



Victorian Government
Solicitor's Office

Service Agreement

For the Provision of Chaplaincy Services

For organisations listed on the Register of Chaplaincy Services Providers

**Victorian Government School Council
(School)**

and

**Chaplaincy Services Provider
(Provider)**

DISCUSSION DRAFT issued on _____

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Ref: 1416593

Agreement Schedule

Item 1 School (clause 1.1)

School name:

Principal:

Address(es):

Telephone:

Email:

Item 2 School's Contract Manager details (8.1):

Name:

Address:

Telephone:

Email:

Facsimile:

Item 3 Provider (clause 1.1)

Provider name:

ABN:

Address:

Telephone:

Provider's representative:

Item 4 Provider's Contract Manager details (8.1):

Name:

Address:

Telephone:

Email:

Facsimile:

Item 5 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:	.....
Item 6 Commencement Date (clause 2.2)	
Commencement Date:	.....
Item 7 Chaplaincy Services to be provided (clause 3)	
School Campus:	.....
Number of Hours per week:	.....
Usual days of work:	.....
Usual hours of work:	.....
Item 8 Agreement funding (clause 3.8)	
Total Cost:	.....
NSCP Funding:	\$20,000
School Funding:	.....
Provider funding:	.....
Total Funding:	.....
Item 9 Invoicing Details (clause 3.8(d))	
Dates:	.....
Amounts:	.....

Signing page

Executed as an agreement on

day of

2014

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 President_____
Signature of Appointee_____
Name of President (print)_____
Name of Appointee (print)

<Use this signing clause when the Provider is a company incorporated in Australia, delete if Provider is not a company>

Executed by the Licensee 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)

<Use this signing clause when the Provider is an incorporated association, delete if Provider is not>

Executed by the Licensee 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)

Background

- A. Victoria has been invited to participate in the Commonwealth Government's National School Chaplaincy Programme (**NSCP**). The aim of the NSCP is to support the emotional wellbeing of students by providing pastoral care services and strategies that support the emotional wellbeing of the broader School community.
- B. The Department of Education and Early Childhood Development (**the Department**) administers the chaplaincy program on behalf of the State. The Department has established guidelines for the operation of the NSCP in Victoria. The program is open to all Victorian Schools.
- C. To assist Victorian Government Schools to secure Chaplaincy Services utilising funding provided through the NSCP, the Department has established a Chaplaincy Services Providers Register.
- D. The Provider is listed on the Register of Chaplaincy Services Providers and has entered into a Provider Agreement with the Department.
- E. The Victorian Government School Council seeks to engage the Provider to provide Chaplaincy Services to the Victorian Government School on and subject to the terms of this Agreement and on the basis that the Provider complies with the Provider Agreement and the NSCP Guidelines.

Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

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

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 5 of the Agreement Schedule.

Chaplaincy Services means pastoral care services and strategies that support the emotional wellbeing of students and the broader School community.

Chaplaincy Services Code of Conduct means the code of conduct for chaplains in Victorian Government Schools as published, and updated from time to time, on the Department's website.

Department means the Department of Education and Early Childhood Development.

Chaplaincy Information, Records and Reporting Policy means the Information, Reporting and Records Policy for the provision of Chaplaincy Services as published, and updated from time to time, on the Department's website.

NSCP means the Commonwealth Government's National Schools Chaplaincy Program.

NSCP Guidelines means the guidelines for the NSCP as published, and updated from time to time, on the Department's website.

Parties mean the parties to this Agreement.

Position Description means the position description developed for the Chaplain pursuant to clause 3.1(a)(ii).

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, supplying the Chaplaincy Services under this Agreement named in Item 2 of the Agreement Schedule.

Provider Agreement means the agreement the Provider has entered into with the State in order to be listed on the Register of Chaplaincy Services Providers.

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 its 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 plan developed by the Principal for the Chaplain pursuant to clause 3.1(a)(ii) that specifies how Chaplaincy Services will be provided to the School.

