



Victorian Government
Solicitor's Office

Provider Agreement

**For the Provision of Chaplaincy Services in Victorian
Government Schools**

**The State of Victoria through the Department of Education
and Training**

(the Department)

and

Chaplaincy Services Provider

(Provider)

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Ref: 1416593

The State of Victoria through the Department of Education and Training

(the Department)

and

Chaplaincy Services Provider

(the 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 Training (**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 programme is open to all Victorian schools.
- C. The Provider has entered into this Agreement with the Department in order to be eligible to provide Chaplaincy Services to Victorian Government Schools. The Provider may also provide Chaplaincy Services to other schools.
- D. The Parties acknowledge that no direct funding attaches to this Agreement and that entering into this agreement does not guarantee that the Provider will be contracted to provide Chaplaincy Services.

Agreed terms

1. Definitions and Interpretation

1.1 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 schools 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 NSCP Guidelines, 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* in Melbourne).

Chaplain means the person engaged by the Provider who the Provider will supply to a Victorian Government school in order to provide Chaplaincy Services to that school.

Chaplaincy Services means pastoral care services (which includes the practice of looking after the personal needs of students, not just their academic needs, through the provision of general spiritual and personal advice) 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 Training as detailed in Schedule 1.

Chaplaincy Information, Records and Reporting Policy means the Information Records and Reporting 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.

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

Position Description means the position description for chaplains developed by the Department, 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.

Provider means the person, corporation, other legal entity, partnership or joint venture, including employees and agents supplying or intending to supply the Chaplaincy Services under a Service Agreement and who is a Party to this Agreement as detailed in Schedule 1.

Service Agreement means a service agreement that the Provider has entered into with a Victorian Government school council for the supply of Chaplaincy Services to that school.

Staff Costs means costs related to the employment of a person by the Provider including but not limited to wages and other 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 (together with all interest or penalties payable by reference to those costs).

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

Work Plan means the plan for a Chaplain as agreed by the Provider and the Principal of the relevant school under the Service Agreement that documents how the Chaplain will provide Chaplaincy Services in that particular school.

2. Contractual Relationship

2.1 Term

- (a) This Agreement commences on the Commencement Date set out in Schedule 1 and, unless terminated earlier under clause 10, will continue until 31 December 2016 (the Term).
- (b) The Department may elect, by notice in writing to the Provider not later than one month prior to the expiry of the current Term, to extend the Term for a period of two years.
- (c) Any 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) The Parties acknowledge that the Department 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.

2.2 Condition precedent and condition subsequent

This Agreement is conditional on the Department obtaining sufficient funding from the Commonwealth Government for the NSCP each year during the Term.

2.3 No Partnership

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (b) Nothing in this Agreement will constitute the Department endorsing or sponsoring the Provider, its officers, agents, or employees and the Provider must ensure that they do not represent themselves as being so endorsed or sponsored.
- (c) Neither the Provider nor its officers, agents, or employees are authorised to incur any obligation or make any representation on behalf of the Department and must not or purport to do so.

2.4 Co-operation and consultation

The Parties agree that they will exercise their rights and perform their obligations under this Agreement in a co-operative, consultative and transparent manner.

2.5 Contract reporting

The Provider will provide the Department with information about and reports on the Chaplaincy Services provided in schools, as requested by the Department, in relation to Chaplaincy Services provided within Victoria, where the funding for the acquisition of those Chaplaincy Services (or part of those services) was provided through the NSCP, including information about a school or schools regarding:

- (a) how many hours of Chaplaincy Services were provided;
- (b) how many students accessed the Chaplaincy Services;
- (c) any complaints or concerns identified with regard to a Chaplain or the provision of Chaplaincy Services; and
- (d) aggregated data about the nature of the Chaplaincy Services provided.

2.6 Performance review

The Department may at its absolute discretion review, investigate or audit the performance of a Provider as required to meet Commonwealth reporting requirements or to satisfy itself that the Provider is meeting its obligations under this Agreement and the NSCP Guidelines.

3. The Provider

The Provider must at all times during the term of the Agreement be reputable and of good standing and capable of providing Chaplains and Chaplaincy Services that meet the terms of this Agreement, any Service Agreement, Applicable Department Guidelines and all applicable laws.

