School Swimming Outside of School Hours Voucher Program Services Contract

[Instructions for use of this document: wherever brackets [ ] or highlighted text appear within this document, complete instruction or delete if not applicable – including these instructions]

**Between**

[Insert name of School Council] **(ABN ##)** of [insert address]

(**School Council**)

and

[Insert name of Supplier] **(ABN ##)** of [insert registered address]

(**Supplier**)

**Agreement Details:**

1. **Details**

|  |  |
| --- | --- |
| School Council representative | Name: |
| Phone: |
| Email: |
| Supplier representative | Name: |
| Phone: |
| Email: |
| Date of Agreement | The date the Agreement is signed on behalf of the School Council |

1. **Services and Specification**

|  |
| --- |
| 1. The Services are the provision of [insert agreed number of lessons available per student] learn to swim and/or water safety program lessons outside of school hours to each Eligible Student bearing a Voucher as part of the School Swimming Outside of School Hours Voucher program (**Program**). 2. The purpose of the Services is to build the skills and knowledge of Eligible Students to achieve the Victorian Water Safety Certificate and meet the Victorian Curriculum requirements. Swimming and water safety programs should enable Eligible Students to achieve their Victorian Water Safety Certificate. 3. The School Council will provide the Supplier with a list of Eligible Students (as amended or replaced from time to time) who will book lessons directly with the Supplier using a Voucher (**Bookings**). 4. From the Commencement Date Parents and/or carers of Eligible students can book swimming and water safety lessons directly with the Supplier using their Vouchers, for date(s) and time(s) agreed with the Supplier. All Bookings will be the responsibility of the Supplier. |

1. **Rates and Fees (incl. of GST)**

|  |
| --- |
| $ [insert] per lesson (per student)  The cost of the lessons will be payable by the School Council pursuant to clause 4. Eligible Students will not be responsible for the cost of any Services provided and the Supplier will not charge the Eligible Student for the Services. |

1. **Completion Date**

|  |
| --- |
| [Amend as necessary]  9 July 2023 |

1. **Terms and Conditions**
   1. The Services must be supplied in accordance with the Conditions at Attachment 1.
   2. The Supplier acknowledges that the School Council enters into this Agreement for the benefit of itself and Eligible Students.

Capitalised terms in these Contract Details that are otherwise undefined have the meaning given in the Conditions at Attachment 1.

**Executed** as an agreement

**School Council**

**Signed** by a duly authorised officer of the **School Council** who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the School Councilwhich will be bound by the Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Signature of authorised officer |  | Name of authorised officer (print) |  |
| Date |  | Position of authorised officer |  |

**Supplier**

**Signed** by a duly authorised officer of the **Supplier** who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the Supplierwhich will be bound by the Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Signature of authorised officer |  | Name of authorised officer (print) |  |
| Date |  | Position of authorised officer |  |

**Attachment 1**

**General Conditions for the Provision of Services (‘Conditions’)**

1. **Provision of Services**

#### This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier in accordance with its terms.

#### The Supplier must provide the Services from the Commencement Date to the School Council in accordance with this Agreement, and must:

#### complete the Services by the Completion Date and any other dates for delivery specified in the Contract Details;

#### provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;

#### ensure the highest quality of work and the delivery of the Services with the utmost efficiency;

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

#### provide any and all plant, equipment, tools or other equipment necessary for the performance of the Services and all such equipment must be properly maintained and be appropriate for the purpose for which it is intended to be used;

#### comply with the School Council’s and the State’s policies and procedures (as notified or made available to the Supplier from time to time);

#### if requested by the School Council, remove and replace any person it is using to provide the Services where the School Council considers it is reasonably warranted to ensure compliance with Child safety Laws;

#### notify the School Council:

##### if any person that it is using to provide the Services has engaged in, or is reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or has breached or may have breached a Child Safety Law; or

##### of any other matter relevant to this Agreement including if the Supplier becomes aware of any breach of this Agreement.

#### If, at any time, the Supplier is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Supplier must immediately notify the School Council of that fact.

