General Service Agreement

(Agreement)

For the Provision of Chaplaincy Services

For Victorian Government schools that are not participating in the Commonwealth Government’s National School Chaplaincy Programme (NSCP)

Victorian Government School Council (School)

and

Chaplaincy Services Provider (Provider)

**Agreement Schedule**

|  |
| --- |
| 1. School (clause 1.1)
 |
| **School name:** |  |
| **Principal:** |  |
| **Address(es):** |  |
| **Telephone:** |  |
| **Email:** |  |
| 1. School's Contract Manager details (clause 7.1):
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:** |  |
| 1. Provider (clause 1.1)
 |
| **Provider name:** |  |
| **ABN:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Provider's representative:** |  |
| 1. Provider's Contract Manager details (clause 7.1):
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:** |  |

|  |
| --- |
| 1. Chaplain's details (clause 1.1)
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:**  |  |
| **Working With Children Check card number:** |  |
| **Working With Children Check Expiry date:** |  |
| **Police Check date issued:** |  |
| 1. Commencement Date (clause 2.1)
 |
| **Commencement Date:**  |  |
| 1. Chaplaincy Services to be provided (clause 3.1(d))
 |
| **School Campus:** |  |
| **Number of Hours per week:** |  |
| **Usual days of work:** |  |
| **Usual hours of work:** |  |
| 1. Agreement funding (clause 2.9)
 |
| **Total Cost:** |  |
|  |  |
| **School Funding:** |  |
| **Provider funding:** |  |
| **Total Funding:**  |  |
| 1. Invoicing Details (clause 2.9(c))
 |
| **Dates:** |  |
| **Amounts:**  |  |

**Signing page**

**Executed** as an agreement **on / /**

|  |  |  |
| --- | --- | --- |
| **The common seal of** the **School Council** was affixed by order of the School Council in the presence of the President of the School Council and its Appointee: |  |  |
| **Signature of School Council President** |  | **Signature of School Council Appointee** |
| **Name of School Council President (print)** |  | **Name of School Council Appointee (print)** |

|  |  |  |
| --- | --- | --- |
| **Executed** by the **Provider** in accordance with s 127 of the *Corporations Act 2001*  |  |  |
| **Signature of Director** |  | **Signature of Director/Company Secretary** |
| **Name of Director (print)** |  | **Name of Director/Company Secretary (print)** |

|  |  |  |
| --- | --- | --- |
| **Executed** bythe **Provider** in accordance with the *Associations Incorporation Reform Act 2012* |  |  |
| **Signature of authorised person** |  | **Signature of authorised person** |
| **Name of authorised person (print)** |  | **Name of authorised person (print)** |
| **Position of authority (print)** |  | **Position of authority (print)** |

Victorian Government School Council

(School)

and

Chaplaincy Services Provider

 (Provider)

Agreed terms

# Definitions and Interpretation

## Definitions

In this Agreement, unless the context otherwise requires:

**Agreement** means this Agreement and includes the schedules and any attachments to it or documents incorporated by reference.

**Applicable Department Guidelines** means the Department's policies and guidelines that are relevant to the provision of chaplaincy services in Victorian Government Schools that are not participating in the Commonwealth Government’s National School Chaplaincy Programme (NSCP) and that are listed as relevant and published on the Department's website (as they are amended from time to time) including but not limited to the Chaplaincy Policy, the Chaplaincy Services Code of Conduct, and the Chaplaincy Information, Records and Reporting Policy.

**Business Days** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

**Chaplain** means the person specified in Item 5of the Agreement Schedule.

**Chaplaincy Policy** means the Chaplaincy Policy as published, and updated from time to time, on the Department’s website

**Chaplaincy services** aim to support the emotional wellbeing of students by providing pastoral care services and strategies that support the emotional wellbeing of the broader school community.

**Chaplaincy Services Code of Conduct** means the Code of Conduct for chaplains in Victorian Government Schools that are not participating in the Commonwealth NSCP and as published and updated from time to time on the Department's website.