4. Performance of Services

4.1 Provision of Services

- (a) The Provider must provide Chaplaincy Services to Victorian Government schools in accordance with the terms of this Agreement; the Service Agreement to which it is a party, Applicable Department Guidelines and all applicable laws;
- (b) Chaplaincy Services provided to Victorian Government schools must be provided during the school term and within school hours or at school related activities as approved by the School.
- (c) The Provider must ensure that each of its Chaplains understands and complies with the Position Description, the Work Plan, Applicable Departmental Guidelines, and all applicable laws.
- (d) The Provider must, 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 the relevant Service Agreement.

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- (e) In addition to any training required under clause 4.1(d) 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 Provider Agreement, the Services Agreement, the Position Description, the Work Plan, Applicable Departmental Guidelines, and all applicable laws.
 - (f) Nothing in this Agreement or any Service Agreement prevents the Department or a Victorian Government school from having access to, contact with, or contracting with, other providers including suppliers of services the same as, or similar to, those provided by the Provider.
 - (g) The NSCP component of any funding for Chaplaincy Services in a Victorian Government school must be applied to a minimum 400 hours of Chaplaincy Services to be provided to the recipient school.

4.2 Provider's Employees

- (a) Chaplains are employees of the Provider and the Provider is responsible for Staff Costs and will indemnify and keep indemnified the State from and against all liability for Staff Costs in any way relating to the provision of Chaplaincy Services.
- (b) The Provider must have a robust recruitment and selection process for engaging Chaplains and must ensure any Chaplain the Provider supplies to a Victorian Government school:
 - (i) meets any NSCP requirements;
 - (ii) meets the requirements of the Principal of that school;
 - (iii) meets the requirements and selection criteria in the Position Description;
 - (iv) has signed the Chaplaincy Services Code of Conduct;
 - (v) has a satisfactory police records check and valid Working with Children Check and has listed the Provider as a notifying organisation for notices issued under the *Working with Children Act 2005*;
 - (vi) has the requisite knowledge, skill and expertise to provide Chaplaincy Services in Victorian Government schools and otherwise comply with the requirements of this Agreement, the applicable Service Agreement, the Work Plan, Position Description, all Applicable Departmental Guidelines, and all applicable laws;
 - (vii) is a fit and proper person to provide Chaplaincy Services in a school setting and have direct contact with children of different ages, cultural backgrounds, values, sexual orientations and religious faiths or other spiritual beliefs; and

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- (viii) has consented to the Provider disclosing information about the person to the Department, including personal information, sensitive information (regarding religious affiliation), and health information within the terms of this Agreement and in relation to that persons 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.
 - (c) The Provider will ensure that any Chaplain the Provider supplies to a Victorian Government school complies with any obligations under this Agreement or the relevant Service Agreement that must be met by the individual providing the Chaplaincy Services.
 - (d) The Provider agrees that any Chaplain the Provider supplies to a Victorian Government school will be subject to all lawful and reasonable directions issued by the Principal of the relevant school whilst he or she is providing Chaplaincy Services at that school.
 - (e) The Provider must immediately withdraw a Chaplain from providing Chaplaincy Services to any Victorian Government school in the event that the Provider:
 - (i) has been requested to do so by the Principal of the school or an agent or employee of the Department;
 - (ii) 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*; or
 - (iii) is no longer satisfied that the Chaplain meets or met the requirements in clause 4.2(b).
 - (f) The Provider must formally review the performance of each Chaplain providing Chaplaincy Services in a Victorian Government school at least once per school year and must include the Principal of the school receiving Chaplaincy Services from that Chaplain in the performance review. The review must be documented in writing.

4.3 Employment policy

The Provider and any person engaged in the provision of Chaplaincy Services by the Provider must not engage in unethical work practices and must comply with all applicable laws and industrial instruments.

5. Incident and investigations Reporting

- (a) A 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*.

