Provider Agreement

For the Provision of Chaplaincy or Student Wellbeing Services in Victorian Government Schools

The State of Victoria through the Department of Education

(Department)

and

[INSERT PROVIDER NAME] National Student Wellbeing Program (NSWP) Provider

(Provider)

2023–28

The State of Victoria through the Department of Education

(Department)

and

**[INSERT PROVIDER NAME**]

National Student Wellbeing Program (NSWP) Provider

(Provider)

Background

1. Victoria has been invited to participate in the Australian Government’s National Student Wellbeing Program (**NSWP**). The aim of the NSWP is to provide Services to support the wellbeing of students through:
	1. pastoral care services; and
	2. strategies developed in consultation with the school community, relevant school staff and school principal, that support the wellbeing of the broader school community.
2. The Department of Education (**Department**)administers the NSWP on behalf of the State. The Department has established guidelines for the operation of the NSWP in Victoria.
3. The NSWP is open to all Victorian schools.
4. The Provider has entered into this Agreement with the Department in order to be eligible to provide Services to Victorian Government Schools. The Provider may also provide the Services to other schools.
5. 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 Services.

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 polices and guidelines that are relevant to the provision of 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 NSWP Guidelines, the Code of Conduct, and the Information, Records and Reporting Policy.

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

**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 or Student Wellbeing Officer** or **Student Wellbeing Officer** means the person engaged by the Provider who the Provider will supply to a Victorian Government school in order to provide Services to that school.

**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).

**Code of Conduct** means the code of conduct for Chaplains or Student Wellbeing Officers in Victorian Government schools as published and updated from time to time, on the Department's website.

**Department** means the Department of Education and any successor department, as detailed in Schedule 1.

### **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.

**HR Act** means the *Health Records Act 2001 (Vic).*

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

**Laws** includes:

### Acts of the Commonwealth and the States and Territories in which the Services will be delivered, and any other relevant State or Territory, including the *Equal Opportunity Act 2010* (Vic);

### ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and

### lawful directions by any person exercising statutory powers regarding the Services .

**NSWP** meansthe Australian Government’s National Student Wellbeing Program.

**NSWP Guidelines** means the guidelines for the NSWP 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.

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Position Description** means the position description for Chaplains or Student Wellbeing Officers 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 or Student Wellbeing Officer, 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 Services under a Service Agreement and who is a Party to this Agreement as detailed in Schedule 1.

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

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

**Services** means chaplaincy and student wellbeing services or pastoral care services which are defined as the practice of supporting the general wellbeing of students and the school community.

**Services to Children** means services provided by the Provider in which the Provider (or any Chaplain or Student Wellbeing Officer engaged by the Provider) 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.

**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 or Student Wellbeing Officer as agreed by the Provider and the Principal of the relevant school under the Service Agreement that documents how the Chaplain or Student Wellbeing Officer will provide the Services in that particular school.

**WWCC** means a working with children check performed under the WWCC Act.

**WWCC Act** means the *Worker Screening Act (2020) Vic*.

# Contractual Relationship

## Term

### This Agreement commences on the Commencement Date set out in Schedule 1 and, unless terminated earlier under clause 10, will continue until **30 June 2028** (the **Term**).

### 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.

### Any 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; and

#### 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.

## Condition precedent and condition subsequent

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

## No Partnership

### This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

### 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.

### 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.

## 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.

## Contract reporting

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

### how many hours of Services were provided;

### how many students accessed the Services;

### any complaints or concerns identified with regard to a Chaplain or Student Wellbeing Officer or the provision of the Services; and

### aggregated data about the nature of the Services provided;

### any other information as requested by the Australian Government.

## Performance review

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

# 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 or Student Wellbeing Officers and Services that meet the terms of this Agreement, any Service Agreement, Applicable Department Guidelines and all applicable Laws.

# Performance of Services

## Provision of Services

### The Provider must provide the 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.

### 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 applicable school.

### The Provider must ensure that each of its Chaplains or Student Wellbeing Officers understands and complies with the Position Description, the Work Plan, Applicable Department Guidelines, and all applicable Laws.

