the term in the Privacy Laws.

Personnel means a Party's officers, employees, agents, contractors and subcontractors (provided that neither Party is the Personnel of the other Party).

Policy means the Professional Experience in Initial Teacher Education Policy, its composite parts and accompanying documents, which outlines the key commitments, principles, practices and responsibilities of all parties in relation to Professional Experience, as published by NESA and updated from time to time.

Pre-service Teacher means a student enrolled in an ITE Program at the University.

Pre-service Teacher Registration Form means the Pre-service Teacher Registration Form published by the Department, as updated from time to time.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), the *Health Records and Information Privacy Act 2002* (NSW), and any other applicable legislation with similar objectives.

Professional Experience means teaching practice, practicum (one of a number of supervised practical teaching experiences) and internship (a final teaching practice without in-class supervision) in a school or other setting for educational purposes, as defined in the Policy or AITSL Accreditation Standards.

Professional Experience Coordinator means a person appointed by a school or other educational site to coordinate the range of Professional Experience placements occurring at that site.

Professional Experience Internship means a final, optional supervised component of the prescribed pre-service Professional Experience days in an ITE Program in which Pre-service Teachers receive program supervision but do not require direct, in-class supervision.

Recipient means the relevant Party which receives the Discloser's Confidential Information.

Supervising Teacher means a registered teacher responsible for coaching, providing feedback to and assessing Pre-service Teachers during work-based learning in Professional Experience sites.

Teaching Performance Assessment means the tool used by the University to assess the practical skills and knowledge of Pre-service Teachers.

Term means the term of this Agreement as set out in the Agreement Details.

Terms and Conditions means the terms and conditions set out in this section of the Agreement headed 'Terms and Conditions'.

WH&S Act means the *Work Health and Safety Act 2011* (NSW) and any other applicable legislation with similar objectives.

WH&S Regulation means the *Work Health and Safety Regulation 2017* (NSW) and any other applicable legislation with similar objectives.

WH&S Law means the WH&S Act, the WH&S Regulation, and any other codes of practice and other instruments under those Acts and Regulations.

Working with Children Check Clearance has the meaning given to the term in the *Child Protection (Working with Children) Act 2012* (NSW).

1.2 In this Agreement, unless expressed to the contrary:

- 1.2.1 words denoting the singular include the plural and vice versa;
- 1.2.2 the word 'includes' in any form is not a word of limitation;
- 1.2.3 no rule of construction applies to the disadvantage of the Party preparing this Agreement on the basis that it prepared or put forward this Agreement or a part of it;
- 1.2.4 a reference to any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 1.2.5 a reference to writing includes writing in digital form;
- 1.2.6 a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 1.2.7 a reference to a person includes a firm, partnership, joint venture, association, corporation or other body corporate and the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 1.2.8 if there is any conflict or inconsistency between the provisions of this Agreement, the provisions listed earlier below prevail to the extent of such conflict or inconsistency, and the provisions or documents listed later below are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency:
 - (a) the Agreement Details;
 - (b) these Terms and Conditions;

- (c) the Schedules; and
- (d) any other document attached to this Agreement or incorporated by reference.

2. Term

- 2.1 This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier in accordance with clause 18 or extended in accordance with clause 2.3.
- 2.2 Notwithstanding the Commencement Date, Professional Experience placements may commence no earlier than 31 January 2025.
- 2.3 No later than 90 days prior to expiry of the Term, the Parties may agree in writing to extend the Agreement for such period as agreed between the Parties.

3. Management of this Agreement

- 3.1 Each party will appoint a Agreement Liaison Officer, who will oversee all aspects of this Agreement and serve as a primary point of contact between the Parties.
- 3.2 Either Party may change its Agreement Liaison Officer by providing written notice of such change to the other Party.
- 3.3 Through their Agreement Liaison Officers, the Department and the University will liaise with each other regularly to:
 - 3.3.1 ensure the terms of this Agreement operate efficiently and in the best interest of both parties; and
 - 3.3.2 review and evaluate the effectiveness of the Professional Experience.
- 3.4 The University's Agreement Liaison Officer will act as a coordinator between the Department and the Pre-service Teachers.

