



Grant Agreement

Between

_____ **And**

Bright from the Start: Georgia Department of Early Care and Learning

I. PARTIES

This Grant Agreement (the "Agreement") is entered into as of the Effective Date below by and between _____, (the "Grantee"), located at _____ and Bright from the Start: Georgia Department of Early Care and Learning (the "Department"), located at 2 Martin Luther King, Jr. Dr., SE, Suite 754, East Tower, Atlanta, GA 30334. The Department and the Grantee are collectively referred to as (the "Parties") or individually as ("Party").

II. PURPOSE

The purpose of this Grant is _____.

III. AUTHORITY

1. This Grant is funded with state lottery funds.
2. The Department is authorized to disburse these funds pursuant to O.C.G.A. §§ 20-1A-4.

IV. THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term.** The Agreement will begin on _____ (the "Effective Date") and continue through _____ unless amended in writing.
2. **Grant Amount.** The amount of this Grant award shall be an estimated amount of _____. The actual funding amount will be based on teacher and student data reported on submitted roster reports and number of days offering services. Grantee shall be responsible for performing the responsibilities outlined in this Agreement and Grantee shall use the Grant funds only for obligations incurred in the performance of the Grant as described in this Agreement.

- 3. Grant Obligations and Requirements.** The services or work to be performed by the Grantee are set forth in Attachment 1 to this Agreement. In the event of a conflict between this Agreement and Attachment 1, the terms of this Agreement shall control. If Grant requirements are performed or provided in a licensed child care and learning program, Grantee must comply with all licensing requirements. Further, any program that participates in Childcare and Parent Services (CAPS), a federally funded Nutrition program, Quality Rated shall also comply with the regulations of said programs.
- 4. Availability of Funds.** If funding for this project is reduced by legislative action, Federal or state allocations, or executive action, the amount under this Agreement will be reduced accordingly. The Department will notify Grantee in writing of any reductions and any such reductions will be effective thirty (30) days after the date of notice. All expenses incurred until the effective date will be reimbursed by the Department. In the event funding no longer exists or is insufficient to pay the charges for services obtained hereunder, this Agreement shall terminate without further obligation to the Department.
- 5. Payment.** The Grantee will receive payment according to the payment terms set out in Attachment 1 of this Agreement. The Grantee must only expend the funds provided in a manner that fulfills the purpose of this Agreement.
- 6. Recapture.** If Grantee fails to perform or otherwise comply with any term or condition of this Agreement, the Department may require the Grantee to repay to the Department any or all of the Grant funds disbursed to the Grantee during the term of this Agreement. The decision to recapture Grant funds shall be within the sole discretion of the Department, and shall be based upon review, evaluation, or audit of the Grant.
- 7. Time Is Of The Essence:** Time is of the essence with respect to the obligations of the Grantee under this Agreement.
- 8. Independent Parties.** Neither Grantee nor any of its agents, servants, employees or subcontractors shall become or be deemed to become agents, servants, employees or subcontractors of the State of Georgia, and in particular the Department, except that every Grantee and all of its agents, servants, employees and subcontractors shall be deemed, for the limited purpose of criminal record check compliance, a Department "employee" subject to the fingerprint records check requirements under O.C.G.A. § 20-1A, Article 2. Neither party shall have the authority to bind the other party in any respect and each shall remain an independent party. Grantee has the responsibility for advising clients served under the terms of this Agreement about the independent status of the Grantee and the Department.
- 9. Licenses, Permits and Other Authorizations.** Grantee shall secure, prior to the Effective Date of this Agreement and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of employment, agency or subcontract, all license, certifications,

permits and other authorizations required to perform their obligations in relation to this Agreement.

10. Subcontract; Assignment. Grantee shall not subcontract for the performance of this Agreement nor permit anyone other than Grantee's personnel to provide any of the services required under this Agreement and shall not assign any of its rights or obligations hereunder without the prior written consent of the Department, which may be reasonably withheld.