2. Term and condition precedent

2.1 Condition precedent

This Agreement is conditional on the School obtaining the NSCP funding specified in Item 8 before the Commencement Date in Item 6.

2.2 Term

This Agreement commences on the Commencement Date set out in Item 6 of the Agreement Schedule and, unless terminated earlier under clause 6 will continue until 31 December in the year in which the Agreement term commenced (**the Term**).

2.3 Extension of term

- (a) 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 three additional school years).
- (b) Any such further Term:
 - (i) 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; and
 - (ii) is conditional on the School obtaining a further grant of NSCP funding to the amount specified in Item 8 of the Agreement Schedule.
- (c) 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.
- (d) The Term cannot be extended beyond 31 December 2018.

3. Performance of Services

3.1 Provision of Services

- (a) Prior to the commencement of Chaplaincy Services, the Principal and the Provider must agree:
 - (i) on the person to be appointed as the Chaplain;
 - (ii) on a Work Plan and a Position Description for the Chaplain;
 - (iii) the manner in which the Chaplain will provide Chaplaincy Services and how the Chaplain's Work Plan and Position Description will be implemented within the School environment.
- (b) 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.
- (c) The Provider must provide and ensure that the Chaplain provides Chaplaincy Services to the School in accordance with the terms of this Agreement, the Provider Agreement, the Position Description, the Work Plan, all applicable Departmental guidelines as published on the Department website and amended from time to time including but not limited to the Chaplaincy Services Code of Conduct, the NSCP Guidelines and the Chaplaincy Information, Records and Reporting Policy, and all applicable laws.
- (d) Chaplaincy Services must be provided within the School's usual school terms and school hours and on the days and time specified in Item 7 of the Agreement Schedule.

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- (e) The Principal may vary the usual days or hours of work specified in Item 7 of the Agreement Schedule by providing written notice to the Provider.
- (f) The Provider must:
- (i) 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, prudence and foresight that would reasonably be expected from a prudent and experienced Chaplain;
 - (ii) provide Chaplaincy Services in a cooperative manner as part of the School's range of student wellbeing services;
 - (iii) act in good faith and in the best interests of the School;
 - (iv) share information with the School as required under the Chaplaincy Information, Records and Reporting Policy, which includes sharing information the School requires to:
 - (A) meet its duty of care obligations;
 - (B) meet its obligations under anti-discrimination legislation including, but not limited to, obligations under to the *Equal Opportunity Act 2010*
 - (C) meet its obligations under the *Occupational Health and Safety Act 2004*;
 - (D) meet its reporting and information sharing obligations under the *Children Youth and Families Act 2005*: and
 - (E) meet any other reporting or legal obligations or requirements;
 - (v) 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;
 - (vi) ensure that, prior to attending the School to provide Chaplaincy Services and during the Term, the Chaplain is aware of and understands their obligations under the Provider Agreement and Service Agreement, the Work Plan, the Position Description, all applicable Departmental guidelines as published on the website and amended from time to time including but not limited to, the NSCP Guidelines, the Chaplaincy Services Code of Conduct, and the Chaplaincy Information, Records and Reporting Policy, and all applicable laws.
 - (vii) ensure that the Chaplain receives regular training at least one per year, and its own expense, in relation to their obligations under the Provider Agreement, the Services Agreement, the Position Description, the Work Plan, relevant Departmental Guidelines published on the Department's website from time to time, including but not limited to the NSCP Guidelines, the Chaplaincy Services Code of Conduct, and the Chaplaincy Information, Records and Reporting Policy, and all applicable laws.

3.2 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.

3.3 School Supplied Materials

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

- (a) only utilise the materials in the performance of Chaplaincy Services;
- (b) take all reasonable care of all the materials;
- (c) comply with any directions of the School's contract manager for preservation, forwarding or disposal of the materials.

