



Agreement Between

And

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

I. PARTIES

This Agreement is made and entered into in Fulton County effective _____ *date* _____, 20____, by and between _____ *grantee name and address* _____, hereinafter referred to as “Grantee,” and Bright from the Start: Georgia Department of Early Care and Learning, 2 Martin Luther King, Jr. Dr., SE, Suite 754, East Tower, Atlanta, GA 30334, hereinafter referred to as the “Department.”

II. PURPOSE

Pursuant to O.C.G.A. §§ 20-1A-4 and 20-1A-64, the Department is charged with administering federal funds designated for Child Care quality initiatives allotted to the state by the U.S. Department of Health and Human Services (HHS). These funds are identified as Child Care Development Funds (CCDF) and are reported under Catalog of Federal Domestic Assistance (CFDA) # 93.575. This contract is also partly funded by the Race to the Top Early Learning Challenge Grant (RTT-ELC). Catalog of Federal Domestic Assistance (CFDA) # 84.412. The Department awards a portion of these funds to grantees based on a competitive review of qualifying quality initiative proposals. The purpose of this Agreement is to improve access to and deliver high quality child care services for children living in families with low incomes. This Agreement sets forth the agreed upon terms and performance expectations between the Department and the Grantee awarded federal CCDF and RRT-ELC funds.

III. THE GRANTEE AND THE DEPARTMENT MUTUALLY AGREE:

- 1. Term.** The Agreement period will begin _____, and continue through _____.
- 2. Amount.** The amount of this grant award shall not exceed _____ in total. Payments will be made in accordance with the approved proposal Budget included in Attachment 1.
- 3. Scope of Services.** The scope of services to be performed by the Grantee are set forth in the approved proposal specifically identified as Attachment 1 to this Agreement. The approved proposal labeled Attachment 1 is part of this agreement. Grantee shall provide the services

described in Attachment 1. In the event of a conflict between this Agreement and Attachment 1, the terms of this Agreement shall control.

4. Rights in Materials. The Department gives to the Grantee a royalty-free, non-exclusive, irrevocable license to reproduce, publish or use all intellectual property that it creates for the Department during the term of this agreement. The Grantee shall be required to give the Department no less than thirty (30) days advance written notice prior to initiating the process to license, copyright, patent or trademark any materials produced under this Agreement.

In the event that any intellectual property materials are produced as a result of this Agreement, the Department shall reserve a royalty-free, non-exclusive, irrevocable right to reproduce, modify, publish or otherwise use and authorize others to use the works for all purposes that the Department deems appropriate.

5. Funding. 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.

6. Payment. The Department will pay the Grantee according to the payment schedule detailed in Attachment 1 unless the Grant is amended.

6.1 Grantee agrees to submit a Monthly Roster Form to DECAL by the 14th calendar day of the month after the end of each month for any month subject to this Agreement.

6.2 Grantee agrees to provide banking information necessary to allow payments to be electronically transferred into the Grantee's bank account and a completed W9 form as required by the IRS for revenue reporting. Exhibits A and B are provided for this purpose.

6.3 Grantee agrees to maintain a financial accounting system that will allow the tracking and financial transaction recording of all funds related to this specific grant award separately identifiable from other revenues and expenses of the Grantee organization.

6.4 Upon notification by the Department, Grantee agrees to resolve all findings identified from a field or desk review within ten (10) working days.

6.5 Grantee agrees to refund to the Department any overpayments assessed by DECAL or its representatives. Overpayments may include any amounts received in error as a result of the Grantee's error, Department error, or automation error. Payment disputes, questions, and concerns can be addressed through DECAL. Grantees may also request an appeal regarding overpayments by contacting DECAL within ten (10) days of receiving notification of the adverse action. Please refer to Attachment 1.

6.6 The Department will not make payments to any entity that does not have a valid signed Grant Agreement. The Department will only recognize a valid signature to this Grant

Agreement by an individual, such as CEO, COO, CFO, President, or Sole Proprietor, who has actual or apparent authority to bind the corporation, business, or other entity or such individual has been granted legal authority by way of corporate resolution.

6.7 The Grantee agrees to maintain all supporting documentation related to this grant at the identified locations and make records available for review by Department staff upon request and without benefit of prior notice or announcement of review. Records will be maintained at the following location:

Phone: _____
Fax: _____

6.8 The Department reserves the right to terminate this Agreement if the Grantee fails to submit complete monthly expense and program status reports within the 15th working day after the end of each month.

6.9 The Department will not be obligated and will not make further payments related to this Agreement after the 30th calendar day from the end of the Agreement term.