11. Indemnification. The Grantee shall, to the extent authorized under the Constitution and laws of the State of Georgia, indemnify, defend and hold harmless the State of Georgia, (including this Department), its officers, directors and employees (collectively, the "State") from any claim, demand, liability, loss, penalty, cost or expense (including court costs and reasonable attorneys' fees) arising out of or occurring in connection with (a) any breach by the Grantee of its obligations under this Agreement or any of the terms or conditions hereof; (b) the Grantee's violation of any federal or State law, rule or regulation (including those pertaining to the protection of the environment); or (c) damage to or destruction of property (including loss of use) or injury to persons (including death), in whole or in part caused by or resulting from any act of negligence or willful misconduct of the Grantee, its agents, subcontractors or employees. In connection with the foregoing indemnity obligations, Grantee shall, at its sole expense, participate in the defense of any suit or action brought against the State, and no settlement or compromise entered into by the Grantee and stemming from the action or suit shall be effective to bind the State unless entered into with the express approval of the State. The indemnity obligations of this paragraph shall survive any termination of this Agreement for the duration of the applicable statute of limitations.

12. Cooperation. Grantee, its employees, agents, subcontractors, and assigns, agree to cooperate fully in the defense of any litigation brought against the Department or Grantee relating to the Services to be performed under this Agreement, and each Party shall give the other prompt notice of any claim, demand, suit or proceeding.

13. Termination.

A. FOR DEFAULT OR CAUSE: This Agreement may be terminated for cause, in whole or in part, at any time by the Department for failure of Grantee to perform any of the terms of this Agreement. If the Department determines a breach has occurred, including but not limited to, the delivery of non-conforming services or deliverables, the Department, in its sole discretion may send a Notice to Cure to Grantee. If Grantee does not cure the breach within the period specified in the Notice to Cure, the Agreement will be terminated. The Grantee shall be paid for all services rendered in furtherance of this Agreement prior to termination, less all sums received from the Department for non-conforming services and deliverables.

B. FOR CONVENIENCE: This Agreement may be terminated or canceled by the Department without cause by providing at least thirty (30) days written notice prior to the effective date of the termination or cancellation. The Grantee will be paid for all services rendered in furtherance of this Agreement prior to termination or cancellation.

C. FOR NON-AVAILABILITY OF FUNDS: Grantee acknowledges that the State of Georgia may not lawfully pledge its credit so as to cause a State agency to incur a financial obligation unless funds to honor the obligation have been lawfully appropriated. If funding for this project is reduced by legislative or executive action, the funding amount under this Agreement will be reduced accordingly. The Department will notify Grantee in writing of any reductions thirty (30) days prior to becoming effective. All expenses incurred until the effective date of reduction of funds will be reimbursed by the Department. In the event funding no longer exists or the source of payment is insufficient, this Agreement shall terminate without further obligation of the Department.

14. Trading With State Employees. The Parties certify that this Agreement does not and will not violate any conflict of interest provisions of O.C.G.A. § 45-10-20 *et seq.*, in any respect. The Grantee agrees not to employ any individual that would result in a violation of this law.

15. Equal Employment; Non-Discrimination. The Grantee agrees to comply with Executive Order No. 11246, as amended and as supplemented by U.S. Department of Labor regulations (41 CFR, Part 60-1, *et seq.*), which prohibits discrimination based on race, creed, color, religion, national origin, sex, or age. The Grantee must include the provisions of this paragraph in every grant, contract, subcontract, or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor. The Grantee further agrees not to discriminate in educational programs and activities relating to this Agreement based on race, color, religion, sex, national origin, age, or disability.

16. Conflicts of Interest. Grantee shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the Department's interests and absent the Department's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement. If a conflict or the appearance of conflict arises, or if Grantee is uncertain whether a conflict or the appearance of conflict has arisen, Grantee shall submit to the Department a disclosure setting forth the relevant details for the Department's consideration.

17. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, arrangements, representations, and communications, whether oral or written, regarding the subject matter hereof. The Department is entering this Agreement solely based upon the agreements and representation contained herein for its own purposes and not for the benefit of any third party. Except as otherwise provided herein, this Agreement may not be altered, amended, or modified except as by further written agreement signed by both the Parties hereto.

18. Choice of Law and Forum. This Agreement is entered into in Fulton County, Georgia and shall be governed by the laws of the State of Georgia without application of conflicts of law principles. Any action by either party, legal or equitable, brought in

connection with this Agreement shall brought in the Superior Court of Fulton Court.

19. Compliance With All Laws. Grantee shall comply with all laws, ordinances, rules, and regulations of any governmental entity, including orders of any court of competent jurisdiction, pertaining to its performance pursuant to this Agreement.

20. Legislative Modification. Notwithstanding any other provision of this Agreement to the contrary, in the event that any federal, state, or local law, rule, regulation, or interpretation thereof restricts, prohibits, or in any way materially changes the method or amount of reimbursement or payment for services under this Agreement at any time during the duration of this Agreement, then this Agreement shall, to the extent permitted by the laws of the State of Georgia, be deemed amended by the Parties to provide for payment of compensation and other fees in a manner consistent with any such prohibition, restriction, or limitation.

21. Verification of Lawful Presence in the United States. Grantee shall comply with the requirements set forth in O.C.G.A. § 50-36-1 *et seq.*

A. Any Grantee that has previously applied for a public benefit through the Department and has previously complied with the requirements of this law by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen in accordance with Code Section 50-36-1(f)(4) shall complete Part A of the applicable verification of lawful presence form in the Pre-k Application and Database Application (PANDA) system prior to signing this Agreement.

B. Except as provided in Subsection A above, Grantee shall:

i. provide a copy or facsimile of at least one secure and verifiable document as defined in O.C.G.A. § 50-36-2, the Secure and Verifiable Identity Document Act, to the Department by or on behalf of the grant applicant at any time within nine months prior to the date of the grant application so long as the document remains valid through the grant approval period; and

ii. execute a signed and sworn affidavit, such as the affidavit attached to this Agreement as Part B of the applicable verification of lawful presence form in the Pre-k Application and Database Application (PANDA) system prior to signing this Agreement, verifying the grant applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of the grant application, he or she shall execute the affidavit required within 30 days after his or her eighteenth birthday.

22. Comprehensive Background Check Compliance Requirements. Grantee shall comply with the Criminal Background Check requirements under O.C.G.A. § 20-1A, Article 2.

- i. Grantee and every agent, servant, employee, and subcontractors of the Grantee who may have any reason to be present at any child care facility while any child is present for care under the scope of this Agreement must receive a satisfactory fingerprint records check determination by the Department or have had an unsatisfactory fingerprint records check determination reversed in accordance with Code section 20-1A-43, prior to performing duties under this Agreement.
- ii. Grantee must ensure that no agent, servant, employee, or subcontractor of the Grantee perform any duty under this Agreement at any child care facility while any child is present for care without a satisfactory fingerprint records check determination by the Department. Failure to adhere to this rule may be independent grounds for termination of the Agreement.
- iii. Grantee shall maintain documentation of the current satisfactory fingerprint records check determination by the Department in the appropriate personnel file of every agent, servant, employee, and subcontractor of the Grantee with a reason to be present at any child care facility while any child is present for care under the scope of this Agreement.
- iv. Grantee shall ensure that each agent, servant, employee, and subcontractor of the Grantee maintain documentation of the current satisfactory fingerprint records check determination such that the documentation can be presented upon request by a child care facility.
- v. Grantee shall cooperate fully with the Department in furtherance of any request that a Grantee, agent, servant, employee, or subcontractor undergo a new or additional fingerprint records check.
- vi. If criminal activity appears on any background check that is performed, the Department, in its sole discretion, shall make the final determination whether the outcome of a criminal background check may serve as adequate grounds to terminate the Agreement.