3.4 Provision of Chaplaincy Services

- (a) The Provider must ensure that Chaplaincy Services are provided:
 - (i) only to students where there has been express and informed consent to the provision of those Chaplaincy Services;
 - (ii) 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;
 - (iii) in accordance with this Agreement and the Provider Agreement;
 - (iv) in accordance with the Work Plan, the Position Description, all applicable Departmental guidelines as published on the website and amended from time to time including but not limited to the NSCP Guidelines, the Chaplaincy Services Code of Conduct, and the Chaplaincy Information, Records and Reporting Policy; and all applicable laws;
 - (v) performed by a Chaplain who:
 - (A) has the requisite qualifications, skills, knowledge and experience to perform the Chaplaincy services described in the Position Description and the Work Plan;
 - (B) has undertaken a satisfactory working with children assessment under the *Working With Children Act 2005* (Vic) and maintains under the Act a valid Working With Children Check during the term of this Agreement;
 - (C) has undertaken a satisfactory police records check;
 - (D) meets any NSCP requirements;
 - (E) 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;

- (F) has signed and demonstrated that they understand the Chaplaincy Services Code of Conduct;
 - (G) 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 that school
- (b) 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.

3.5 Incident and investigations Reporting

- (a) 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 (Vic)*.
- (b) The Provider must, within a reasonable time, inform the Principal and the Department of:
- (i) 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
 - (ii) any significant incidences occurring during or related to the provision of Chaplaincy Services at the School; and
 - (iii) any significant incidences occurring during or related to the Chaplain.
- (c) Either party must inform the other party within 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.
- (d) Where appropriate, the parties will comply with the Department's *Addressing Parent Concerns and Complaints Effectively: Policy and Guide* (or equivalent policy, as published on the Department's website and amended from time to time) in the investigation and determination of any concerns or complaints about a Chaplain providing Chaplaincy Services.
- (e) Nothing in this clause prevents a party from exercising its right to
- (i) withdraw the Chaplain from providing Chaplaincy Services at the School in accordance with clause 3.6 of this Agreement; and/or
 - (ii) terminate the Agreement under clause 6 of this Agreement.

3.6 Withdrawal of Chaplain

- (a) The Provider must immediately withdraw the Chaplain from providing Chaplaincy Services in the school in the event that the Provider:

- (i) has been requested to do so by the Principal of the school in accordance with clause 3.7(b) of this Agreement
- (ii) has been requested to do so by the Department;
- (iii) 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 work in child-related work for the purposes of the *Working with Children Act 2005* (Vic); or
- (iv) is no longer satisfied that the Chaplain meets or met the requirements in clause 3.4(a)(iv).

3.7 Replacement Chaplain

- (a) If the person identified in Item 5 of 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 of that fact and provide details of another, suitably qualified and experienced person to replace the Chaplain (**Replacement Chaplain**), within three Business Days and at no additional cost to the School.
- (b) If the Principal is dissatisfied with the performance of the Chaplain:
 - (i) 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.
 - (ii) the Provider must promptly provide details of a Replacement Chaplain, at no additional cost to the School.
- (c) Where the Provider has proposed a Replacement Chaplain:
 - (i) the Principal must notify the Provider, in writing, within two Business Days, whether the Principal accepts the Replacement Chaplain proposed by the Provider;
 - (ii) on receipt of notice that the Principal does not accept the proposed Replacement Chaplain, the Provider must promptly provide details of a further Replacement Chaplain, at no additional cost to the School;
 - (iii) the Principal must notify the Provider in writing within two Business Days whether he or she accepts the further Replacement Chaplain proposed by the Provider.
- (d) The Provider acknowledges and agrees that the Principal is under no obligation to accept any person proposed by the Provider as the Chaplain.
- (e) If the Principal and Provider cannot agree on a Replacement Chaplain, the termination provisions apply.

3.8 Cost of the Chaplaincy Services

- (a) The cost for the provision of Chaplaincy Services is set out in Item 8 of the Agreement Schedule.
- (b) The NSCP component of the funding identified in Item 8 of the Agreement Schedule must be applied so that the School receives a minimum 400 hours of Chaplaincy Services.
- (c) 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.
- (d) The Provider must submit to the School a Tax Invoice or Tax Invoices in respect of the Chaplaincy Services as set out in Item 9 of the Agreement Schedule, which is to be
 - (i) not less frequently than once per School term; and
 - (ii) must only relate to the costs of the services provided or to be provided in that invoice period.
- (e) 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 Services in accordance with the requirements of this Agreement, the School will not be required to pay for those Services.