**Department** means the Department of Education and Training.

**Chaplaincy Information, Records and Reporting Policy** means the Information, Reporting and Records Policy for the provision of chaplaincy services for Victorian Government Schools that are not participating in the NSCP as published, and updated from time to time, on the Department's website.

**National Schools Chaplaincy Programme (NSCP)** means the Commonwealth Government’s National School Chaplaincy Programme which is administered by the Department for the State.

**Party or Parties** means a party or the parties to this Agreement.

**Position Description** means the position description for chaplains developed by the Department for Victorian Government Schools that are not participating in the NSCP and as amended from time to time and published on the Department's website that sets out an understanding of the functions and responsibilities of the position of chaplain, the skills required to perform those functions and the role of the position within the range of student wellbeing services at a school.

**Principal** means the person occupying the position of Principal at the Victorian Government School.

**Provider** means the person, corporation, other legal entity, partnership or joint venture, including employees and agents, named in 3 of the Agreement Schedule, that is a Party to this Agreement and that will supply chaplaincy services under this Agreement.

**School** means the Victorian Government School named in Item 1 of the Agreement Schedule receiving chaplaincy services under this Agreement. The School Council of the relevant School is the legal entity capable of entering into this Agreement on behalf the School.

**Staff Costs** means costs related to the employment of the Chaplain by the Provider including but not limited to wages and entitlements, Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, leave entitlements, training, professional development, workers’ compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

**State** means the Crown in right of the State of Victoria.

**Tax Invoice** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Work Plan** means the work plan for the Chaplain as agreed by the Provider and the Principal that documents how the Chaplain will provide chaplaincy services to the School.

# Term and condition precedent

## Term

#### This Agreement commences on the Commencement Date set out in Item 6of the Agreement Schedule and, unless terminated earlier under clause 5, will continue for two years from that date.

## Extension of term

#### The Principal of the School may elect, by notice in writing to the Provider not later than one month prior to the expiry of the then current Term, to extend the Term for a period of one school year (up to a maximum of two additional school years).

#### Any such further Term will be on the same terms and conditions as this Agreement, except that the Items forming part of the Agreement Schedule will be negotiated between the Parties at the time of extension.

#### The Parties acknowledge that the School is under no obligation to extend the Term and that the Provider has no expectation that the Term will be extended.

# Performance of Services

## Provision of Services

### Prior to the commencement of chaplaincy services, the Principal and the Provider must agree:

#### on the person to be appointed as the Chaplain;

#### on a Work Plan; and

#### the manner in which the Chaplain will provide chaplaincy services within the School environment.

### Where the person being appointed by the Provider as the Chaplain is not known at the time of signing this Agreement, the Parties must agree on the appointment of a Chaplain, in writing, prior to the commencement of chaplaincy services, and that person will be deemed to be the person specified in Item 5 of the Agreement Schedule.

### The Provider must provide and ensure that the Chaplain provides chaplaincy services to the School in accordance with the terms of this Agreement, the Position Description, the Work Plan, Applicable Departmental Guidelines and all applicable laws.

### chaplaincy services must be provided on the days and during the hours specified in Item 7of the Agreement Schedule, which must be within the School's term and hours and at School related activities as approved by the Principal.

### The Principal may request that the Provider vary the usual days or hours of work specified in Item 7of the Agreement Schedule by providing notice to the Provider. The Provider must not unreasonably deny such a request.