7. Approvals. The Department shall have final approval on any changes to the process or materials for which this Agreement is being entered. Final approval on all products, including remote access material, also shall lie within the Department. Grantee may rely on all decisions and approvals of the Department.

8. Time Is Of The Essence: Time is of the essence with respect to the obligations of the Grantee under this Agreement.

9. 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 responsibility for advising clients served under the terms of this agreement about the independent status of the Grantee and the Department.

10. Subcontract; Assignment. Grantee shall not subcontract or permit anyone other than Grantee personnel to provide any of the services required of Grantee under this Agreement and shall not assign any of its rights or obligations hereunder without the prior written consent of the Department.

11. Publicity. Any publicity given to the program or services provided for herein, including but not limited to notices, information pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Grantee, may identify the Department as an institution with which

Grantee has contracted but shall not be released prior to written approval by the Department; provided, however, that Grantee may reference this Agreement in proposals for other Agreements without the required written approval.

12. Indemnification. The Grantee shall, to the extent authorized under the Constitution and laws of the State of Georgia, indemnify and hold the Department harmless from liability resulting from the negligent acts or omissions of the Grantee, its agents, subcontractors or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement.

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 provisions hereof. If the Department determines default and/or breach has occurred, including but not limited to the delivery of non-conforming services and/or deliverables, the Department will send a Notice of Right to Cure to Grantee. If Grantee does not cure the default and/or breach within the period specified in the Notice of Right 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/or deliverables.

B. FOR CONVENIENCE: This Agreement may be terminated or canceled by either party without cause; however the party seeking to terminate or cancel this Agreement must give written notice of its intention to do so to the other party at least thirty (30) days 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, less all sums received from the Department for non-conforming services and/or deliverables.

C. FOR NON-AVAILABILITY OF FUNDS: 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 and any such reductions will be effective after thirty (30) days' notice. 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.

D. FOR TERMINATION FROM OTHER DECAL PROGRAMS: This Agreement may be terminated for cause, in whole or in part, at any time by the Department for failure of Grantee to have satisfactory performance for the Childcare and Parent Services Program, Quality Rated Program or to maintain an active license with the Department.

14. Trading With State Employees. The Grantee and Department 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.*

15. Non-Discrimination. Neither the Grantee nor the Department will discriminate in educational programs and activities or employment relating to this Agreement on the basis of race, color, religion, sex, national origin, age or disability.

16. Drug-free Workplace. By entering into this Agreement with the Department, the Grantee hereby certifies that:

- A. A drug-free workplace will be provided for the Grantee's employees, agents, and servants, pursuant to O.C.G.A. § 50-24-3, during the performance of this Agreement; and
- B. Grantee will secure from any approved subcontractor hired to work in a drug-free workplace the following written certification:

17. Federal and Departmental Prohibition and Requirements Related to Lobbying.

- A. Pursuant to 31 U.S.C. Section 1352, the Grantee agrees that:
 - i. No federally appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Agreement, grant, loan, or cooperative agreement.
 - ii. As a condition of receipt of any federal Agreement, grant, loan, or cooperative agreement exceeding \$100,000, the Grantee shall file with the Department a signed "Certification Regarding Lobbying," which is appended to this Agreement as Attachment 4.
 - iii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Agreement, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, copies of which may be obtained from the Department.
 - iv. A disclosure form will be filed at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by Grantee under subparagraphs (b) or (c) of this paragraph. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action.

Any Grantee who makes a prohibited expenditure or who fails to file or amend the disclosure form, as required, shall be subject to a civil penalty of not less than \$10,000

and not more than \$100,000 for each such expenditure.

An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

The Grantee shall require that the prohibitions and requirements of this paragraph be included in the award documents for all sub-wards at all tiers (including subcontractors, sub-grants, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

B. Grantee further agrees that in accordance with the federal appropriations act:

- i. No part of any federal funds contained in this Agreement shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.
- ii. No part of any federal funds contained in this Agreement shall be used to pay the salary or expenses of any grant or Agreement recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.
- iii. Grantee further agrees that no part of state funds contained in this Agreement shall be used for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, Internet, or video presentation designed to support or defeat legislation pending before the General Assembly or any committee thereof, or the approval or veto of legislation by the Governor or for any other purposes.
- iv. Pursuant to the provisions of this paragraph, Grantee further agrees to sign the Certification Regarding Lobbying attached as Attachment 4 to this Agreement.

