Victorian Agreement for the National School Chaplaincy Program 2021–2022

State of Victoria represented
by the Department of Education and Training

(Department)

and

Non-Government School

2021–2022

Agreement Schedule

|  |
| --- |
| 1. School (clause 1)
 |
| **School name:** |  |
| **Principal:** |  |
| **Address(es):** |  |
| **Telephone:** |  |
| **Email:** |  |
| 1. School's Representative details (clause 11)
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:** |  |
| 1. School's address for Notices (clause 12)
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:** |  |
| 1. Department's Representative details (clause 11):
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:** |  |
| 1. Department's address for Notices (clause 12)
 |
| **Name:** |  |
| **Address:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Facsimile:**  |  |
| 1. NSCP funding (clause 1)
 |
| **School Campus:** |  |
| **NSCP funding:** |  |
| **School Campus:** |  |
| **NSCP funding:** |  |
| 1. Commencement Date (clause 3(a))
 |
| **Commencement Date:** |  |

State of Victoria represented by the Department of Education and Training

of 2 Treasury Place, East Melbourne, Victoria 3002

(the Department)

and

The party set out at Item 1 of the Agreement Schedule

 (the School)

Background

1. Victoria continues to participate in the Commonwealth Government’s National School Chaplaincy Program (**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.
2. 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.
3. The School is entering into this Agreement with the Department in order to receive NSCP Funding for 2021 and 2022 of $20,280 per School campus per annum or up to $24,336 per School campus per annum if the School is in a remote or very remote area.

Agreed terms

# Definitions

In this Agreement, unless the contrary intention appears, the following definitions apply:

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

**Appropriate Insurance** has the meaning set out in the Funding Guideline.

**Business Day** 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 School to provide Chaplaincy Services to the 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 schools as amended from time to time and published on the Department's website.

**Child Abuse** has the meaning set out in section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

**Child Safe Standards** means the Victorian Child Safe Standards made under the *Child Wellbeing and Safety Act 2005* (Vic).

**Commencement Date** has the meaning set out at Item 7 of the Agreement Schedule.

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

**Dispute** means any dispute arising out of this Agreement, or concerning the performance or non-performance by either Party of its obligations under the Agreement, or concerning any decision of a Party or interpretation of any clause of this Agreement.

### **Funded Organisation** has the meaning set out in the Funding Guideline.

**Funding Guideline** means the Victorian Funding Guideline for Services to Children prepared to give effect to Recommendation 26.1 of *Betrayal of Trust* the final report of the Family and Community Development Committee’s Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, as amended from time to time.

**Insolvency Event** means where the School is unable to pay its debts as and when they fall due; or a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the School; or the School enters into a scheme of arrangement with its creditors; or the School is wound up; or the School assigns any of its property for the benefit of creditors or any class of creditors; or a person with a legal right over any of the School's assets takes any step towards taking possession or takes possession of those assets or exercises any power of sale.

**Law** means the law in force in the State of Victoria and the Commonwealth of Australia, including common law, legislation, regulations, by-laws and other subordinate legislation.

**NSCP** meansthe Commonwealth Government’s National School Chaplaincy Program.

**NSCP Funding** means the funding payable each year to the School per School campus as set out in Item 6 of the Agreement Schedule, in order for the School to engage or secure the services of a Chaplain to provide Chaplaincy Services during that year.

**NSCP Guidelines** means the guidelines for the NSCP established by the Department as amended from time to time and available on the Department’s website at <https://www.education.vic.gov.au/school/teachers/health/mentalhealth/Pages/nscpchaplaincy.aspx>

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

**Records** includes documents, information and data stored by any means and all copies and extracts of the same.

**Representative** means the person or persons nominated by the Parties listed in Items 2 or 4 of the Agreement Schedule or any other person who is subsequently appointed in accordance with clause 11.

**School Child Safety Policies** means any relevant School policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting the minimum requirements of the Child Safe Standards.

**School** means the school set out in Item 1 of the Agreement Schedule.

**Services to Children** means services provided by the Chaplain in which the Chaplain engaged by the School is responsible for the supervision of, or has authority over, a child. This includes the provision of care, education, services or activities for children. To avoid doubt, it does not include one-off activities or incidental or ad hoc contact with children.

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

**Term** means the term of this Agreement set out in clause 3.

# Good Faith

The Department and the School agree to act reasonably and in good faith at all times.

# Term of Agreement

### This Agreement commences on the Commencement Date and expires on 31 December 2022 (**Term**) unless terminated earlier.