23. Obligations to Maintain Confidentiality. Grantee acknowledges that all material and information that has or will come into its possession or knowledge in connection with this Agreement, or the performance thereof, may consist of confidential and private information, the disclosure of which or use by third parties may be damaging. Confidential information may include, but be not limited to, personally identifiable information, personal health records, student and institutional records, employee information, business plans and models, budget and finance information, marketing information and research records, without regard to whether such records have been designated as confidential.

A. Access to and Use of Confidential Information.

Understanding the sensitive nature of confidential information, the Grantee agrees to:

- i. Hold such material and information in

confidence, not to make use thereof other than for the performance under this Agreement, and not to release or disclose any information to any other party except as may be required by law;

- ii. Limit use and disclosure of such confidential information within its own organization to those individuals and entities with a specific business need for the performance of this Agreement;
- iii. Protect, use, and disclose confidential information in compliance with all applicable federal and state laws and regulations;
- iv. Provide sufficient supervision and training to its employees and agents to ensure compliance with the terms of this Agreement.

- B. **Legal Requests.** Should the Grantee be served with a subpoena or other legal process for any records containing confidential information relative to this agreement, the Grantee will notify the Department immediately and cooperate fully with the Department in any lawful efforts to protect the confidential information.
- C. **Notification of Unauthorized Disclosure.** The Grantee shall notify the Department within two (2) days of the discovery of any breach or unauthorized disclosure of confidential information and provide the Department with all information relative to the nature, timing and scope of any such breach or unauthorized disclosure.
- D. **Return and Destruction.** Except as otherwise provided in Sections 25 and 29 of this Agreement, the Grantee shall, at the discretion of the Department, either return all confidential information to the Department or destroy confidential information in such a manner as to make it unusable upon termination of this Agreement or upon request of the Department.
- E. **Open Records and Public Information.** Neither the Grantee nor the Department shall be required to keep confidential any information subject to the provisions of the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq. or information (a) that is or becomes publicly available through no breach of this Agreement, (b)

independently developed by either party, (c) previously known to either party without obligation of confidence or (d) acquired by either party from a third party which is not, to either party's knowledge, under an obligation of confidence with respect to such information.

F. Confidentiality Survives Termination. The Grantee's obligations relative to confidential information shall survive the termination of this Agreement.

24. Audits and Financial Reporting. At any point in time, the Department reserves the right to require that an independent financial audit be performed of the Grant at the Grantee's expense by an entity designated or approved by the Department. In the event that such an audit is conducted, the Department expressly reserves the right to direct the Grantee to undergo any additional auditing by an entity designated or approved by the Department for this purpose. If additional audits are required, all costs associated shall be paid for in their entirety by the Grantee.

25. Record Retention and Review. Grantee shall establish and maintain full and complete records that pertain to the Agreement for a period of three (3) years beyond the Agreement ending date, or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three-year period. At any point in time, Grantee shall permit the Department, or any representative designated to act on the Department's behalf, or any federal government entity to conduct audits pursuant to this provision upon two (2) business days' written notice and during normal business hours. The term "audits," as used in this paragraph, shall not be defined to include reviews by Department staff members, which may be performed with no advance notice to the Grantee. In order to assure compliance with this section, Grantee agrees to provide the Department (or its authorized representatives) and any federal government entity with books, records, and documents pertaining to this Agreement.

26. Collection of Audit or Review Exceptions. The Grantee agrees that the Department may withhold net payments equal to the amount that has been identified as an exception by an audit or review, notwithstanding the fact that such audit or review exception is made against a prior or current Agreement or subcontract. The Grantee may also repay the Department for the total exception by cashier's check or money order made payable to: Georgia Department of Early Care and Learning. Submission by the Grantee of a check for which there are insufficient funds to repay any audit or review exception may serve, in the Department's discretion, as grounds for the immediate termination of this Agreement.