4. Professional Experience Placements

- 4.1 The University warrants that each Pre-service Teacher is and remains enrolled as a student at the University for the duration of each Pre-service Teacher's Professional Experience and in that capacity is covered under the insurance required by clause 17 as a student of the University.
- 4.2 The number of Pre-service Teachers undertaking Professional Experience at a NSW public school will vary according to the size of the school and the needs of the University. The number of Pre-service Teachers that may be placed with a NSW public school will be determined by the school, on behalf of the Department, in its absolute discretion.
- 4.3 The Parties agree that Pre-service Teachers will not be employed by the Department for the purpose of this Agreement. This clause does not prevent the Department from independently entering into a scholarship agreement with Pre-service Teachers or separate agreements of

paid employment or remuneration with Pre-service Teachers for the provision of work or services not associated with their Professional Experience.

4.4 The University acknowledges and agrees that:

- 4.4.1 Professional Experience is and remains subject to the Department's overriding duty of care to students;
- 4.4.2 a Pre-service Teacher's access to students is and remains subject to the discretion of the Department;
- 4.4.3 a Pre-service Teacher's activities and supervision during Professional Experience will be commensurate with their stage of progress in their ITE Program; and
- 4.4.4 the Department has no obligation to provide residential accommodation, meals or other facilities for Pre-service Teachers.

5. Shared Responsibilities

5.1 The Department, on behalf of and in conjunction with NSW public schools, and the University agree to:

- 5.1.1 in regards to ITE programs accredited by NESA, implement the NESA Professional Experience in Initial Teacher Education Policy and adhere to the best practices set out in the Policy
- 5.1.2 in regards to ITE programs not accredited by NESA, implement the AITSL Professional Experience Guidelines;
- 5.1.3 carry out its responsibilities under this Agreement in a diligent and professional manner;
- 5.1.4 give priority, for the Term, to the selection and matching of Pre-service Teachers for Professional Experience placements based on the Department's areas of workforce need, including:
 - (a) mathematics;
 - (b) physics;
 - (c) chemistry;
 - (d) technology and applied studies (particularly, industrial technology, engineering science and combinations such as food technology and textiles technology);
 - (e) special education;
 - (f) rural, regional and remote education;
 - (g) education in Western and South Western Sydney;
 - (h) scholarship / internship / cadetship holders, including Pre-service Teachers undertaking additional studies in Aboriginal education; and
 - (i) Aboriginal and Torres Strait Islander Teachers;

- 5.1.5 use best endeavours to ensure that Personnel supervising the Professional Experience are suitably skilled and have expertise in making sound judgements about whether Pre-service Teachers have achieved the AITSL Professional Teacher Standards at a 'Graduate' level;
- 5.1.6 adopt a common reporting template for Professional Experience placements;
- 5.1.7 work together to develop standardised communications and Professional Experience documentation common to all ITEPs and schools, including a professional experience handbook and a common reporting template for all Professional Experience;
- 5.1.8 comply with the protocols for seeking Professional Experience placements as prescribed by Schedule 1.

6. Responsibilities of the University

- 6.1 Without limiting clause 5, the University agrees to:
 - 6.1.1 follow the protocols in Schedule 1 and ensure that Pre-service Teachers do not make direct, individual contact with the Department or any school affiliated with the Department in connection with this Agreement;
 - 6.1.2 assign appropriately skilled tertiary supervisors to provide instruction, mentoring and feedback to Pre-service Teachers during Professional Experience. These supervisors must undertake relevant professional learning to obtain and maintain detailed knowledge of the AITSL Professional Teacher Standards at a 'Graduate' level and relevant assessment processes, as well as current working knowledge of NSW public schools, systems and requirements;
 - 6.1.3 provide the Department with such information about each Pre-service Teacher's level of knowledge and skill, learning objectives, requirements and relevant assessment criteria as required for effective management of Professional Experience placements;
 - 6.1.4 notify the Department of any changes to a Pre-service Teacher's enrolment at the University or if a Pre-service Teacher will be absent from a Professional Experience placement for any reason as soon as it becomes aware of any such changes or absences;
 - 6.1.5 at all times remain responsible for the Pre-service Teacher's education and be the authorising body in relation to the Pre-service Teacher's assessment and discipline;
 - 6.1.6 investigate complaints arising from the behaviour of Pre-service Teachers and University Personnel during Professional Experience and work with schools to manage Pre-service Teachers who are at risk of not satisfactorily completing formal teaching practice;
 - 6.1.7 ensure that Pre-service Teachers complete the Department's mandatory pre-requisites for Professional Experience placements, as notified by the Department from time to time, including but not limited to completing the Pre-service Teacher Registration form, training and documentation, prior to commencement of a Professional Experience placement. Pre-service Teachers cannot commence placements until all mandatory pre-requisites are completed;