### The Provider must:

#### provide chaplaincy services to the reasonable satisfaction of the Principal and in a proper, timely and efficient manner using that standard of care, skill, diligence and foresight that would reasonably be expected from a prudent and experienced Chaplain;

#### provide chaplaincy services in a cooperative manner as part of the School's range of student wellbeing services;

#### act in good faith and in the best interests of the School;

#### share information with the Principal and the School as required under the Chaplaincy Information, Records and Reporting Policy, which includes sharing information required to:

##### meet duty of care obligations;

##### meet obligations under anti-discrimination legislation including, but not limited to, obligations under to the *Equal Opportunity Act 2010*

##### meet obligations under the *Occupational Health and Safety Act 2004;*

##### meet reporting and information sharing obligations under the *Children Youth and Families Act 2005:* and

##### meet any other reporting or legal obligations or requirements.

#### promptly inform the Principal of any matter which may give rise to an actual or potential conflict of interest in relation to the provision of chaplaincy services;

#### ensure that, prior to attending the School to provide chaplaincy services and during the Term, the Chaplain is aware of and understands the obligations under the General Service Agreement, the Work Plan, the Position Description, Applicable Departmental Guidelines and all applicable laws;

#### at its own expense, provide a Chaplain with any additional training that the Chaplain requires so that the Chaplain is capable of providing chaplaincy services in a manner that complies with the Provider’s obligations under this Agreement; and

#### in addition to any training required under clause 2.2(a)(f) the Provider must, at its own expense, ensure that the Chaplain receives continuing professional development training, at least once per year, in relation to their obligations under the General Service Agreement, the Position Description, the Work Plan, Applicable Departmental Guidelines and all applicable laws.

## Non-exclusivity

Nothing in this Agreement prevents the School from having access to, contact with, or contracting with, other providers including suppliers of services the same as, or similar to, those provided under this Agreement.

## School Supplied Materials

Where the School provides any materials to the Provider, the Provider must:

### only utilise the materials in the performance of chaplaincy services;

### take all reasonable care of all the materials; and

### comply with any directions of the School's contract manager for preser­vation, forwarding or disposal of the materials.

## Provision of Chaplaincy Services

### The Provider must ensure that chaplaincy services are provided:

#### only to students where there has been express and informed consent to the provision of those chaplaincy services;

#### in such a way as to achieve, or attempt to achieve a particular result where the Principal has, either expressly or by implication, made known to the Provider any particular purpose for which the chaplaincy services are required;

#### in accordance with this Agreement;

#### in accordance with the Work Plan, the Position Description, Applicable Departmental Guidelines, and all applicable laws;

#### and performed by a Chaplain who:

##### meets the requirements of the Principal;

##### has the requisite qualifications, skills, knowledge and experience to perform the chaplaincy services described in the Position Description and the Work Plan;

##### has undertaken a satisfactory working with children assessment under the *Working With Children Act 2005* and maintains under the Act a valid Working With Children Check during the term of this Agreement;

##### has undertaken a satisfactory police records check;

##### meets any additional relevant legal requirements and policies of the School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the Principal;

##### has signed and demonstrated that they understand the Chaplaincy Services Code of Conduct;

##### has acknowledged and understands that he or she will be subject to all lawful and reasonable directions issued by the Principal of the School whilst he or she is providing chaplaincy services at the School; and

##### has consented to the Provider disclosing information about the person to the Principal, including personal information, sensitive information (regarding religious affiliation), and health information within the terms of this Agreement and in relation to that person’s selection and recruitment, their performance as a Chaplain, their provision of chaplaincy services, complaints or investigations about their performance as a Chaplain or provision of chaplaincy services, any relevant investigations into that person by a school, the Provider or a law enforcement agency, and any criminal or alleged criminal activity.

### The Provider must formally review the performance of each Chaplain providing chaplaincy services in the School at least once per School year, and must include the Principal in the performance review process. This review must be documented in writing.