27. Cooperation in Transition of Services. The Grantee agrees that upon termination of this Agreement, in whole or in part, for any reason, the Grantee will cooperate as requested by the Department to effectuate the smooth and reasonable transition of the care and services for consumers/customers/clients

as directed by the Department. This will include but not be limited to the transfer of the consumer/customer/client records, personal belongings, and funds of all consumers/customers/clients as directed by the Department. Grantee further agrees that should it go out of business and/or cease to operate, all original records of consumers/customers/clients served pursuant to this Agreement shall be transferred by the Grantee to the Department immediately upon request and shall become the property of the Department.

28. Notices. All notices required or permitted to be given under this Agreement shall be in writing, sent to the appropriate party at its address specified below, and deemed to be properly given through one of the following methods:

- (a) delivery by hand (against receipt), as to which receipt is deemed to occur upon actual delivery; or
- (b) delivery via United States Registered or Certified Mail, Return Receipt Requested, as to which receipt is deemed to occur five (5) days after posting of any such Certified or Registered Mail.

Grantee: _____

Phone: _____

Department: _____
Bright from the Start:
Georgia Department of Early Care and Learning
2 Martin Luther King, Jr. Dr., SE
Suite 754, East Tower
Atlanta, Georgia 30334
Phone: (404) _____

A Party may designate a new recipient to whom all notices are to be sent by notifying the other Party in writing of any change in this designation.

- 29. Production of Documents.** Grantee acknowledges that all documents prepared, stored, maintained, or received on behalf of the Department for any reason shall be subject to the Georgia Open Records Act in accordance with O.C.G.A. § 50-18-70 *et seq.* Once requested by the Department, Grantee must return all relevant documents to the Department within 24 hours of the issuance of the request. If for good cause, the Grantee is unable to produce a portion of or all the relevant documents within 24 hours of the issuance of the request, the Grantee must provide the following information, in writing, to the Department: the reason(s) that the Grantee cannot comply with the request, a description of the documents and timeline for when the documents will be available.
- 30. Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, assigns, and agents.
- 31. Survival.** The provisions in this Agreement that by their nature are intended to survive expiration or termination of this Agreement shall survive including but not limited to the ownership, indemnification, and confidentiality provisions.
- 32. Force Majeure.** Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a "Force Majeure Event"). Grantee's financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Grantee under this Section. Grantee shall give the Department prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Grantee shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.
- 33. Severability.** If any of the provisions of this Agreement are or become illegal, unenforceable, or invalid, in whole or in part for any reason, the remainder of this Agreement shall remain in full force and effect without being impaired or invalidated in any way.
- 34. Remedies.** No remedies or rights herein conferred upon the Parties are intended to be exclusive of any remedy or right provided by law, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including the right of specific performance).
- 35. Waiver.** The failure of either party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or performance thereof at any time or times

thereafter; nor shall its waiver of any right hereunder at any given time, including rights to any payment, be deemed a waiver thereof for any other time.

36. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

37. Captions. The captions contained in this Agreement are for reference and convenience only and may not be used to interpret the provisions or intent of this Agreement.

38. Agreement Attachments and Exhibits. This Agreement includes as its attachments and exhibits the documents listed below:

Attachment 1 Grant Obligations and Requirements

IN WITNESS WHEREOF, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS AMENDMENT AND AGREE TO BE BOUND BY ALL OF ITS TERMS, CONDITIONS AND PROVISIONS, AS INDICATED BY THEIR SIGNATURE BELOW

Grantee Legal Name

**Bright from the Start:
Georgia Department of Early Care and Learning**

BY: _____
(Authorized Signature)

BY: _____

Printed Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Federal EIN: _____

Federal EIN: 58-2238669

Attachment 1 Grant Requirements and Obligations

Attachment 1 Grant Requirements and Obligations