- 6.1.8 ensure that Pre-service Teachers undertaking a Professional Experience Internship have satisfactorily completed at least 75% of the prescribed supervised days of professional experience under close, in-class supervision, have been assessed as meeting or exceeding all of the AITSL Professional Teacher Standards at a 'Graduate' level, and have a valid Working With Children Check Clearance;
- 6.1.9 report annual data to the Department, including:
- (a) the total number of Professional Experience placements;
 - (b) a list of schools where Pre-service Teachers have been placed and details of the number of placements in each school, including names of Supervising Teachers; and
 - (c) a description of the type, state and duration of each Professional Experience placement, detailing the teaching area and stage of progress through the course for each Pre-service Teacher;
- 6.1.10 consult with the Department and seek advice on potential workload implications for Supervising Teachers before introducing any new initiative to be undertaken during Professional Experience or in conjunction with schools, such as a Teaching Performance Assessment;
- 6.1.11 ensure that any Pre-service Teacher who is supported by the University to apply for a waiver of Appendix B of the NESA Professional Experience Policy is enrolled in a NESA- accredited ITE program, has demonstrated prior successful Professional Experience and is of good academic standing;
- 6.1.12 communicate clearly to Pre-service Teachers enrolled in non-NESA- accredited ITE Programs that they are not eligible to apply for a Waiver of Appendix B of the NESA Professional Experience Policy;
- 6.1.13 pay Supervising Teachers and Professional Experience Coordinators directly, consistent with the payment arrangement set out in the Teacher Education Professional Experience Supervision Agreement between the NSW Council of Deans of Education, the NSW Teachers Federation and the NSW ACT Independent Education Union;
- 6.1.14 ensure that Pre-service Teachers and University Personnel:
- (a) comply with:
 - (i) the regulations, Department Policies, guidelines, procedures and any reasonable directions of the Department;
 - (ii) all applicable laws and regulatory requirements, including but not limited to Child Protection Laws, Privacy Laws and WH&S Law; and
 - (iii) the terms of this Agreement, and
 - (b) upon the conclusion of a Professional Experience placement:
 - (i) stop using Department Personal Information, Department Health Information and Department Confidential Information;

- (ii) return and/or destroy (as directed by the Department) any Department Personal Information, Department Health Information or Department Confidential Information in its possession or control; and
- (iii) return any work-related resources provided by the Department in the course of Professional Experience.

7. Responsibilities of the Department

7.1 Without limiting clause 5, the Department agrees to:

- 7.1.1 use best endeavours to provide Pre-service Teachers with Professional Experience that meets the expectations and focus of the specified placement, as outlined in documentation from the University and in accordance with this Agreement and all applicable laws;
- 7.1.2 use best endeavours to ensure that NSW public schools provide quality and consistent Professional Experience placements for Pre-service Teachers, especially in the areas of workplace need identified in clause 5.1.4;
- 7.1.3 assign appropriately skilled Supervising Teachers, who have:
 - (a) at least 'Proficient Teacher' level accreditation according to the AITSL Professional Teacher Standards;
 - (b) detailed knowledge of the AITSL Professional Teacher Standards at a 'Graduate' level and relevant assessment process;
 - (c) expertise in mentoring, supervisory and feedback skills to coordinate and supervise the Professional Experience placement; and
 - (d) undertaken relevant professional learning to underpin their knowledge and skills, such as the AITSL's online professional learning program, Supervising Preservice Teachers;
- 7.1.4 use best endeavours to ensure that all relevant NSW public school Personnel are aware that all Pre-service Teachers other than those undertaking a Professional Experience Internship must be provided with direct, in-class supervision in the Classroom and while accompanying teachers on other school duties, such as sport or playground duty as part of their Professional Experience;
- 7.1.5 use best endeavours to ensure that Pre-service Teachers are not used in a relief teaching capacity whilst undertaking Professional Experience;
- 7.1.6 liaise with the University Agreement Liaison Officer for the purpose of assisting in the evaluation of a Pre-service Teacher's performance during Professional Experience, especially where the Pre-service Teacher is at risk of not satisfactorily completing the formal teaching practice;
- 7.1.7 ensure that, in the case of a Pre-service Teacher seeking to videorecord in a NSW public school to collect evidence for the Teaching Performance Assessment, videoing is done in accordance with the protocol detailed in Schedule 2;
- 7.1.8 identify a Professional Experience Coordinator at each NSW public school willing to host Professional Experience placements and share their contact details with the University to implement the protocol described in Schedule 1;

- 7.1.9 make available to Pre-service Teachers policies, procedures, and any other information relevant to Pre-service Teachers' participation in Professional Experience placements;
- 7.1.10 where available and practicable, provide the Pre-service Teacher with access to amenities or resources available to Department Personnel that are reasonably necessary for a Professional Experience placement; and
- 7.1.11 notify the University if there is any type of incident (including any injury or near-miss) involving the Pre-service Teacher or University Personnel.