4. Information

4.1 Compliance with the Information, Records and Reporting Policy

- (a) The Provider acknowledges that in accordance with the terms of the Provider Agreement and 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.
- (b) The Provider acknowledges that the records must be kept, filed, and made available to the School or the Department in accordance with the Provider Agreement, this Agreement, and the Chaplaincy Information, Records and Reporting Policy.
- (c) 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;
- (d) 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:
 - (i) the *Privacy and Data Protection Act 2014 (Vic)* and any standards, policies or guidelines issued from time to time in accordance with this Act;

- (ii) the *Health Records Act 2001* (Vic) and any standards, policies or guidelines issued from time to time in accordance with this Act;
- (iii) the *Public Records Act 1973* (Vic) and any standards, policies or guidelines issued from time to time in accordance with this Act;
- (iv) any other relevant legislation and associated standards, policies or guidelines issued from time to time; and
- (v) the Chaplaincy Information, Records and Reporting Policy published on the Department's website and as amended from time to time.

4.2 Privacy

The Provider acknowledges that it will be bound by the *Health Records Act 2001* (Vic) 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.

4.3 Mandatory Reporting

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

- (a) all mandatory reporting obligations under the *Children, Youth and Families Act 2005* (Vic) as if the Chaplain were a "mandatory reporter" as defined under that Act ; and
- (b) the Department's *Child Protection – Mandatory Reporting Policy* as published, and updated from time to time, on the Department's website.

4.4 Reporting

- (a) 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:
 - (i) how many hours of Chaplaincy Services were provided;
 - (ii) how many students have accessed the Chaplaincy Services;
 - (iii) any complaints or concerns identified with regard to the Chaplain or the provision of Chaplaincy Services;
 - (iv) aggregated data about the nature of the Chaplaincy Services provided.
- (b) 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.

5. Warranties

The Provider warrants that:

- (a) 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;
- (b) the persons 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 (Vic)* and police check;
- (c) 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.

6. Termination

6.1 Termination by notice

- (a) Either party may terminate this Agreement by notice in writing to the other party.
- (b) Termination will take effect immediately on receipt of the notice to terminate.

6.2 Consequences of termination

- (a) Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (b) Where this Agreement is terminated
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) the Provider will return all School supplied material within seven days, or otherwise dispose or deal with them at the direction of the Principal;

- (v) the Provider will ensure that all relevant files, records and information are provided to the School in accordance with the Department's Information, Records and Reporting Policy.
- (c) 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.

6.3 Survival

Clauses, 4, 6.2, 8.2 and 8.3 of this Agreement survive the termination or expiry of this Agreement or the completion of the Chaplaincy Services.

7. Disputes

- (a) If any dispute arises under or in connection with this Agreement (Dispute) the Principal and the Provider will promptly meet and discuss in good faith with a view to resolving such Dispute.
- (b) Nothing in this clause prevents a party from exercising its rights to terminate the Agreement under clause 6 of this Agreement.

8. General

8.1 Notices

- (a) Any notice, approval or consent must be addressed and delivered to the respective parties contract manager identified in Item 2 and Item 4 of the Agreement Schedule by any means listed in that Schedule.
- (b) 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.

8.2 Staff Costs

- (a) 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.
- (b) 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.

8.3 Indemnity for breach of information obligations

- (a) 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:
 - (i) a breach of this Agreement or a Provider Agreement, including any failure to provide the Chaplaincy Services;
 - (ii) any warranty given by the Provider under this Agreement or any Provider Agreement being incorrect or misleading in any way; or

- (iii) 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.

8.4 Variation

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

8.5 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.

8.6 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria.
- (b) 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.