### (c).1 The Provider must ensure that at all times during the Term of the Agreement:

#### the Provider and each of its Chaplains or Student Wellbeing Officers comply with the Child Safe Standards and the School Council Child Safety Policies; and

#### the Provider and each of its Chaplains or Student Wellbeing Officers provide any information upon request by the Department to enable the Department to perform its role as a relevant authority in respect of the Provider and/or each of its Chaplains or Student Wellbeing Officers under the *Child Wellbeing and Safety Act 2005* (Vic).

### (c).2 The Provider must ensure that each of its Chaplains or Student Wellbeing Officers or Student Wellbeing Officers completes the required training as described in NSWP guidance.

### The Provider must, at its own expense, provide a Chaplain or Student Wellbeing Officer with any additional training that the Chaplain or Student Wellbeing Officer requires so that the Chaplain or Student Wellbeing Officer is capable of providing the Services in a manner that complies with the Provider's obligations under this Agreement and the relevant Service Agreement.

### In addition to any training required under clause 4.1(d) and clause 4.1(c).2 the Provider must, at its own expense, ensure that the Chaplain or Student Wellbeing Officer receives continuing professional development training, at least once per year, in relation to their obligations under the Agreement, the Service Agreement, the Position Description, the Work Plan, Applicable Department Guidelines and all applicable Laws.

### 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, the Chaplaincy Service provided by the Provider.

## Provider’s Employees

### Chaplains or Student Wellbeing Officers 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 the Services.

### The Provider must have a robust recruitment and selection process for engaging Chaplains or Student Wellbeing Officers and must ensure any Chaplain or Student Wellbeing Officer the Provider supplies to a Victorian Government school:

#### meets any NSWP requirements;

#### meets the requirements of the Principal of that school;

#### meets the requirements and selection criteria in the Position Description;

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

#### has a satisfactory police records check and a satisfactory WWCC*,* and maintains under the WWCC Act a valid WWCC during the term of this Agreement, has listed the Provider as a notifying organisation for notices issued under the WWCC Actand makes the police records check and WWCC available to the Department on request;

#### has the requisite knowledge, skill and expertise to provide the 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 Department Guidelines and all applicable Laws;

#### is a fit and proper person to provide the 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;

#### 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 or Student Wellbeing Officer, their provision of the Services , complaints or investigations about their performance as a Chaplain or Student Wellbeing Officer or provision of the Services , any relevant investigations into that person by a school, the Provider or a law enforcement agency, and any criminal or alleged criminal activity involving that person;

#### has completed training specified in the NSWP guidelines; and

### The Provider will ensure that any Chaplain or Student Wellbeing Officer 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 Services.

### The Provider must immediately withdraw a Chaplain or Student Wellbeing Officer from providing the Services to any Victorian Government school in the event that the Provider:

#### has been requested to do so by the Principal of the school or an agent or employee of the Department;

#### becomes aware of or reasonably suspects that the Chaplain or Student Wellbeing Officer:

##### 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 or Student Wellbeing Officer could be deemed as not being suitable to work in child-related work for the purposes of the WWCC Act*;*

##### has not complied with the Child Safe Standards in accordance with clause 4.1(c).1 or any School Council Child Safety Policies; or

##### is the subject of an allegation of reportable conduct;

#### is no longer satisfied that the Chaplain or Student Wellbeing Officer meets or met the requirements in clause 4.2(b).

### The Provider must formally review the performance of each Chaplain or Student Wellbeing Officer providing the Services in a Victorian Government school at least once per school year and must include the Principal of the school receiving the Services from that Chaplain or Student Wellbeing Officer in the performance review. The review must be documented in writing.

### Where the Services provided under a Service Agreement and in accordance with this Agreement are Services to Children, the Provider acknowledges that the Provider will be responsible for ensuring that at all times the Provider complies with the Funding Guideline as if the Provider was a Funded Organisation to the reasonable satisfaction of the Department.