8. Child Protection

8.1 The University must:

- 8.1.1 acknowledge that it, its Personnel and the Pre-service Teachers are aware of the requirements of the Child Protection (Working with Children) Act 2012 (NSW) and all related laws concerning child protection (Child Protection Laws).
- 8.1.2 ensure that it, its Personnel and the Pre-service Teachers comply with the requirements of the Child Protection Laws and policies of the Department relating to child protection as notified to the University from time to time.

8.2 The University must immediately notify the Department if it becomes aware that a Pre-service Teacher or any of the University's Personnel has been referred to, or charged by police, or found guilty of an offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012* (NSW).

8.3 If the University reasonably believes it has information that would assist the Department to make any decision, assessment or plan, or conduct any investigation or provide any service relating to the safety, welfare or wellbeing of a child or a class of children at a NSW public school, the University must promptly provide that information to the Department. The University must also provide such information to the Department on request and procure that Pre-service Teachers agree to comply with this clause 8.3.

8.4 The Department may, at its absolute discretion, direct that a Pre-service Teacher or any of the University's Personnel are not permitted on the Department's premises (including any school site) or to engage in any child-related work in relation to the Agreement.

8.5 Decisions about school students will be made solely by the Department in its absolute discretion.

9. Investigations and disciplinary actions

- 9.1 The Parties agree that the investigation of a Pre-service Teacher or University Personnel's acts or omissions, including allegations of reportable conduct, arising out of a Professional Experience placement and resulting disciplinary actions (if any) are the responsibility of the University.
- 9.2 The Department, if it wishes the University to investigate the behaviour of a Pre-service Teacher or University Personnel engaged in a Professional Experience placement, must

notify the University in writing of the grounds of its concerns about the Pre-service Teacher or University Personnel's behaviour.

- 9.3 Notwithstanding clause 9.1, if at any time the Department is not reasonably satisfied that a Pre-service Teacher is competent to perform allotted tasks, or a Pre-service Teacher has not conducted themselves in a safe and professional manner, with notice to the University the Department may immediately do any or all of the following:
- 9.3.1 restrict or limit access by the Pre-service Teacher or University Personnel to school students;
 - 9.3.2 direct the Pre-service Teacher or University Personnel to leave the premises of the Department;
 - 9.3.3 take all reasonable steps necessary to ensure that the Pre-service Teacher or University Personnel complies with a direction given under this clause 9.3; and
 - 9.3.4 suspend or terminate a Professional Experience placement.
- 9.4 Neither Party is entitled to any damages, costs or expenses in connection with the Department's exercise of its rights in accordance with clause 9.3.

10. Confidentiality

- 10.1 The Recipient must, in relation to the Discloser's Confidential Information:
- 10.1.1 keep such information confidential;
 - 10.1.2 only use, or allow the use of, such information for the purpose of carrying into effect this Agreement;
 - 10.1.3 maintain custody of such information and do everything necessary, prudent or desirable to safeguard the confidentiality of such information and keep it protected from any use, disclosure or access that is inconsistent with this Agreement, including implementing sufficient and appropriate security practices against unauthorised copying, use and disclosure;
 - 10.1.4 only disclose such information to the Recipient's Personnel or, in the case of the University, Pre-service Teachers who need to know the information for the purposes of this Agreement and who have been directed to keep it confidential;
 - 10.1.5 comply with the Discloser's reasonable directions relating to such information; and
 - 10.1.6 not use such information to the Discloser's commercial or competitive disadvantage.
- 10.2 The Recipient may disclose the Discloser's Confidential Information to the extent that the Recipient is required by law to disclose such information, provided that the Recipient must:
- 10.2.1 to the extent permitted by law, promptly give the Discloser prior notice of the proposed disclosure with full details of the circumstances and relevant information;
 - 10.2.2 consult with the Discloser on the form and content of the proposed disclosure;
 - 10.2.3 postpone the proposed disclosure for as long as reasonably possible without prejudicing the Recipient's own legal position;