## Incident and investigations Reporting

* + 1. Either Party must immediately inform the other Party if it becomes aware or reasonably suspects that a Chaplain may be or has been charged with, found guilty of, or convicted of an offence (including, but not limited to, a sexual offence), which may mean the person could be deemed as not being suitable to work in child-related work for the purposes of the *Working with Children Act 2005*.
		2. The Provider must, within two (2) business days, inform the Principal of:
			1. the commencement of any significant internal inquiry into a Chaplain or the provision of chaplaincy services as well as any relevant outcome of that inquiry; and
			2. any significant incidences occurring during or related to the provision of chaplaincy services at the School; and
			3. any significant incidences occurring during or related to the Chaplain.
		3. Either Party must inform the other Party within two (2) business days if they become aware that there has been a complaint about the Chaplain or the provision of chaplaincy services in the School.

### A Principal may arrange an investigation of a complaint or incident or an investigation into the actions of a Chaplain or the provision of chaplaincy services.

* + 1. Nothing in this clause prevents a Party from exercising its right to:
			1. withdraw the Chaplain from providing chaplaincy services at the School in accordance with clause 2.7 of this Agreement; and/or
			2. terminate the Agreement under clause 5 of this Agreement.

## Withdrawal of Chaplain

* + 1. The Provider must immediately withdraw the Chaplain from providing chaplaincy services in the school in the event that the Provider:
			1. has been requested to do so by the Principal of the School in accordance with clause 2.8(b) of this Agreement;
			2. becomes aware of or reasonably suspects that the Chaplain has been or may be charged, convicted or had a finding of guilt in relation to an offence (including, but not limited to, a sexual offence), which may mean the Chaplain could be deemed as not being suitable to engage in child-related work for the purposes of the *Working with Children Act 2005;* or
			3. is no longer satisfied that the Chaplain meets or met the requirements in clause 2.5(a)(iv).

## Replacement Chaplain

### If the person identified in Item 5of the Agreement Schedule as the Chaplain is unavailable or otherwise unable to provide the chaplaincy services, the Provider must promptly notify the Principal of the School.

### If the Principal is dissatisfied with the performance of the Chaplain the School may request that the Provider remove that person from their involvement in the provision of chaplaincy services to the School. Subject to any applicable law, the Provider must comply with such a request.

### Where the Chaplain is unavailable to provide chaplaincy services or has been withdrawn from the School, the Provider must promptly provide the Principal with the details of a suitably qualified and experienced replacement chaplain as soon as practicable and at no additional cost to the School.

### The Provider must have a robust recruitment and selection process for engaging replacement chaplains and any replacement Chaplain must meet the requirements of clause 2.5(a)(v) of this Agreement.

### The Provider acknowledges and agrees that the Principal is under no obligation to accept any person proposed by the Provider as the Chaplain. The Principal must inform the Provider as to whether the Principal will accept the replacement chaplain proposed by the Provider.

### If the Principal and Provider cannot agree on a Replacement Chaplain within 28 days, the termination provisions apply.

## Cost of the Chaplaincy Services

### The cost for the provision of chaplaincy services is set out in Item 8 of the Agreement Schedule.

### Unless otherwise expressly stated, all prices or other amounts payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### The Provider must submit to the School a Tax Invoice or Tax Invoices in respect of the chaplaincy services as set out in Item 9of the Agreement Schedule, which is to be:

#### not less frequently than once per School term; and

#### must only relate to the costs of the chaplaincy services provided or to be provided in that invoice period.

### Without limiting any other clause of this Agreement, or any other remedy the School may have, if the Provider fails to provide or perform any of the chaplaincy services in accordance with the requirements of this Agreement, the School will not be required to pay for those chaplaincy services.

# Information

## Compliance with the Information, Records and Reporting Policy

### The Provider acknowledges that in accordance with the terms of this Agreement, ownership of all records created by the Chaplain during or related to the provision of chaplaincy services in the school immediately vests in the State.

### The Provider acknowledges that the records must be kept, filed, and made available to the School or the Department in accordance with this Agreement and the Chaplaincy Information, Records and Reporting Policy.

### On termination or expiry of this Agreement the Provider will ensure that all relevant files, records and information related to the provision of chaplaincy services in the School are provided to the school or the Department in accordance with the Chaplaincy Information, Records and Reporting Policy and that the beneficial ownership of all records relating to the chaplaincy services provided by the Provider will be transferred to School.