18. Debarment. In accordance with Executive Order 12549, Debarment and Suspension, and implemented at 45 CFR Part 76, 100-510, Grantee certifies by signing Attachment 5 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency. Grantee further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier transactions and in all solicitations for lower tier covered transactions.

19. 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 of the parties hereto.

20. Choice of Law and Forum. This Agreement shall be governed by the laws of the State of Georgia without application of conflicts of law principles. Any action brought by either party, legal or equitable, brought in connection with this Agreement, any matter pertaining to this Agreement, or any work performed hereunder shall be brought in the Superior Court of Fulton County, Georgia.

21. Compliance With All Laws. Grantee shall comply with all laws, ordinances, rules, and regulations of any governmental entity pertaining to its performance pursuant to this Agreement.

22. Immigration Compliance Requirements. Since the intended beneficiary of this Grant Agreement is a minor under the age of eighteen (18), and not the Grantee the rules in accordance with these matters shall not apply.

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

- i. Grantee whose agents, servants, employees and subcontractors have no reason under the scope of this Agreement to be present at any child care facility while any child is present for care must sign the affidavit attached to this Agreement as Attachment 7 attesting to that fact and is exempted from criminal background check requirements.
- ii. 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.
- iii. 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.
- iv. 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 contract.
- v. 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.
- vi. 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.
- vii. 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.

24. 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. Grantee, therefore, agrees to 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 authorized by law. The Grantee shall comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

Notwithstanding the foregoing, 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.

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 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) with books, records, documents, and other evidence pertaining to this Agreement. Failure to comply with said request for records will result in sanctions against the Grantee as outlined in Attachment 1.

26. Audits and Financial Reporting Requirements. Grantees that expend \$750,000 or more in Federal funds during their fiscal year agree to have a single entity-wide audit conducted for that year in accordance with the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards effective 12/26/2013.

Grantees expending \$100,000 or more in State funds during their fiscal year agree to have an entity-wide audit conducted for that year in accordance with Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants.

Grantees expending at least \$25,000 but less than \$100,000 in State funds during their fiscal year agree to prepare unaudited entity-wide financial statements for that year. Assertions concerning the basis of financial statement preparation must be made by the president or other corporate official.

Grantee further agrees to submit the required audit or financial statements in the quantities set forth below, within 180 days after the close of the Grantee's fiscal year:

Two (2) copies to:
Audit Coordinator
Georgia Department of Early Care and Learning
2 MLK, Jr. Dr., SE
Suite 870, East Tower
Atlanta, Georgia 30334

One (1) copy to:
State Department of Audits and
Accounts Division
270 Washington Street, S.W., Rm. 1-156
Atlanta, Georgia 30334-8400

Grantee understands that according to the provisions of O.C.G.A. §§ 50-20-4 and 50-20-6, failure to comply with the above audit and financial reporting requirements could be cause for the Department to suspend payments, to terminate this Agreement, to require a refund of all monies

received under this Agreement and to prohibit the Grantee from receiving funds from any state organization for a period of twelve (12) months from the date of notification by the Department or the State Department of Audits and Accounts.

27. Collection of Audit or Review Exceptions. The Grantee agrees that the Department may withhold net payments (voucher deduction) 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 check. 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.

28. 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 and shall become the property of the Department.

29. 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: _____
Fax: _____

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) _____
Fax: (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.

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. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding the offending term or provision, this Agreement shall remain in full force and effect. Such term or provision shall be deemed stricken here from and shall not affect the terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the opinion of a court of competent jurisdiction to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreements of the parties.

32. Sanctions. The Department reserves the right to take any sanctions outlined in Attachment 1 for violation of any term in this Agreement.

33. Agreement Attachment and Exhibit Inclusion. This Agreement includes as its attachments and exhibits the documents listed below:

- | | |
|---------------------|---|
| Attachment 1 | Quality Rated Subsidy Grant Scope of Work with Budget Plan |
| Attachment 2 | Federal Funding Accountability Form |
| Attachment 3 | Certification Regarding Lobbying |
| Attachment 4 | Certification Regarding Debarment, Suspension and Other Responsibility Matters |
| Attachment 5 | Immigration Affidavit |
| Attachment 6 | Affidavit in Lieu of Criminal Records Check Determination |

THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY ALL OF ITS TERMS, CONDITIONS AND PROVISIONS, AS INDICATED BY THEIR SIGNING OF THIS AGREEMENT.

Grantee Legal Name

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

BY: _____
(Authorized Signature)

BY: _____

Printed Name: _____
Title: _____

Name:
Title:

Date: _____
Federal EIN: _____

Date: _____
Federal EIN: 58-2238669