- 10.2.4 allow the Discloser a reasonable opportunity to challenge the requirement to disclose the relevant information (at the Discloser's cost and expense, provided that the Recipient must provide reasonable cooperation to the Discloser); and
 - 10.2.5 only disclose the minimum information legally required to be disclosed.
 - 10.3 The Recipient may otherwise disclose the Discloser's Confidential Information in accordance with the prior written consent of the Discloser.
 - 10.4 The University must procure that Pre-service Teachers agree to comply with the conditions of this clause 10 in relation to any Confidential Information belonging to the Department that is received by Pre-service Teachers.
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11. Publicity

- 11.1 Unless otherwise required by law (in which case clause 10.2 applies), each Party must not (without the prior written consent of the other Party, in its absolute discretion):
 - 11.1.1 disclose, distribute or otherwise communicate any media release, public statement, promotional material or other publicity (including in any electronic media) about or in relation to the existence or terms of this Agreement, each Party's role in connection with the Agreement, Professional Experience undertaken in connection with this Agreement, or the relationship between the Parties; or
 - 11.1.2 use the names, logos or marks of the other Party or its programs or events.
 - 11.2 The University acknowledges that nothing in this Agreement restricts:
 - 11.2.1 the Department or the NSW Government from complying with NSW Government policies and procedures in relation to public statements;
 - 11.2.2 the Department Personnel or NSW Government officials or ministers from making any statements they decide; or
 - 11.2.3 disclosure of information by the Department under the *Government Information (Public Access) Act 2009* (NSW) (and the University must provide any information for the Department to comply with this law).
 - 11.3 The University must not (and must procure that its Personnel and Pre-service Teachers do not):
 - 11.3.1 represent to any person that the Department (or any school) endorses or approves of the University or its services or products; or
 - 11.3.2 make any false, misleading, deceptive, or disparaging representations about the Department, or otherwise damage the Department's brand, goodwill or reputation.
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12. Privacy

- 12.1 If the University handles any Personal Information or Health Information in relation to this Agreement, the University must, and must ensure that Pre-service Teachers and University Personnel:

- 12.1.1 comply with Privacy Laws whether or not the University is subject to those Laws; and
 - 12.1.2 do everything necessary or reasonably requested by the Department to enable the Department to comply with Privacy Laws.
- 12.2 Without limiting the generality of clause 12.1, in relation to any Personal Information and Health Information handled by the University, Pre-service Teachers and University Personnel in relation to this Agreement, the University must, and must procure that Pre-service Teachers and University Personnel:
 - 12.2.1 act only on the instructions of the Department;
 - 12.2.2 ensure that processes and documentation used to seek parental consent in respect of the collection and management of Personal Information belonging to school students meet the Department's requirements as set out in Schedule 2;
 - 12.2.3 use, access, and retain such Personal Information and Health Information only to the extent necessary to perform obligations under this Agreement and complete Professional Experience;
 - 12.2.4 not, directly or indirectly, disclose Personal Information and Health Information to any person without the Department's prior written consent, unless required by applicable law;
 - 12.2.5 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Information and Health Information and against accidental loss or destruction of, or damage to, Personal Information and Health Information;
 - 12.2.6 comply with all reasonable directions of the Department in relation to the care and protection of Personal Information and Health Information held in connection with the Agreement and take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
 - 12.2.7 not transfer any Personal Information and Health Information, or disclose any Personal Information and Health Information to a person located outside of New South Wales, without the Department's prior written consent (which may be withheld in the Department's absolute discretion); and
 - 12.2.8 comply with any directions, guidelines, determinations or recommendations of the Commissioner, to the extent that they are not inconsistent with this clause.
- 12.3 Unless otherwise expressly agreed by the Department in writing (subject to any conditions required by the Department in its absolute discretion, including the protocols in Schedule 2), the University must not, and must procure that Pre-service Teachers and University Personnel do not:
 - 12.3.1 take or record any photos or videos of any school community associated with the Department (including any school students, parents or teachers); or
 - 12.3.2 collect any Health Information about the Department's school students.

13. Data Breaches

- 13.1 If the University becomes aware of an actual or potential:

- 13.1.1 breach of clause 10 (Confidentiality) or clause 12 (Privacy);
- 13.1.2 incident which could be an Eligible Data Breach; or
- 13.1.3 any other breach of security in relation to the Agreement or the IT systems of either the University or the Department,

(in each case a **Data Breach**),

the University must immediately notify the Department in writing of the Data Breach (but in any event within 24 hours).