### The Provider may retain copies of part or all of the records produced by the Chaplain in relation to the provision of chaplaincy services in the School if this is required by law or professional practice or in order to meet its obligations. The Provider must use, disclose, store, secure and dispose of any copied records in accordance with:

#### the *Privacy and Data Protection Act 2014* and any standards, policies or guidelines issued from time to time in accordance with this Act;

#### the *Health Records Act 2001* and any standards, policies or guidelines issued from time to time in accordance with this Act;

#### the *Public Records Act 1973*  and any standards, policies or guidelines issued from time to time in accordance with this Act;

#### any other relevant legislation and associated standards, policies or guidelines issued from time to time; and

#### the Chaplaincy Information, Records and Reporting Policypublished on the Department’s website and as amended from time to time*.*

## Privacy

The Provider acknowledges that it will be bound by the *Health Records Act 2001* and the *Privacy and Data Protection Act 2014* and any applicable principles and code of practice under those Acts with respect to any act done or practice engaged in by the Provider under or in connection with this Agreement in the same way and to the same extent as the Department or the School would have been bound had it been directly done or engaged in by the Department or the School.

## Mandatory Reporting

The Provider will ensure that its employees, agents and advisers will comply with:

### all mandatory reporting obligations under the *Children, Youth and Families Act 2005* as if the Chaplain were a “mandatory reporter” as defined under that Act; and

### the Department’s *Child Protection – Reporting Obligations* as published, and updated from time to time, on the Department's website*.*

## Reporting

### The Provider will, in accordance with the Chaplaincy Information, Records and Reporting Policy, give the Principal information about and report on the chaplaincy services provided to the School as agreed in the Work Plan and Position Description and otherwise as requested by the Principal including information about:

#### how many hours of chaplaincy services were provided;

#### how many students have accessed the chaplaincy services;

#### any complaints or concerns identified with regard to the Chaplain or the provision of chaplaincy services;

#### aggregated data about the nature of the chaplaincy services provided.

### The Provider will also provide the Principal with information and records that relate to the delivery of chaplaincy services as requested by the Principal in order for the School to meet any obligations the School has to account for the expenditure of funds.

# Warranties

The Provider warrants that:

### it and its employees and agents are fit and proper persons, appropriately qualified and have the requisite knowledge, skill and expertise to provide the chaplaincy services;

### the person providing chaplaincy services at the School will at all times during the term of this Agreement hold a current Working With Children Check pursuant to the *Working With Children Act 2005* and a police check;

### while on premises controlled by the Principal of the School, the Provider and its employees and agents will at all times comply with the Principal's lawful directions and all applicable School and Departmental policies, including any applicable occupational health and safety and security policies.

# Termination

## Automatic Termination

This Agreement immediately and automatically terminates on termination or expiry of this Agreement.

## Termination by Agreement

### This Agreement may be terminated at any time by agreement between the Parties. Termination is effective either on the date specified in the notice of termination, or where no date is specified, immediately upon receipt of the notice of termination.

## Termination without notice

### The School may terminate this Agreement immediately, in writing, if the Provider:

### fails to withdraw a Chaplain from the School under clause 2.7 of this Agreement;

### and the Principal are unable to agree on a Work Plan, a Chaplain or a replacement Chaplain;

### goes or is likely to go into liquidation or a receiver and manager or mortgagee’s or chargee’s agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

## School may terminate with notice

The School may terminate this Agreement by giving seven (7) days' notice, in writing, to the Provider if:

### the Provider fails to remedy any breach of this Agreement (which in the reasonable opinion of the School is able to be remedied) within 14 days after the date on which the School issues the Provider a written notice requiring the Provider to remedy the breach;

### the Provider breaches any material provision of this Agreement and in the reasonable opinion of the School such breach cannot be remedied; or

### the Provider or any of its employees or agents are found guilty of fraud, dishonesty or an offence (including, but not limited to, a sexual offence), which may mean the person could be deemed as not being suitable to engage in child-related work for the purposes of the *Working with Children Act 2005*.

