

## 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 Consolidated Appropriations Act, 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 January 1, 2021; and
  - c. The provider is offering face-to-face, in-person childcare. Providers that are voluntarily operating virtually do not qualify for payments.
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 as of January 1, 2021. The Cabinet will issue payments to registered providers based on subsidy enrollment.

4. The Cabinet will issue a total of four (4) payments to each qualifying provider. The Cabinet will issue a payment every two (2) months. The first payment will be \$300.00 per child. The following three (3) payments will be \$260.00 per child.
5. 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.
6. The Provider shall use a portion of these payments to pay each Provider employee who is currently providing childcare to essential employees. The Provider may use a portion of these payments to provide salary increases or hazard pay to these employees.”
7. 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.
8. 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.
9. 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.
10. In order to receive any payment, the Provider’s fully executed Agreement must be received by the Division of Child Care (“DCC”) on or before March 10, 2021.
11. All payments issued to the Provider pursuant to this Agreement must be used by June 30, 2022. The Provider agrees to return any portion of the payments not used by June 30, 2022 to the Cabinet. Payments shall not be transferred to any third party.
12. 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.
13. In the event the Provider closes or ceases to operate, the Provider shall return any unused funds to the Cabinet.
14. 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.
15. The Provider agrees to use all payments in accordance with this Agreement. 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.
16. 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 June 30, 2022. 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.
17. The Provider agrees that the payments referenced herein are grants and that it is not entitled to any additional sums.
18. The Provider acknowledges that all payments are conditioned upon the availability of federal funds.

19. The Provider agrees to indemnify and hold harmless the Cabinet from any claim, demand, or cause of action by any person or entity asserting an interest in or entitlement to the payments made hereunder. This indemnification obligation shall extend to costs, expenses, and attorney's fees expended by the Cabinet in connection with such claims.
20. 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.
21. This Agreement shall be binding upon the Parties, their Affiliates, successors, and assigns.
22. 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.
23. This Agreement may only be modified by a writing signed by authorized representatives of all Parties.
24. 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.
25. There are no third-party beneficiaries, express or implied, to this Agreement.
26. 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.
27. 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.

**Cabinet for Health and Family Services**

**Provider**

By:

By: *Linda Gorton*

Name:

Name: Linda Gorton

Title:

Title: Mayor

Address:

Address: 200 East Main St.  
Lexington, KY 40507

Date:

Date: 3/9/2021

Licensure #: L 350165