13.2 If a Data Breach occurs, the University must immediately:

- 13.2.1 comply with the Department's directions regarding the Data Breach (including by providing the Department any information it requests regarding the Data Breach);
- 13.2.2 allow the Department to participate in the University's assessment of the Data Breach;
- 13.2.3 use its best endeavours to ensure that any potential Data Breach does not become an actual Data Breach;
- 13.2.4 use its best endeavours to remedy any Data Breach and minimise its consequences;
- 13.2.5 provide the Department with a written report detailing the cause of, and procedure for correcting, the Data Breach; and
- 13.2.6 take all reasonable steps to prevent any reoccurrence of such Data Breach, and provide the Department with reasonable evidence that it will not reoccur.

13.3 If either Party determines that an Eligible Data Breach has or may have occurred that must be notified to the Commissioner, the University must prepare a draft notice to the Commissioner within 48 hours for the Department to review. The Department may:

- 13.3.1 require the University to make any amendments to the draft notice; or
- 13.3.2 elect to notify the Commissioner of the Eligible Data Breach itself.

14. Intellectual Property

14.1 Unless otherwise agreed in writing by the Parties, nothing in this Agreement transfers or affects:

- 14.1.1 the Department's ownership of all right, title and interest (including IP Rights) in the Department Material; or
- 14.1.2 the University's ownership of all right, title and interest (including IP Rights) in the University Material.

14.2 Except as otherwise agreed in writing between the Parties, the University acknowledges and agrees that ownership of all IP Rights in Materials created, discovered, brought into existence, or otherwise acquired as a result of, for the purpose of, or in connection with this Agreement, or a Professional Experience placement conducted under this Agreement vests in the Department on its creation.

- 14.3 Subject to clause 14.4, the Department acknowledges and agrees that ownership of all IP Rights brought into existence by a Pre-service Teacher as a result of, or for the purposes of, course work that is a component of the ITE Program in which the Pre-service Teacher is enrolled vests in the Pre-service Teacher.
- 14.4 The University must not, and must procure that Pre-service Teachers agree not to, incorporate any Department Material, including Personal Information and Health Information belonging to any Department Personnel or school students and Confidential Information provided by the Department under this Agreement, into any Intellectual Property brought into existence as a result of, or for the purposes of, course work that is a component of the ITE Program in which a Pre-service Teacher is enrolled, without the Department's prior written consent.

15. Resolution of Disputes

- 15.1 A Party claiming that a dispute (**Dispute**) has arisen under or in connection with this Agreement must notify the other Party in writing giving details of the dispute.
- 15.2 During the ten (10) Business Day period after initial notice of a Dispute (or any longer period agreed in writing between the Parties) (the **Initial DR Period**) the Parties' Agreement Liaison Officers must work in good faith to resolve the Dispute.
- 15.3 If the Dispute is not resolved by the Parties within the Initial DR Period, the Dispute must be referred to a senior executive of the Department (or their authorised delegate) and the University's Dean of Faculty or Head of School (or their authorised delegate), who must work together in good faith to resolve the Dispute within a period of ten (10) Business Days (or any longer period agreed in writing between the Parties).
- 15.4 While the procedure set forth in this clause 15 is being followed, both Parties must continue to fulfil their obligations under this Agreement.
- 15.5 The procedure set out in this clause 15 does not limit or exclude a Party's rights under this Agreement or at common law or equity (including the right to make applications for interim relief, including injunctions).

16. Indemnity

- 16.1 The University indemnifies the Department and the Department's Personnel against any Losses the Department suffers arising from any negligent or unlawful act or omission of the University's Personnel or Pre-service Teachers in relation to this Agreement.
- 16.2 The liability of a Party for any Loss sustained, incurred or suffered by the other Party arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is reduced to the extent that such Loss is caused by the other Party's own negligence or breach of this Agreement.
- 16.3 Each Party must use reasonable efforts, to the extent within its control and consistent with each Party's obligations under this Agreement, to promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by it under or in connection with this Agreement.
- 16.4 Other than liability arising under or referred to in clause 16.1, to the extent permitted by law, neither Party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for any Consequential Loss.

17. Insurance

- 17.1 The University must have and maintain the insurances set out in the Agreement Details.
- 17.2 The insurance referred to in clause 17.1 must be with an insurance office or underwriter that is well established, reputable and financially solvent.
- 17.3 The University must, on request by the Department, promptly provide certificates of currency certifying that it has insurance as required by this clause 17. If the Department determines that the University is not in compliance with this clause 17, the Department may obtain appropriate insurance policies for and on behalf of the University and pass the cost of such policies on to the University.

