

## CHILDCARE PROGRAM AGREEMENT

THIS AGREEMENT is entered by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services, Division of Child Care (hereinafter “Cabinet”), and

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(hereinafter “Provider”), whose principal place of business is located at

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(hereinafter collectively “the Parties”).

WHEREAS, on March 6, 2020, Governor Andy Beshear declared a state of emergency in Kentucky due to the Covid-19 pandemic; and

WHEREAS, the United States Congress passed the American Rescue Plan, in March 2021 (“The Act”) to provide economic relief to the states and other entities adversely affected by the pandemic; and

WHEREAS, the Commonwealth of Kentucky has received funding under the Act to provide a Sustainment Grant to help childcare providers remain open to provide care for children of essential personnel during the state of emergency; and

WHEREAS, Provider is a licensed, certified, or registered childcare provider currently providing childcare for children of essential personnel during the state of emergency and is experiencing economic difficulties as a result of the pandemic;

NOW THEREFORE, in consideration of the mutual covenants and representations contained herein, the Parties agree as follows:

1. The Cabinet will make sustainment payments to all licensed, certified, and registered providers that meet the requirements of this Agreement and as detailed below:

a. The provider is an existing licensed, certified, or registered childcare provider in the Commonwealth of Kentucky; and

b. The provider is active in the Cabinet, Office of Inspector General, Division of Regulated Childcare (“DRCC”) database on or before March 11, 2021; and

c. The provider is offering face-to-face, in-person childcare. Providers that are voluntarily operating virtually do not qualify for payments.

d. The provider is a participant in the Kentucky All-STARS program and has the ability to accept children enrolled in Kentucky’s Child Care Assistance Program (CCAP).

e. If the provider only offers half-day child care services (child care services for less than 5 hours per day), then the award amount will be pro-rated by fifty percent.

f. If the provider operates only during the school year calendar, then payments issued in June or July will be subtracted from the total award amount.

g. If the provider is in an emergency suspension status or appealing a revocation, then the provider will not receive payments issued during the time of suspension or revocation.

2. However, a provider that would otherwise meet the requirements of Section 1 but is required by a local health department to temporarily close in order to comply with COVID-19 health and safety guidelines, shall still qualify for payments.

3. The Cabinet will issue payments to licensed and certified childcare programs based on licensure/certification capacity as reported to the DRCC by March 11, 2021. The Cabinet will issue payments to registered providers based on subsidy enrollment.

4. The Cabinet will issue nine stabilization payments to the Provider prior to September 30, 2023, in accordance with Section 1 of the agreement.

5. The Provider receiving the American Rescue Plan funds must complete a monthly data sheet and send it to the third party vendor by the 5<sup>th</sup> of each month. The data sheet will include data on enrollment, staff turnover, and other key data points.

6. The Provider will be offered payments based on a three tier system:

a. The first, introductory tier will require the Provider to meet minimum labor cabinet requirements, minimum child care regulatory requirements, and to participate in the Kentucky All-STARS program. The pay rate for the Provider's award will be based on the program capacity for certified and licensed child care programs. For registered providers, the payment will be based on the enrollment at the time of the award.

b. The second tier of payment will require the Provider to meet the requirements in 5.a., and in addition, the minimum pay rate for all employees in the child care program (including kitchen, office, and janitorial staff) must be a minimum pay rate of \$10/hour. Licensed and certified Tier 2 participants will receive payment based on capacity with an additional ten percent of the award. Registered providers in Tier 2 will receive payment based on their current enrollment with an additional ten percent added to the award.

c. The third tier of payment will require the Provider to meet the requirements in 5.a., and in addition, the minimum pay rate for all employees in the child care program (including kitchen, office, and janitorial staff) must be a minimum pay rate of \$13/hour. Licensed and certified Tier 3 participants will receive payment based on capacity with an additional twenty percent of the award. Registered providers in Tier 3 will receive payment based on their current enrollment with an additional twenty percent added to the award.

d. The Provider has the ability to move tiers during the award periods. There is a rolling application deadline to move from one tier to another.

e. The Provider may move from one tier to another throughout the award period, the amount of the award will vary from payment to payment. The Provider must meet the 30-day cut-off date for the application of each tier in order for the Cabinet (and third party vendor) to total amount of each payment.

f. The Provider must provide documentation, such as payroll records, to verify eligibility for Tier 2 or Tier 3 payment.

g. If the Provider does not currently pay staff members in accordance with Tier 2 or Tier 3 payment, then the Provider can still apply for Tier 2 or Tier 3; however, the Provider will have to show payroll documentation within four months of the award to show that staff salaries have increased to Tier 2 or Tier 3 status.

7. The Provider can apply in October 2021 in order to be eligible for the first round of payments. Then, prior to each payment, there is a rolling application time frame for the Provider to switch to a different tier, if desired. The cut-off date for application would be 30 days prior to the beginning of the funding month. The per-child amount will be determined 15 days after the application period ends. Once the Provider applies for an initial application in October 2021, the Provider will not need to reapply unless it wishes to move to a higher or lower tier.