#### This Agreement is entered into on a non-exclusive basis.

1. **Price for the Services**

#### The Rates or Fees applicable to the Services set out in the Contract Details are fixed and are inclusive of:

##### all costs incurred by the Supplier in the provision of the Services; and

##### all other taxes payable in connection with the Services (excluding GST).

#### Expenses may only be charged in accordance with the Contract Details.

1. **Termination**

#### The School Council may terminate this Agreement without cause at any time by giving written notice to the Supplier (such termination to take effect upon receipt of the notice or such later date as specified in the notice) who must, on receipt, immediately cease accepting any Bookings for lessons, must satisfy existing Bookings and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services.

#### The School Council will pay the Supplier for the Services performed in accordance with this Agreement and the satisfaction of existing Bookings up to the date of the termination in accordance with clause 2, but has no other liability to the Supplier in relation to that termination.

#### The School Council may terminate this Agreement immediately by notice in writing to the Supplier if:

##### in the opinion of the School Council, the Supplier is in breach of this Agreement and the breach is not capable of remedy, or the Supplier fails to remedy the breach within 14 days of receipt of written notice from the School Council of the breach;

##### the Supplier or any of its Personnel or sub-contractors have engaged in, or are reasonably believed by the School Council to have engaged in, fraud, collusion, improper, dishonest or criminal conduct or any other serious misconduct in connection with this Agreement or in any other dealings with the School Council;

##### the Supplier commits any act or does anything that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Supplier into disrepute and as a consequence the School Council believes that its continued association with the Supplier will be prejudicial or otherwise detrimental to the reputation of the School Council; or

##### it determines at any time that:

##### there is a breach of any Child Safety Laws caused by, or in any way connected with, the Supplier or its employees, agents and contractors; or

##### the Supplier or any of its employees, agents and contractors are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

#### The Supplier may terminate this Agreement immediately by notice if the School Council fails to pay any amounts due and payable under this Agreement within 60 days of the date on which it was due.

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

#### On termination or expiration of this Agreement, the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any data or Confidential Information and, at the election of the School Council, return to the School Council, or delete or destroy, the material at no additional cost to the School Council.

#### **Invoicing and payment**

#### The Supplier must submit to the School Council a Tax Invoice in respect of the Services as soon as practicable after provision of Services, or at such other time or times as agreed by the parties. A Tax Invoice submitted for payment must be sent by email to the address specified in the Contract Details.

#### The Supplier must record which Eligible Students have received the Services and how many lessons have been provided to them and provide verification of participation with the Tax Invoice submitted for payment pursuant to this clause 4.

#### The School Council will pay the invoiced amount within 30 days of receipt of an accurate invoice and once the School Council is satisfied the Services have been provided as required under this Agreement. However, if the School Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount the School Council believes is due for payment. The parties will endeavour to resolve any such dispute. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.

#### Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with this Agreement but must be taken only as payment on account.

#### The School Council will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act* *1983* (Vic).

1. **Failure to perform**

#### Without limiting any other remedy the School Council may have, if the Supplier fails to provide any of the Services in accordance with this Agreement, the School Council will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).

#### If the default referred to in clause 5(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the School Council may either have the Services remedied or re-performed by a third party and the Supplier must pay the reasonable costs incurred by the School Council in doing so.

1. **Warranties**

#### The Supplier warrants to the School Council that:

#### (**Purpose**) The Services will be performed in such a way as to achieve the purpose specified in Item 2 of the Details;

#### (**Conflict**) the Supplier and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement; and

#### (**Fit for purpose**) the Supplier’s facilities are fit for purpose and provide a safe and structured environment to run learn to swim and/or water safety lessons without the attendance of School Staff.