- (b) The Provider must, in writing and within two Business Days, inform 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.
- (c) Either Party must inform the other Party within two Business Days if they become aware that there has been a complaint about a Chaplain or the provision of Chaplaincy Services.
- (d) The Department may arrange an investigation of a complaint or incident or an investigation into the actions of a Chaplain or the provision of Chaplaincy Services.
- (e) Nothing in this clause prevents a Party from exercising its right to terminate the Agreement under clause 10 of this Agreement.

6. Records

6.1 Compliance with the Information, Records and Reporting Policy

- (a) The Provider acknowledges that in accordance with the terms of this Agreement and any relevant Service Agreement, ownership of all records created by the Chaplain during or related to the provision of Chaplaincy Services in a Victorian Government school immediately vests in the State and the records must be kept and made available to the relevant school or the Department in accordance with this Agreement, the Service Agreement and the Chaplaincy Information, Records and Reporting Policy.
- (b) 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 Victorian Government school are provided to the school or the Department in accordance with this Agreement, the Service Agreement and the Chaplaincy Information, Records and Reporting Policy.

6.2 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 State (by actions or inactions of employees of the Department) or the school council of the relevant Victorian Government school would have been bound had it been directly done or engaged in by the State or the school council of the relevant Victorian Government school.

6.3 Mandatory reporting

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

- (a) 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
- (b) the Department's *Child Protection - Mandatory Reporting Policy*.

6.4 Use of Confidential Information

The Provider will (and will ensure that its employees, agents and advisers will):

- (a) use, reproduce, or otherwise make available any confidential information (including personal information and health information) created or received during or as a result of the provision of Chaplaincy Services only to perform its obligations under this Agreement or a Service Agreement; and
- (b) not otherwise use or disclose or make available confidential information (including personal information and health information) other than in accordance with the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001*, and the Chaplaincy Information, Records and Reporting Policy.

6.5 Disclosure

The Provider consents to the Department making available information in relation to the Provider or Chaplaincy Services:

- (a) as is necessary to comply with any financial, contract or procurement reporting obligations;
- (b) that is requested by the Victorian Auditor-General, Ombudsman, Independent Broad-Based Anti-Corruption Commission, Victoria Police, Coroners' Court of Victoria, Commission for Children and Young People, Victorian Parliament, a court or tribunal, or the Commonwealth;
- (c) as may be required to comply with its obligations including its legal obligations under the *Freedom of Information Act 1982*; and
- (d) as required during any investigation, inquiry or legal proceeding.

7. Indemnity

- (a) The Provider must indemnify the State against any loss, damage, claim, action or expense (including legal expense) which the State suffers as a direct or indirect result of any of the following:
 - (i) a breach of this Agreement or a Service Agreement, including any failure to provide the Chaplaincy Services;
 - (ii) any warranty given by the Provider under this Agreement or any Service Agreement being incorrect or misleading in any way; or

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- (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 State, its officer or employees.

8. Warranties

The Provider warrants that:

- (a) the provision of the Chaplaincy Services will be carried out with all due care and skill and in accordance with this Agreement, any applicable Service Agreement, the Work Plan, the Position Description, Applicable Departmental Guidelines, and all applicable laws;
- (b) it and its employees and agents are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Chaplaincy Services;
- (c) the Provider will notify the Department in writing of any change in control of the Provider within seven Business Days after that change occurs;
- (d) the Provider does not, and will ensure that its employees and agents do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Agreement; and
- (e) the Provider will promptly inform the Department of any matter which may give rise to an actual or potential conflict of interest.

9. Insurance

9.1 Minimum insurance cover

- (a) The Provider must effect and maintain for the Term the insurances specified in Schedule 1.
- (b) The policies must cover the Provider's liability to the State for loss, damage to property and the death or injury to any person and must also note the interest of the State.
- (c) The Provider must, upon request by the Department, provide proof within 10 Business Days of the request that the insurance policies have been effected and maintained.

9.2 Accident Compensation

The Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Provider to provide Chaplaincy Services, the Provider:

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- (a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013*;
 - (b) insures against its liability to pay compensation whether under legislation or otherwise; and
 - (c) produces to the Department, on request, any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013*.

10. Termination

10.1 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.

10.2 Termination without notice

The Department may terminate this Agreement immediately, in writing, if the Provider 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.