### This Agreement is conditional on the Department receiving sufficient funds from the Commonwealth for the NSCP each year during the Term (including any extended Term).

# NSCP Funding

### The Department will pay the NSCP Funding to the School annually by 1 March in each funded year.

### The Department may withhold payment of a portion of the NSCP Funding payable under this Agreement by the amount of NSCP Funding that was not expended by the School in a previous funding year.

### The Department may, in the Department’s absolute discretion, immediately suspend payment of all or part of the NSCP Funding to the School on written notice to the School if:

#### the School has breached this Agreement;

#### where the Chaplaincy Services provided under this Agreement are Services to Children, the School and/or the Chaplain has failed or may have failed to comply with the Funding Guideline in accordance with clause 5(f); or

#### the School and/or Chaplain has failed to comply with the Child Safe Standards in accordance with clause 5(e).

### If the Department determines that:

#### the School is in breach of this Agreement;

#### where the Chaplaincy Services funded under this Agreement are Services to Children, the School fails to maintain compliance with the Funding Guideline or fails to comply with clause 5(f) of this Agreement with respect to a Chaplain delivering Services to Children; or

#### if the School and/or Chaplain has failed to comply with the Child Safe Standards in accordance with clause 5(e),

#### the Department may demand the School repay to the Department, by written notice, an amount not exceeding the total amount of NSCP Funding within 30 days, or such other time period as agreed, of receiving the written notice from the Department.

### Any amount demanded by the Department pursuant to this clause will, upon default in payment, be recoverable as a debt due to the State without further proof of debt being necessary.

### Upon expiry of this Agreement, the School must, within 20 Business Days, pay to the Department, an amount equal to the portion of NSCP Funding that has not expended in accordance with this Agreement.

# School's Acknowledgments

The School acknowledges and agrees that:

### NSCP Funding is conditional each year during the Term on the State's receipt of funds from the Commonwealth for the NSCP pursuant to the Department's agreement with the Commonwealth;

### NSCP Funding does not constitute a gift but is a grant being provided by the State to the School on the terms and conditions of this Agreement;

### NSCP Funding and any interest earned on NSCP Funding must be used by the School to meet the general recurrent costs of providing Chaplaincy Services that are consistent with the NSCP Guidelines;

### NSCP Funding must be applied so that the School receives a minimum of 400 hours of Chaplaincy Services provided during the School's terms and within School hours;

### where the School and/or the Chaplain are subject to the Child Safe Standards, the School must ensure at all times during the Term of the Agreement that:

#### the School and the Chaplain comply with the Child Safe Standards and the School Child Safety Policies; and

#### the School and the Chaplain provide any information upon request by the Department to enable the Department to perform its role as a relevant authority in respect of the School and/or the Chaplain under the *Child Wellbeing and Safety Act 2005* (Vic);

### where the Chaplaincy Services funded in accordance with this Agreement are Services to Children, the School acknowledges that the School will:

#### be responsible for ensuring that at all times the School and the Chaplain comply with the Funding Guideline as if the School and/or Chaplain were Funded Organisations to the reasonable satisfaction of the Department; and

#### provide and will ensure that the Chaplain provides to the Department within five (5) Business Days such information evidencing its compliance with the Funding Guideline as the Department may reasonably request;

### any Chaplain engaged with NSCP Funding must:

#### meet any NSCP requirements;

#### have a satisfactory police records check, valid Working with Children Check under the *Working with Children Act 2005* and have listed the relevant School as a notifying organisation for notices issued under the *Working with Children Act 2005* and makes these available to the School on request;

#### have the requisite qualifications, knowledge, skill and experience to provide Chaplaincy Services;

#### be a fit and proper person to provide Chaplaincy Services in a school setting and have direct contact with children;

#### have signed and demonstrated an understanding of the Chaplaincy Services Code of Conduct;

#### be aware of and understand the NSCP Guidelines;

#### complete the ‘Professional learning for National School Chaplaincy Program for Chaplains - responding to and preventing cyberbullying’ provided by the Office of the eSafety Commissioner within three months of commencing in their position;

### the State has made no commitment to grant any further funds, in addition to the NSCP Funding, to the School and any expenditure incurred by the School in securing or providing Chaplaincy Services in addition to the amount covered by the NSCP Funding is the responsibility of the School;

### the School must ensure that any agreement the School has to engage a Chaplain contains terms for payment, performance, reporting, disclosure and termination that allow the School to adhere to the terms of this Agreement;

### the Department's involvement in the provision of Chaplaincy Services in the School is limited to the provision of the NSCP Funding and the State is in no way responsible for the activities undertaken by the Chaplain or by the School in providing Chaplaincy Services;

### in carrying out their operations, the School must comply with all applicable Laws and industrial instruments;

### the School will not, by virtue of this Agreement, be deemed to be an agent, contractor or partner of the Department, or as having any power or authority to bind or represent the Department.