1. **Supplier responsibilities**

#### The Supplier will be responsible for:

#### overall delivery of the Services and legal responsibility for emergency procedures; first aid requirements and control of all its guests and staff;

#### (**Instructors**) engaging and retaining suitably qualified and competent staff to perform the Services. The Supplier must ensure all Instructors carrying out the Services have a current CPR qualification and at least one of the Instructors have one of the following qualifications:

##### AUSTSWIM Teacher of Swimming and Water Safety Certificate;

##### Swim Australia Teacher:

##### Swim Australia Teacher of Competitive Swimming;

##### Life Saving Victoria – Swimming and Water Safety Teacher; or

##### Skill Set SISSS00112 ‘Swimming and Water Safety Teacher’ from an accredited provider;

#### (**Risk management**) appropriate risk management and emergency management procedures and ensuring that parents and/or carers of Eligible Students are informed and aware of relevant procedures;

#### (**Supervision**) appropriate supervision for the provision of Services and ensuring that parents and/or carers of Eligible Students are informed of supervision requirements and responsibilities; and

#### (**Assess**) assessing Eligible Students for the Victorian Water Safety Certificate and enter the details of those that achieve the competencies of the Victorian Water Safety Certificate on the Life Saving Victoria Victorian Water Safety Certificate dashboard.

1. **Liability**

#### The Supplier indemnifies the School Council and each of its officers, employees and agents and each Eligible Student (in this clause, each an **Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any of them suffers or incurs as a result of any demand, action, claim or proceeding against any Indemnified Party for or in relation to any of the following:

#### any breach of this Agreement;

#### any wrongful, fraudulent, unlawful or negligent act or failure by the Supplier or any of the Supplier’s employees, agents, officers or subcontractors;

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

#### except to the extent that any such demand, action, claim or proceeding is caused by the negligence or other wrongful act or omission of the Indemnified Party. To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.

#### If any indemnity payment is made by the Supplier under this clause 8, the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

#### The aggregate liability of the School Council to the Supplier in connection with this Agreement is limited to an amount equal to the Fees charged or chargeable under this Agreement.

1. **Insurance**

#### The Supplier must (and must ensure that any sub-contractors appointed by it under clause 12) obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.

#### On request, the Supplier must provide the School Council with evidence of the currency of any insurance it is required to obtain under this clause.

1. **Confidentiality, privacy and data protection**

#### The Supplier and its employees, agents, directors, partners, shareholders and consultants will keep the Confidential Information confidential and secure and must:

##### use and reproduce the Confidential Information only to the extent necessary to perform its obligations under this Agreement; and

##### not disclose or otherwise make available any Confidential Information to any other person.

#### All Confidential Information will remain the property of the School Council.

#### The Supplier consents to the School Council publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required for the School Council to comply with any Law or Victorian government policy.

#### The Supplier agrees to be bound by the Information Privacy Principles, the Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier in connection with the provision of the Services or collection, use or storage of data in the same way as the Privacy Obligations would have applied to the School Council in respect of that act or practice had it been directly done or engaged in by the School Council.

1. **Working with Children Checks and Child Safe Standards**
2. The Supplier must ensure that all its employees, agents and contractors engaged in the provision of Services: have undertaken a satisfactory working with children check if required pursuant to the *Worker Screening Act 2020* (Vic) or as otherwise requested by the School Council.
3. The Supplier acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
4. If the Supplier is an Applicable Entity, it warrants to the School Council that it:

##### is compliant and will continue to comply with Child Safety Laws; and

##### will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Supplier (or its employees, agents and contractors).

1. The Supplier (and its employees, agents and contractors) must:

##### if applicable (whether or not the Supplier must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and

##### comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Supplier with any Child Safety Laws or any relevant School Council Child Safety Policies.

1. **Sub-contracting**

#### The Supplier must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the School Council.

#### The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

1. **Compliance with Law and Policy**

#### The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services.

#### The Supplier must:

##### maintain complete and accurate Records;

##### securely store and ensure the integrity of the Records in accordance with all applicable standards issued under the *Public Records Act 1973* (Vic);

##### permit the School Council to inspect and take copies of the Records at any time; and

##### if requested by the School Council, transfer the Records to the School Council in a format and manner reasonably requested by the School Council.