18. Termination

- 18.1 Either Party may terminate this Agreement for convenience at any time by giving 90 days' written notice to the other Party.
- 18.2 Either Party may terminate this Agreement immediately by written notice to the other if:
- 18.2.1 a Party breaches this Agreement and fails to remedy the breach within 20 Business Days of receiving notice from the other Party requiring it do so; or
 - 18.2.2 a Party breaches any provision of this Agreement where that breach is not capable of remedy.
- 18.3 Termination of this Agreement for any reason is without prejudice to any rights which either Party may have accrued before termination.
- 18.4 In the event of termination, the Parties will cooperate in good faith to ensure that Pre-service Teachers currently undertaking Professional Experience placements are not unduly disadvantaged by reason of the termination.
- 18.5 Upon the expiry or termination of this Agreement, the University must, and must procure that Pre-service Teachers and University Personnel:
- 18.5.1 immediately stop using Department Personal Information, Department Health Information and Department Confidential Information;
 - 18.5.2 return and/or destroy (as directed by the Department) any Department Personal Information, Department Health Information or Department Confidential Information in its possession or control; and
 - 18.5.3 return any work-related resources provided by the Department in the course of Professional Experience.

19. General

- 19.1 **Governing Law:** The laws of the State of New South Wales govern this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of that State.
- 19.2 **Notices:** A notice or other communication connected with this Agreement must be in writing.

- 19.3 **Warranty:** Each Party warrants that it has the authority and right to enter into this Agreement.
- 19.4 **Relationship:** This Agreement does not create any relationship of partnership, employment, principal and agent, or of trustee and beneficiary between the Parties.
- 19.5 **No exclusivity:** The University acknowledges and agrees that the Department is not, by executing this Agreement, restricted in any way from entering into a Professional Experience Agreement with any other person to provide activities which are the same as, or similar to, Professional Experience.
- 19.6 **Costs:** Each Party must bear its own costs of, and incidental to, the negotiation, execution and carrying into effect of this Agreement, and any other document to give effect to this Agreement.
- 19.7 **Variation:** This Agreement may only be varied by a document executed by the Parties, except in the case of variations to the Department protocols described in Schedule 1 and Schedule 2, which will be effective upon notification from the Department.
- 19.8 **Severability:** Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required by this clause, part or all of the relevant provision of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.
- 19.9 **Entire Agreement:** This Agreement represents the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement, and supersedes any prior deed, agreement or understanding connected with that subject matter.
- 19.10 **Rights Cumulative:** The rights, powers, privileges and remedies provided under the provisions of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Agreement or by applicable law or otherwise. The obligations of the parties in relation to confidential information at law or under any professional custom or usage are not altered by this Agreement.
- 19.11 **Waiver:** The failure of a Party at any time to insist on performance of any provision of this Agreement is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Agreement. Any waiver by a Party of a breach of this Agreement must be in writing and is not a waiver of any further breach of the same or any other provision.
- 19.12 **Assignment:** The University must not assign or novate its obligations or interests under this Agreement without the prior written consent of the Department.
- 19.13 **Survival:** On termination or expiry of this Agreement, any provision of this Agreement which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Agreement will continue in full force and effect, including clauses 10 (Confidentiality), 11 (Publicity), 12 (Privacy), 13 (Data Breaches), 14 (Intellectual Property), 15 (Resolution of Disputes), and 16 (Indemnity).
- 19.14 **Counterparts:** This Agreement may be signed in any number of counterparts (including counterparts in electronic form) which taken together will constitute one instrument.
- 19.15 **Electronic Execution:** A Party may sign this Agreement, and any variations to it, by electronic means where permitted by law. Each Party consents to the signing of this Agreement by electronic means.

Schedule 1 **PROTOCOLS FOR CONTACTING NSW PUBLIC SCHOOLS FOR PROFESSIONAL EXPERIENCE PLACEMENTS AND MAKING REQUIRED PAYMENTS**

The **University** will actively manage arrangements for Professional Experience to ensure that the protocols are implemented. The protocols described in Schedule 1 may be updated as required, in consultation with the NSW Council of Deans of Education. Updates will come into effect upon notification from the Department.