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

# Guidelines

### The NSCP Guidelines form part of this Agreement. The Department may amend the NSCP Guidelines during the Term and, upon amendment, the Guidelines as amended form part of this Agreement.

# Reporting, Accounts and Records

### The School will provide the Department with information about and reports on the Chaplaincy Services, as requested by the Department, including information about:

#### how many hours of Chaplaincy Services were provided;

#### how many students accessed the Chaplaincy Services; and

#### aggregated data about the nature of the Chaplaincy Services provided.

### The School must immediately inform the Department 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*; or

#### has not complied with the Child Safe Standards in accordance with clause 5(e) or any School Child Safety Policy.

### The School must, in writing and within a reasonable time, inform the Department of:

#### 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;

#### any significant incidences occurring during or related to the provision of Chaplaincy Services; and

#### any significant or substantiated complaints made about a Chaplain or the provision of Chaplaincy Services.

### The School must keep, and must ensure that Schools keep, full and accurate Records, including financial records, so as to enable:

#### the identification of all NSCP Funding as well as the expenditure of NSCP Funding;

#### the audit of financial records in accordance with current Australian professional accounting standards; and

#### the School to perform and report on its performance under this Agreement.

### For each calendar year of the Term, the School must certify, on or before 30 June in the year following the relevant calendar year that amounts equal to the NSCP Funding paid for that calendar year:

#### were spent (or committed to be spent) for that calendar year for the provision of Chaplaincy Services; or

#### have been offset or returned to the Department.

#### **7A Funding Services for Children**

### Where the Chaplaincy Services provided under this Agreement are Services to Children:

### the School must maintain insurance written on an occurrence basis covering legal liability (regardless of how this liability arises) for death or bodily injury of any person and loss and destruction of, and damage to, any property, and shall include liability for Child Abuse for no less than $5 million per claim or, in the case of coverage provided on the basis of a monetary aggregated claims amount, $10 million per annum, unless the Department agrees in writing that insurance on other terms and conditions is Appropriate Insurance; and

### the School will provide the Department within five (5) Business Days, with such information evidencing its compliance with the Funding Guideline as the Department may reasonably request; and

### the School warrants that:

#### at the time of entering into this Agreement:

##### it complies with the Funding Guideline as a Funded Organisation; and

##### if it is not a duly incorporated legal entity, it is actively working towards incorporation in order to comply with the Funding Guideline as a Funded Organisation; and

#### during the Term of the Agreement:

##### it will at all times comply with the Funding Guideline as a Funded Organisation; and

##### if it is not a duly incorporated legal entity, it is actively working towards incorporation in order to comply with the Funding Guideline as a Funded Organisation,

##### and will immediately notify the Department in writing if it fails or is likely to fail to comply with the Funding Guideline in any respect.

# Disclosure Obligations

The School acknowledges and consents to the Department disclosing information about the School and any information provided under this Agreement to the extent necessary to comply with any of the Department's legal obligations or administrative obligations including obligations the Department has under:

#### the *Freedom of Information Act 1982*;

#### the *Ombudsman Act 1973*;

#### the *Equal Opportunity Act 2010* and the *Occupational Health and Safety Act 2004*;

#### the *Children Youth and Families Act 2005*; and

#### the disclosure requirements of the Auditor General.

# Termination

### 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.

### The Department may terminate this Agreement immediately by notice if:

#### the Department for any reason is no longer in receipt of NSCP funding from the Commonwealth;

#### the Department reasonably believes that the School has misused any NSCP Funding;

#### the Department reasonably believes that the School has breached or is reasonably suspected of breaching clause 5(e) [Child Safe Standards];

#### where the Chaplaincy Services provided in accordance with this Agreement are Services to Children, if the Department reasonably believes that the School has breached or is reasonably suspected of breaching clauses 5(f) or 7A [Funding for Services to Children]; or

#### an Insolvency Event occurs.

### Subject to clause 9(b), the Department may terminate this Agreement by 14 days' notice, in writing, to the School if:

#### the School 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 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 Department such breach cannot be remedied.