1. **GST**

#### Terms used in this clause have the same meanings given to them in the GST Act.

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

#### If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid Tax Invoice, payment of the GST amount will be made at the same time as the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

#### If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 14(c) to take account of the adjustment event. The Supplier must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Supplier to the School Council, or by the School Council to the Supplier, as the case may be.

1. **General**

#### The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the non‑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.

#### Time is of the essence in relation to the provision of the Services.

#### This Agreement may only be varied or replaced by agreement in writing.

#### The School Council may give or withhold any consent or approval, or exercise any discretion, under this Agreement in its absolute discretion unless express provision to the contrary is made.

#### This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

#### The following clauses survive termination or expiry of this Agreement: 3(b), 3(f), 3(g), 4, 7, 8, 9, 10, 16(c) and this clause 15(e).

1. **Electronic Execution**

#### Each party acknowledges and agrees to the signing of this Agreement by electronic means, The parties agree to be legally bound by the Agreement signed this way.

1. **Definitions**

In these Conditions, unless the context otherwise requires:

**Agreement** means the agreement for the provision of the Services of which these Conditions, the attachments and the Contract Details form part.

**Agreement Details** means the part of this Agreement described as such, commencing on page 1 of this Agreement.

**Applicable Entity** has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

**Child-connected Work** has the meaning given to it in the Ministerial Order.

**Child Safety Laws** means any Laws that in any way relate to child safety, including the *Child Safety and Wellbeing Act 2005* (Vic).

**Code of Practice** means a code of practice as described in, and approved under, thePDP Act.

**Commencement Date** means the date of this Agreement.

**Completion Date** means the date set out in the Contract Details by which provision of the Services must be effected by the Supplier.

**Commissioner** means the Commissioner for Privacy and Data Protection appointed under section 96 of the PDP Act.

**Conditions** means these General Conditions for the Provision of Services.

#### **Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the School Council, including any information designated or treated by the School Council as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality.

**Eligible Student** means the list of School students provided to the Supplier by the School Council who are eligible for the Swimming Outside of School Hours Voucher program and for whom consent has been provided (as amended or replaced from time to time).

**Fees** means the fees payable to the Supplier for the provision of the Services as set out in or calculated in accordance with the Contract Details.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act* *1999* (Cth).

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**Information Privacy Principles** means the information privacy principles set out in the PDP Act.

**Instructor** means an officer, employee or agent of the Supplier who provides professional, technical expertise and supervision for the Services.

**Laws** means the law in force in the State of Victoria and the Commonwealth of Australia, including common law and legislation.

**Ministerial Order** means Ministerial Order 870 entitled “Child Safe Standards – Managing the risk of child abuse in schools” (as amended or replaced from time to time).

**Overdue Amount** means an amount (or part thereof) that:

#### is not, or is no longer, disputed;

#### is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with this Agreement; and

#### has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

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

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services as set out in the Contract Details.

**Records** means physical documents held, produced or created by the Supplier and each of its employees and agents under or in the course of performing the Supplier’s obligations under this Agreement. For clarity Records do not include the Supplier’s internal working documents or notes.

**School** means the school which the School Council represents.

**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 the School which the School Council represents produces for the purpose of meeting its minimum child safety standards pursuant the Ministerial Order.

**School Staff** has the meaning given to it in the Ministerial Order.

**Services** means the services (or any of them) specified in the Contract Details and, if applicable, the Specification.

**Tax Invoice** has the meaning given in the GST Act.

**Victorian Water Safety Certificate** means the Victorian Government initiative which describes specific competencies that should be achieved by the time students reach the end of primary school that focus on water safety knowledge, rescue skills, a survival sequence and the ability to swim a continuous distance of 50 metres. Further detail can be found at:

<https://lsv.com.au/toolkit/victorian_water_safety_certificate_more.php#tab-1>.

**Voucher** means School Swimming Outside of School Hours Vouchers provided by the School Council to Eligible Students for presentation to the Supplier. Vouchers are non-transferable.