8. Each payment is conditioned upon the Provider meeting the requirements of this Agreement. Prior to payment, the Cabinet will examine the DRCC database (or any other available material) to ensure that the Provider is still operating and continues to meet the requirements of this Agreement.

9. The Provider shall use a portion of these payments to pay of each Provider employee who is currently providing childcare to essential employees. These employee payments may be in the form of salary, salary increases, hiring bonuses, retention bonuses, or hazard pay. The Provider shall detail and document compliance with this requirement and shall secure written verification from each employee that he or she has received payment. The Cabinet reserves the right to confirm with each employee that payment has been made.

10. Payments may also be used for "fixed expenses," including but not limited to, facility rent or mortgage, facility utilities, insurance premiums, personal protective equipment, cleaning supplies, and food. The Provider may also use payments to make updates to equipment necessary to respond to COVID-19 requirements and protocols. Along with personal protective equipment, the Provider may use funds for training and technical assistance on health and safety practices.

11. The Provider may use the awards to purchase materials for social/emotional curriculum activities and curriculum used in the school to benefit the students. The Provider shall detail and document these expenditures and keep documentation for verification.

12. If the Provider obtained loan financing during the declared state of emergency in order to continue to operate, payments may be used toward the repayment of this loan. Any payments used in this manner shall be documented and retained by the Provider.

13. The Provider agrees that it shall not use any portion of the payments as detailed below: a. Payments cannot be used for the creation of new programs or for the expansion of existing programs; and b.

Payments cannot be used for “elective expenses,” including but not limited to elective facility repairs, new furniture, or new playground equipment.

14. If the Provider elects not to receive or use any portion of the payments, the Provider shall document and mail this decision to the DCC.

15. In the event the Provider closes or ceases to operate, the Provider shall return any unused funds to the Cabinet.

16. The Provider agrees that payments shall not be transferred to any third party. In the event the Provider is purchased prior to the completion of the sustainment payments, the Provider shall return any unused funds to the Cabinet. The new purchasing entity shall not be entitled to any of the Provider’s remaining sustainment payments.

17. The Provider agrees to use all payments in accordance with this Agreement. The Cabinet will use a third party vendor to audit the purchases of the Provider. The Provider agrees that if the Cabinet determines that any portion of the payments has not been used in accordance with this Agreement, that any amount identified is an overpayment and shall be returned to the Cabinet.

18. The Provider agrees to document the use of the payments in accordance with this Agreement. The Cabinet reserves the right to conduct an audit to determine the Provider’s compliance with the Agreement. The Provider shall cooperate with the Cabinet in the event of an audit and shall make all documentation available upon request. The Provider shall retain all documentation for a minimum of five (5) years after September 30, 2023. The Provider agrees that if the Cabinet determines that any payment has not been properly documented and/or not retained, this shall result in an overpayment and the identified amount shall be reimbursed to the Cabinet.

19. The Provider agrees that the payments referenced herein are grants and that it is not entitled to any additional sums.

20. The Provider acknowledges that all payments are conditioned upon the availability of federal funds.

21. This Agreement represents the entire understanding of the Parties and the Parties acknowledge that there are no promises, terms, conditions, obligations, or commitments other than those contained herein. This Agreement supersedes all previous or contemporaneous communications, representations, or agreements of the Parties, whether verbal or written. The Provider acknowledges that it has not been induced to execute this Agreement by any promise, threat, representation, or other communication from any source not expressly stated herein.

22. This Agreement shall be binding upon the Parties, their Affiliates, successors, and assigns.

23. A waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by an authorized representative of the waiving Party.

24. This Agreement may only be modified by a writing signed by authorized representatives of all Parties.

25. This Agreement shall be construed and enforced in accordance with the laws and regulations of the Commonwealth of Kentucky. The Parties agree that the exclusive jurisdiction and venue for any action at law, suit in equity, or other judicial proceeding for the enforcement hereof shall be in the Franklin

County Circuit Court, Frankfort, Kentucky. The Parties agree that this Agreement shall be construed according to the plain meaning hereof and without resort to any canon of construction interpreting the Agreement against its drafter.

26. There are no third-party beneficiaries, express or implied, to this Agreement.

27. The Parties hereto acknowledge that each of them has read this Agreement, fully understands his, her, or its rights, privileges, and duties under this Agreement, and executes and delivers this Agreement freely and voluntarily. The Parties further acknowledge that each of them has had the opportunity to consult with an attorney to explain the terms of this Agreement and the consequences of signing.

28. Nothing contained herein shall be construed to waive the inherent sovereign immunity of the Commonwealth of Kentucky.

IN WITNESS HEREOF, the Parties have executed this Agreement.

Provider

DCBS

By:

Approve

Name:

Decline

Title:

Date:

Date:

Licensure#

Tier 1

Tier 2

Tier 3

CHFS Cabinet Approval:

Approved as to form and legality:

DocuSigned by:  
*Eric Friedlander*  
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Eric Friedlander

Secretary

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General Counsel

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