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

#### the Department fails to remedy, to the satisfaction of the School, 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 Department with a written notice requiring the Department to remedy the breach; or

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

### Where this Agreement is terminated, the School, at the Department's discretion, either:

#### may continue to engage a Chaplain until the NSCP Funding already paid to the School have been expended; or

#### must return any unspent NSCP Funding as at the date of termination to the Department within 30 days of the notice of termination.

### Where this Agreement is terminated the Parties must take all appropriate action to mitigate any loss and prevent additional costs being incurred.

# Disputes

### If a Dispute arises under or in connection with this Agreement

#### the Parties’ Representatives must meet as soon as practicable in order to resolve the Dispute;

#### if a Dispute is not able to be resolved by the Parties’ Representatives within 14 Business Days of such Dispute arising, the nominated senior executive officer (or equivalent) of the Department and the School must meet within seven Business Days and discuss in good faith with a view to resolving such Dispute;

#### if the Dispute is not able to be resolved by the nominated senior executives within 14 Business Days of referral to those executives, the Department nominee and the Principal of the School (or equivalent) must meet within seven Business Days and discuss in good faith with a view to resolving such Dispute.

#### If the Dispute is not able to be resolved by the Department nominee and the Principal of the School within 14 Business Days the termination provisions apply.

### The Parties must continue to perform their respective obligations under this Agreement pending the resolution of the Dispute.

### Nothing in this clause is to be taken as preventing any Party from seeking interlocutory relief in respect of a Dispute.

# Communications and notices

### For the purposes of ensuring a productive and efficient relationship between the Department and the School, each Party nominates a Representative in relation to all communications required or arising under or in connection with this Agreement as follows:

#### the School’s Representative is listed at Item 2 of the Agreement Schedule;

#### the Department’s Representative is listed at Item 4 of the Agreement Schedule.

### Either Party may nominate a replacement Representative by written notice to the other Party and the appointment of the replacement Representative will be effective from the date on which such notice is given.

# Notices

### All notices, demands, reports or other communications provided under this Agreement must be in writing, signed by an officer authorised to sign and directed to the Representative at the relevant address described below, as varied by notice:

#### The School’s address details are listed at Item 3 of the Agreement Schedule.

#### The Department’s address details are listed at [Item 5](#Item5) of the Agreement Schedule.

### A notice shall be taken to be served on the date of receipt unless delivery is made or email or transmission received:

####  on a non-Business Day, or

####  after 4.30 pm on a Business Day,

in which case it shall be taken to be served on the next Business Day.

# Indemnity

### The School 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:

#### a breach of this Agreement;

#### any wrongful or any negligent act or failure to act by the School or any of the School’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 officers or employees.

# Waiver

### A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

# Variation

### Any addition to or variation of this Agreement must be in writing signed by or on behalf of the parties.

# Assignment

The School must not assign any right, benefit, obligation or duty (or any part thereof) under this Agreement without the prior written consent of the Department which consent may be withheld in the Department’s absolute discretion.

# Entire Agreement

This Agreement contains the entire agreement between the Parties in connection with NSCP and it supersedes all previous agreements or understandings between the Parties in connection with NSCP.

# Governing Law and jurisdiction

This Agreement is governed by the law of Victoria. The Parties submit to the jurisdiction of the courts of Victoria and courts entitled to hear appeals from those courts.

# Survival

### Clauses 4(f), 7, 7A(c), and 8 to 20 survive the expiry or earlier termination of this Agreement.

# Counterparts

### This Agreement may be signed and exchanged by the parties in counterparts. The counterparts taken together will constitute one document.

**EXECUTED AS A DEED**

<Use this signing clause when the School is a company incorporated in Australia under the *Corporations Act 2001* (Cth), amend or replace with appropriate signing clause if the School is not a company>

|  |  |  |  |
| --- | --- | --- | --- |
| **THE COMMON SEAL of**  **(ABN )** was affixed in accordance with its constitution in the presence of: | )))) |

|  |
| --- |
| *[****INSTRUCTION - for use when a company executes the contract by fixing its common seal]***seal |

 |
|  Signature of Director Name of Director (block letters) |  |  Signature of Director/Company Secretary Name of Director/Company Secretary (block letters) |

|  |  |  |
| --- | --- | --- |
| **SIGNED** by………………………………..  (……………………………………………of ......................................Division/Office) as authorised representative for **SECRETARY TO THE DEPARTMENT OF EDUCATION AND TRAINING** in the presence of: | ))))))) | ***[INSTRUCTION – for use when the Secretary's delegate will execute the contract for amounts less than or equal to that person’s delegation]***  |
|  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 |

Date: / /