## Provider may terminate with notice

The Provider may terminate this Agreement by giving 14 days' notice, in writing, to the School if:

### the School fails to remedy, to the satisfaction of the Provider, any breach of this Agreement (which in the reasonable opinion of the Provider is able to be remedied) within 14 days after the date on which the Provider issues the School with a written notice requiring the School to remedy the breach; or

### the School breaches any material provision of this Agreement and in the reasonable opinion of the Provider such breach cannot be remedied.

## Termination without cause

### This Agreement may be terminated at any time without cause by a Party giving the other Party 30 days' notice of termination, in writing.

## Consequences of termination

### Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either Party prior to termination.

### Where this Agreement is terminated:

#### the Provider must cease all work under this Agreement immediately following the notice of termination and take all appropriate action to mitigate any loss and prevent additional costs being incurred;

#### the School will, within 30 days, pay to the Provider all amounts owing in respect of the chaplaincy services undertaken as at the date of termination, provided that such chaplaincy services have, in the reasonable opinion of the School, been performed in accordance with the requirements of this Agreement;

#### the Provider will refund to the School, within 30 days, all amounts that have been paid to the Provider in advance for chaplaincy services not yet performed;

#### the Provider will return all School supplied material within seven days, or otherwise dispose or deal with them at the direction of the Principal;

#### the School will return all Provider supplied material within seven days, or otherwise dispose or deal with them at the direction of the Provider;

#### the Provider will ensure that all relevant files, records and information are provided to the School in accordance with the Information, Records and Reporting Policy.

### The Parties acknowledge that where this Agreement is terminated, the School may choose to enter into a new agreement with another chaplaincy service provider for the provision of services that would, but for the termination, have been provided under this Agreement.

## Survival

Clauses 3, 5.7, 7.2and 7.3 of this Agreement survive the termination or expiry of this Agreement or the completion of the chaplaincy services.

# Disputes

### If any dispute arises under or in connection with this Agreement the Principal and the Provider will promptly meet and discuss in good faith with a view to resolving such dispute.

### Nothing in this clause prevents a Party from exercising its rights to terminate the Agreement under clause 5 of this Agreement.

# General

## Notices

### Any notice, approval or consent must be addressed and delivered to the respective Party’s contract manager identifiedinItem 2 and Item 4 of the Agreement Schedule by any means listed in that Schedule.

### Either Party may nominate a replacement contract manager by notice in writing to the other Party. The appointment of the replacement contract manager will be effective from the date on which such notice is received.

## Staff Costs

### The Provider will indemnify and keep indemnified the School from and against all liability for Staff Costs in any way relating to the provision of chaplaincy services.

### If the School is or becomes liable to pay any Staff Costs, the School may deduct the amount of its liability for the Staff Costs from any amount due by the School to the Provider, whether under this Agreement or otherwise.

## Indemnity for breach of information obligations

###  The Provider must indemnify the School against any loss, damage, claim, action or expense (including legal expense) which the School suffers as a direct or indirect result of any of the following:

#### a breach of this Agreement, including any failure to provide the chaplaincy services;

#### any warranty given by the Provider under this Agreement being incorrect or misleading in any way; or

#### any wrongful or any negligent act or failure to act by the Provider or any of the Provider’s employees, agents, officers or sub-contractors;

except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of the School.

## Variation

This Agreement may only be varied or replaced by a document executed by the Parties.

## Waiver and exercise of rights

Any failure to compel performance of any of the terms and conditions of this Agreement will not constitute a waiver of those terms or conditions, nor will it affect or impair the right to enforce those rights at a later time.

## Governing law and jurisdiction

### This Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria.

### Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.