10.3 Department may termination with notice

The Department may terminate this Agreement by seven days' notice, in writing, to the Provider if:

- (a) the Provider fails to provide the Chaplaincy Services in accordance with the requirements of a Service Agreement and the Provider fails to remedy, to the satisfaction of the Department, any breach of a Service Agreement (which in the reasonable opinion of the Department is able to be remedied) within 14 days after the date on which the Department issues the Provider a written notice requiring the Provider to remedy the breach;
- (b) the Provider fails to remedy, to the satisfaction of the Department, any breach of this Agreement (which in the reasonable opinion of the Department is able to be remedied) within 14 days after the date on which the Department issues the Provider a written notice requiring the Provider to remedy the breach; or
- (c) the Provider breaches any material provision of this Agreement and in the reasonable opinion of the Department such breach cannot be remedied.

10.4 Provider may terminate with notice

- (a) The Provider may terminate this Agreement by 14 days' notice, in writing, to the Department if:
 - (i) the Department 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 Department with a written notice requiring the Department to remedy the breach; or

- (ii) the Department breaches any material provision of this Agreement and in the reasonable opinion of the Provider such breach cannot be remedied.

10.5 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.

10.6 Consequences of termination

- (a) On termination of this Agreement the Parties must take all appropriate action to mitigate any loss and prevent additional costs being incurred.
- (b) On termination of this Agreement the Provider must cease all work under this Agreement and any Service Agreement and must immediately advise each Chaplain that the Agreement has been terminated and instruct those Chaplains to cease all work in schools under a Service Agreement.
- (c) Where this Agreement is terminated and following the notice of termination the Department must advise schools that the Agreement has been terminated and that schools receiving services from the Provider must immediately cease to accept any continued Chaplaincy Services from that Provider and either
 - (i) enter into an agreement with a different provider in order to receive Chaplaincy Services until the NSCP funding has been expended; or
 - (ii) return any unspent NSCP funding to the Department.
- (d) Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either Party prior to termination.

11. Survival

Clauses 2.3, 2.5, 6.2, 6.4, 6.5, 7 and 10 of this Agreement survive the termination or expiry of this Agreement or the completion of the Chaplaincy Services.

12. Disputes

If any dispute arises under or in connection with this Agreement (Dispute) the Department 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 right to terminate the Agreement under clause 10.

13. General

13.1 No Volume Guarantee

The Department makes no representation or warranty that a Provider will be contracted any Schools to provide Chaplaincy Services.

13.2 Agreement Management

All correspondence in connection with this Agreement should be sent to the person and address specified in the Schedule (**Representatives**). Either Party may nominate a replacement Representative by notice in writing to the other Party. The appointment of the replacement Representative will be effective from the date on which such notice is given.

13.3 Amendment

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

13.4 Subcontracting

The Provider must not subcontract any of its obligations under this Agreement or in the provision of Chaplaincy Services to Victorian Government schools.

13.5 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.

13.6 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.

Executed as a Deed

SIGNED by)
.....)
.....)
Division/Office as authorised)
representative for **SECRETARY TO THE**)
DEPARTMENT OF EDUCATION AND)
TRAINING in the presence of:)

.....
Signature of witness

.....
Name of witness (block letters)

By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Department of Education and Training

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

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)

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

Executed by the 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)

Date: / /

Schedule 1

Item 1 Department	GPO Box 4367, Melbourne, Vic 3001 Postal address (03) 9637 3179 Telephone (03) 9637 2030 Facsimile student.engagement@edumail.vic.gov.au Email address
Item 2 Chaplaincy Services Provider	Provider name ABN Postal address Telephone Facsimile Email address
Item 3 Representative	Kris Arcaro, Director Wellbeing, Health and Engagement Division Department's Representative GPO Box 4367, Melbourne, Vic 3001 Postal address (03) 9637 3179 Telephone (03) 9627 2030 Facsimile arcaro.kris.f@edumail.vic.gov.au Email Provider's Representative Name and Position Postal address Telephone Facsimile Email address
Item 4 Commencement Date	
Item 5 Insurance	\$10,000,000 Public Liability Insurance \$10,000,000 Professional Liability Insurance