## Employment policy

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

# Incident and investigations reporting

### A Party must immediately inform the other Party if it becomes aware or reasonably suspects that a Chaplain or Student Wellbeing Officer:

#### 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 WWCC Act; or

#### has not complied with the Child Safe Standards in accordance with clause 4.1(c).1 or any School Council Child Safety Policies*.*

#### is the subject of an allegation of reportable conduct

### The Provider must, in writing and within two Business Days, inform the Department of:

#### the commencement of any significant internal inquiry into a Chaplain or Student Wellbeing Officer or the provision of the Services as well as any relevant outcome of that inquiry; and

#### any significant incidences occurring during or related to the provision of the Services.

### 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 Student Wellbeing Officer or the provision of the Services.

### The Department may arrange an investigation of a complaint or incident or an investigation into the actions of a Chaplain or Student Wellbeing Officer or the provision of the Services.

### Nothing in this clause prevents a Party from exercising its right to withdraw a Chaplain or Student Wellbeing Officer from providing the Services to any Victorian Government school under clause 4.2(e) or terminate the Agreement under clause 10 of this Agreement.

# Records

## Compliance with the Information, Records and Reporting Policy

### 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 or Student Wellbeing Officer during or related to the provision of the 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 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 the Services in the Victorian Government school are provided to the school or the Department in accordance with this Agreement, the Service Agreement and the Information, Records and Reporting Policy.

## Privacy

### The Provider:

### acknowledges that it will be bound by the *Privacy Act 1988 (Cth)*, the PDP Act, the HR Act and any applicable principles and codes 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 council of the relevant school would have been bound had it been directly done or engaged in by the Department or the school.

### acknowledges that the Department is bound by legal obligations relating to privacy and data protection, including obligations under the PDP Act, the Victorian Protective Data Security Framework and the HR Act.

### must not do any act or engage in any practice that would cause the Department or the school council of the relevant school to contravene the obligations referred to in clause 6.2(b) in respect of any data collected, held, used, managed, disclosed or transferred by the Provider under or in connection with this Agreement.

## Mandatory reporting

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

### all mandatory reporting obligations under the *Children, Youth and Families Act 2005* as if the Chaplain or Student Wellbeing Officer were a "mandatory reporter" as defined under that Act; and

### the Department policies listed in the NSWP guidelines as amended from time to time which include but are not limited to:

#### Child Safe Standards

#### Protecting Children — Reporting and Other Legal Obligations

#### Protecting Children – Making a Report or Referral; and

#### PROTECT - Identifying and Responding to All Forms of Abuse in Victorian Schools.

## Use of Confidential Information

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

### 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 the Services only to perform its obligations under this Agreement or a Service Agreement; and

### not otherwise use or disclose or make available confidential information (including personal information and health information) other than in accordance with the PDP Act, the HR Act, and the Information, Records and Reporting Policy.

## Disclosure

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

### as is necessary to comply with any financial, contract or procurement reporting obligations;

### 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 Australian Government;

### as may be required to comply with its obligations including its legal obligations under the *Freedom of Information Act 1982*; and

### as required during any investigation, inquiry or legal proceeding.

# Indemnity

### 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:

#### a breach of this Agreement or a Service Agreement by the Provider or Chaplain or Student Wellbeing Officer, including any failure to provide the the Services in accordance with this Agreement or a Service Agreement;

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

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

#### a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise; or

#### any injury to, or death of, any person or any loss of, or damage to any property caused by or arising in connection with:

##### the provision of the the Services by the Provider; and/or

##### the entry onto, and the activities undertaken on and in, a Victoria Government school premises by the Provider and/or 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 officers or employees.

### It is not necessary for the Department to incur expense or make a payment before enforcing a right of indemnity conferred by this Agreement.

# Warranties

The Provider warrants that:

### the provision of the 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 Department Guidelines and all applicable Laws;

### it and its employees and agents are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services;

### the Provider will notify the Department in writing of any change in control of the Provider within seven Business Days after that change occurs;

### 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;

### the Provider will promptly inform the Department of any matter which may give rise to an actual or potential conflict of interest; and

### if the Services provided under a Service Agreement and in accordance with this Agreement are Services to Children, the Provider 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.

# Insurance

## Minimum insurance cover

### The Provider must effect and maintain for the Term the insurances specified in Schedule 1.

### 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.

### 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.

## Funding Services for Children

### Where the Services provided under a Service Agreement and in accordance with this Agreement are Services to Children:

### without limiting clause 9.1, the insurance coverage required by clause 9.1 must include 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 Provider 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.