1. Working in partnership is the foundation for enabling effective allocation of Professional Experience placements. University staff should develop and sustain working relationships with schools as the core of their approach to contacting schools for placements. A partnership-based approach will enhance efficacy and minimise unnecessary workload for the University and schools.
2. Schools must be contacted only by the University staff to seek and organise Professional Experience placements on behalf of their Pre-service Teachers. Individual Pre-service Teachers must not contact schools directly.
3. The principal makes the decision as to the appropriateness of the school hosting Professional Experience placements at a particular time. The number of Pre-Service Teachers to be placed with each school at any given time will be determined by the school.
4. The Department will provide the University with contact details of the Professional Experience Coordinators of schools in semester 1 and semester 2 each year. When contacting schools for placement, the University must only use the provided contact details. Contacts should be made via email in the first instance.
5. The Department does not permit mass emails to all its schools. The University must not send emails to large groups of schools. The University must use best endeavours to utilise the matching capacity of their placement software to target and contact relevant groups of schools for their Pre-service Teacher cohort.
6. The Department provides two Common Dates for the University to contact schools requesting placements:
 - 1 November for Terms 1 and 2 in the following year - if the University has Professional Experience placements planned for Terms 1 and 2 of the following year, from the agreed common date of **1 November** of the school year in the year prior to required placements occurring, the University will email the school using the contact details of the Professional Experience Coordinators supplied by the Department to seek placements for the following school year. They will contact only those schools from the list of schools which are feasibly placed in relation to student locations and preferences.
 - 1 April for Terms 3 and 4 of the same year - the University, from the agreed common date of **1 April** of the school year in which the required placements are occurring, the University will email the school using the contact details of the Professional Experience Coordinators supplied by the Department to seek placements for Terms 3 and 4 of that school year. They will contact only those schools from the list of schools which are feasibly placed in relation to student locations and preferences.

7. The University collects and manages data on the schools they contact and the schools they use for Professional Experience placements including records of communication. This data is available to be shared with the Department on request.
8. The Department expects the University to monitor their contacts with schools that do not agree to undertake Professional Experience placements and not continue to contact these schools if they do not have availability for placements.
9. In NSW, all Supervising Teachers and Professional Experience Coordinators receive a set daily payment for undertaking the role. This payment is made directly from the University to individual Supervising Teachers and Professional Experience Coordinators. The University must manage this process through ensuring Supervising Teachers and Professional Experience Coordinators are advised of the payment process and supplied with the necessary paperwork to apply for their payment. Universities must process payment in a timely manner.
10. Rates of payment are established for Supervising Teachers and Professional Experience Coordinators in NSW through an agreement between the NSW Council of Deans of Education, the NSW Teachers Federation, and the NSW ACT Independent Education Union. Rates are periodically adjusted. The University should contact the NSW Council of Deans of Education in the start of each year for payment rates and details.

Schedule 2 Protocols for Pre-service Teacher Videoing in Schools

Conditions

1. The protocols in this Schedule 2 apply to all videoing in schools for the purpose of Professional Experience placements.
2. The school principal maintains final approval as to whether they will allow videoing in their school.
3. Videos must not be used in lieu of university supervision visits in schools.

Actions for:	Protocols
Pre-service Teachers	<p>Prior to lesson: Permission notes must be distributed to all parents and approvals must be received in advance of videoing.</p> <p>NOTE: Permission for Pre-service Teachers to video in the Classroom is an agreement between the parent/carer and the ITEP. The Department is facilitating this permission process.</p> <p>During lesson:</p> <ul style="list-style-type: none"> • ONLY Pre-service Teacher may be videoed, plus other teacher resources to support lesson, e.g. board • No school student images may be recorded • Tripods must be used as they signal/make it clear videoing is happening. • Prior to videoing, ensure students without parent permissions are moved to a separate area in the Classroom • Pre-service Teacher opening statement must be recorded at the start of the video – explicit explanation – “I am going to be recording some of this lesson. Please ensure you do not walk in front of the camera which is on the tripod over there. (point to it) We are starting to video now” • Pre-service Teacher must record closing statement at the end of the video: “I will finish videoing now and will turn the camera off”. • Can only refer to any student by first name while videoing <p>Post lesson: Before the Pre-service Teacher leaves the school grounds, they must make sure no student images have been accidentally recorded. If student images are accidentally recorded, they must be deleted immediately and images not allowed to leave the school.</p>
ITEPs	<p>ITEPs must have in place, and approved by the DoE prior to videoing:</p> <ul style="list-style-type: none"> - Storage location and process - Destruction schedule - Process to manage breaches - Permission notes on ITEP letterhead - Any changes to approved protocols must be negotiated with the DoE prior to implementation.
Schools	<ul style="list-style-type: none"> - Principal maintains final approval as to whether they will allow videoing in their school - Supervising Teacher must be in the Classroom when videoing is taking place - Any schools participating in this videoing are required to keep a copy of the signed permission notes for 7 years or until the child reaches 25 years old as per the requirement for other permission notes.