## Accident Compensation

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

### complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (**WIRC Act**);

### insures against its liability to pay compensation whether under legislation or otherwise; and

### produces to the Department, on request, any certificates or like documentation required by the WIRC Act.

# Termination

## 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 Department may terminate this Agreement immediately by giving written notice to the Provider:

### 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;

### if the Australian Government ceases providing funding to the Department on behalf of the State for the NSWP pursuant to the project agreement for the NSWP between the Australian Government and the States and Territories of Australia;

### if the Provider has breached or is reasonably suspected of breaching clause 4.1(c).1 [Child Safe Standards]; or

### where the Chaplaincy or Student Wellbeing Services provided under a Service Agreement and in accordance with this Agreement are Services to Children, if the Provider has breached or is reasonably suspected of breaching clauses 4.2(g), 8(f) or 9.2 [Funding for Services to Children].

## Department may terminate with notice

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

### the Provider fails to provide the 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;

### 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

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

## Provider may terminate with notice

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

#### 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

#### the Department 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

### On termination of this Agreement the Parties must take all appropriate action to mitigate any loss and prevent additional costs being incurred.

### On termination of this Agreement the Provider must cease all work under this Agreement and any Service Agreement and must immediately advise each Chaplain or Student Wellbeing Officer that the Agreement has been terminated and instruct those Chaplains or Student Wellbeing Officers to cease all work in schools under a Service Agreement.

### 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 the Services from the Provider must immediately cease to accept any continued Services from that Provider and either

#### enter into an agreement with a different provider in order to receive the Services until the NSWP funding has been expended; or

#### return any unspent NSWP funding to the Department.

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

# Survival

Clauses 2.3, 2.5, 6.1(b), 6.2, 6.4, 6.5, 7, 8 and 10to 13of this Agreement survive the termination or expiry of this Agreement or the completion of the Services .

# 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.

# General

## No Volume Guarantee

The Department makes no representation or warranty that a Provider will be contracted to any Victorian Government schools to provide the Services.

## 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.

## Amendment

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

## Subcontracting

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

## 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.

## Counterparts

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

## Electronic signatures

The parties acknowledge and agree that this Agreement may be executed by electronic signature which shall have the same force and effect as a handwritten signature. Without limiting this term, ‘electronic signature’, whether digital or encrypted, will include scanned and transmitted versions (e.g. via pdf) of an original signature. An electronic signature is sufficient to indicate a party’s approval of the terms of this Agreement and the parties agree to be so bound by their electronic signature and the terms of this Agreement.

## Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.

## Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. Nothing in this Agreement will constitute or deem a party to be the employee of another party.

Signing Page

Executed as a Deed

|  |  |  |
| --- | --- | --- |
| **Signed sealed and delivered** by **[name]** a duly authorised officer of the **Department of Education** for and on behalf of the **STATE OF VICTORIA** in the presence of: |  |  Signature of Officer |
|   |  |   |
| Signature of Witness |  | Name of Witness (print) |

Date

|  |  |  |
| --- | --- | --- |
| **Signed sealed and delivered** for and on behalf of **[Provider name and ACN/ABN number]** by **[name]** a duly authorised representative of the **Provider** in the presence of: |  |  Signature of Authorised Representative |
|   |  |   |
| Signature of Witness |  | Name of Witness (print) |

Date

1. Details

|  |  |
| --- | --- |
| **Item 1 Department** | GPO Box 4367, Melbourne, Vic 3001**Postal address**(03) 7022 0019**Telephone**student.engagement@edumail.vic.gov.au**Email address** |
| Item 2 Provider | **Provider name****ABN****Postal address****Telephone****Facsimile****Email address** |
| Item 3 Department Representative | Tara DaltonDirectorFamily Violence and Child Safety BranchWellbeing, Health and Engagement Division**Postal address**GPO Box 4367, Melbourne, Vic 3001**Telephone**(03) 7022 0734**Email** tara.dalton@education.vic.gov.au  |
| Item 4 Provider’s Representative  | **Name and Position****Postal address****Telephone****Email address** |
| Item 5 Commencement Date | [insert date] |
| Item 6 Insurance | $10,000,000 Public Liability Insurance$10,000,000 Professional Liability Insurance |