

PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT made this day of , 20

B E T W E E N:

THE REGIONAL MUNICIPALITY OF NIAGARA
(herein referred to as "Niagara Region")

-and-

Fill in proper legal name

(herein referred to as the "Agency")

WHEREAS pursuant to the *Child Care and Early Years Act, 2014* and regulations thereunder, Niagara Region has undertaken various responsibilities with respect to the provision of services to children;

AND WHEREAS the Agency operates child care services and is in receipt of funding on an annual basis for a licensed day nursery, if applicable, Special Needs Resourcing, if applicable, Child and Family Programs and Services, if applicable, Recreational Programs, if applicable, General Operating Grants, if applicable and Wage Enhancement, if applicable and has agreed to provide certain services for children subject to the terms and conditions set out in this Agreement;

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

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) "Act" means the *Child Care and Early Years Act, 2014*, as amended from time to time, and includes any successor legislation;
- (b) "Additional Subsidies" means additional monies, including general operating grants and wage enhancement, which Niagara Region may provide at its discretion to the Agency in respect to the provision of Services as described in Schedule "B" hereto but do not include the direct subsidy provided with respect to a Subsidized Child;
- (c) "Agreement" means this Agreement and all schedules attached hereto and all amendments made hereto and thereto by written agreement between the Parties

including but not restricted to annual Appendices described in Schedule “A” hereto ;

- (d) “Applicable Law” means the Act, Regulations and all other present or future applicable laws, statutes, regulations, treaties, judgments and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on a Party in the context of this Agreement;
- (e) “Approved Site” means a site operated by the Agency for the provision of Services and which has been approved by Niagara Region for referral of Subsidized Children and “Approved Sites” shall be the plural thereof. Initial Approved Sites are listed in Schedule A hereto;
- (f) “Assessed Parent Fee” means the fee payable to the Agency by the parent(s) or guardian(s) of a Subsidized Child determined in accordance with the Regulations;
- (g) “Director” means the Director of Children’s Services for Niagara Region or designate;
- (h) “Guidelines” mean all applicable guidelines of the Ministry with respect to the provision of day care services;
- (i) “Investigation” means any investigation concerning a Serious Occurrence at the Approved Site or concerning an alleged failure of the Agency to provide the Services in accordance with the terms of this Agreement;
- (j) “Ministry” means the Ministry of Education, Ontario or such other ministry as may from time to time be designated by the Province of Ontario to administer day nurseries in the Province of Ontario;
- (k) “Parties” means all the Parties to this Agreement and “Party” refers to anyone of them;
- (l) “Permitted Cost” means the per diem rate prescribed by Niagara Region in accordance with Schedule “B” hereto with respect to any particular service being provided at an Approved Site operated by the Agency;
- (m) “Policies and Procedures” mean all applicable policies and procedures of Niagara Region with respect to the provision of day care services including but not restricted to the Policies and Procedures set forth in Schedule “C” hereto;
- (n) “Regulations” mean regulations made under the Act from time to time;
- (o) “Serious Occurrence” means:
 - a. the death of a child who receives child care at a home premises or child care centre;
 - b. Abuse, neglect or an allegation of abuse or neglect of a child while receiving child care at a home premises or child care centre
 - c. A life-threatening injury to or a life-threatening illness of a child who receives child care at a home premises or child care centre;
 - d. An incident where a child who is receiving child care at a home premises or child care centre goes missing or is temporarily unsupervised, or;
 - e. An unplanned disruption of the normal operations of a home child care premise or child care centre that poses a risk to the health, safety or well-being of children receiving care at a home child care premises or child care centre.

- (p) Services means those services described in section 2 of the Agreement and to be provided to by the Agency in accordance with and subject to terms of the Agreement;
- (q) “Subsidized Child” means a child on whose behalf Niagara Region has agreed to pay all or part of the cost of services provided by the Agency and “Subsidized Children” mean the plural thereof;

1.2 Schedules

Schedules refers to **Schedules "A", "B" and "C"**, and any work schedules provided by the authorized or designated Region representative and includes all the terms, specifications and standards of the work, including the manner in which it is to be completed.

ARTICLE 2 – PROVISION OF THE SERVICES

2.1 The Services

During the Term of this Agreement, the Agency shall:

- (a) provide the Services, as more particularly described in this Agreement and **Schedule “A”**, attached hereto;
- (b) perform such duties using its best efforts and in accordance with the highest professional standards and employing the skill and competence expected of an Agency providing similar services;
- (c) Provide all such reporting and submit to such Investigations as Niagara Region may require pursuant to the terms of this Agreement;
- (d) promptly comply with all reasonable requests, instructions, directions and rules of Niagara Region;

2.2 Qualifications

The Agency providing Services pursuant to this Agreement shall:

- (a) be familiar with all relevant legislation affecting child care services in Ontario, including but not limited to the Act, the Regulations and all other Applicable Law;
- (b) be familiar with all Policies and Procedures related to the Agency’s responsibilities under this Agreement, copies of which are available on Niagara Region’s external website, and perform all Services and responsibilities under this Agreement in compliance with said Policies and Procedures and in compliance with all Guidelines;
- (c) ensure that each employee or agent of the Agency has provided a criminal reference check, including a vulnerable sector screen, conducted by a police force within six (6) months before commencing work at the Agency or any of its Approved Sites;
- (d) ensure that each employee or agent of the Agency has provided to the Agency, prior to the employee commencing work at the Agency or any of its Approved Sites,

- a signed declaration, in a form satisfactory to Niagara Region, with respect to the period since the date of the last criminal reference check;
- (e) Retain in their records the reference check and declaration described in subsections 2.2 (c) and 2.2 (d) and make same available to Niagara Region. This provision shall not impose any obligation upon Niagara Region to request copies of the reference check and the Agency accepts full responsibility for its covenants in subsections 2.2(c) and 2.2 (d) herein;
 - (f) Ensure that it is licensed to provide child care services in accordance with the Act and Regulations;
 - (g) Achieve all such additional qualifications specifically arising from the Services described in Schedule "A" hereto.

2.3 Term of Agreement

This Agreement shall remain in effect for one year, and shall automatically renew for further terms of one year on each anniversary of the date first written above or until one of the parties terminates the Agreement in accordance with Section 2.4 herein. During the Term, the Agency shall provide the Services in accordance with the terms and conditions specified herein.

2.4 Termination or Suspension

- (a) If the Agency, in the opinion of Niagara Region, acting reasonably, fails to satisfactorily perform the Services in accordance with the terms of this Agreement, Niagara Region may terminate this Agreement on five (5) days written notice.
- (b) Niagara Region may terminate the Agreement for any reason whatsoever by providing a minimum of thirty (30) days prior written notice of termination to the Agency.
- (c) Niagara Region may temporarily suspend the Services, or any portion thereof, forthwith:
 - (i) pending the results of an Investigation Niagara Region may conduct at its discretion at any time;

If the Services are temporarily suspended for Investigation, payment to the Agency shall be suspended for that time period. In the case of Investigation, reinstatement of the Services under this Agreement will depend upon the results of the Investigation and the Agency acknowledges and agrees that Niagara Region may require new terms or conditions to be added to this agreement before reinstatement will be allowed.

- (d) Niagara Region may suspend payment for the Services, or any portion thereof for any other reason, at any time by notice in writing to the Agency on five (5) days written notice for any reason other than for Investigation. In the event this occurs, Niagara Region shall on and after that date no longer have an obligation to make the payments in accordance with section 2.5 herein. The Agency shall resume

receipt of payment if and to the extent that such suspension is lifted by notice from Niagara Region.

- (e) In the event of termination, Niagara Region shall be liable for payment to the Agency for those monies attributable to the part of the Services properly performed to the date of termination specified in such notice, and the Agency shall discontinue the Services on the date specified in the notice.
- (f) Upon the completion, termination or suspension of this Agreement for any reason whatsoever, or upon simple request of Niagara Region at any time, the Agency shall promptly deliver to Niagara Region true copies of all Documents (as defined in section 2.7(a)), including all electronic files, used or prepared by the Agency, including its employees or anyone engaged by the Agency on its behalf.

2.5 Payment

Payment of the Licensee for the Services shall be made in accordance with Schedule "B" hereto.

2.6 Agency an Independent Contractor

Notwithstanding any other provision in this Agreement, the Agency agrees and acknowledges that the Services shall be provided by the Agency as an independent contractor. Specifically, the Agency agrees and acknowledges that:

- (a) Neither it nor any of its employees shall be deemed to be officer, agent, employee or official of Niagara Region;
- (b) the Agency shall be responsible as an independent contractor for the collection and payment of all taxes, remittances, contributions or levies imposed, charged or required under any law in respect of the Services provided and the fees and disbursements paid pursuant to this Agreement;
- (c) Niagara Region is not responsible, either jointly or severally, to fund any remittances, deductions or contributions, including those required by the Canada Revenue Agency, Canada Pension Plan, Employment Insurance, Workplace Safety and Insurance, Ontario Health Premium administrators or authorities on behalf of the Agency or its employees;
- (d) Neither it nor any of its employees is eligible to participate in any health, insurance, pension, disability or similar plan offered, funded, or contributed to, by or on behalf of Niagara Region;
- (e) the Agency and not Niagara Region, shall respond to and assume responsibility for any employment related claims advanced to or by the Agency including, but not limited to, those claims arising under any labour relations, employment standards, human rights, occupational health and safety, workers compensation, workplace safety and similar legislation;

- (f) Niagara Region is not responsible for any additional charges or liabilities in excess of Niagara Region's agreement to pay the Agency as outlined in section 2.5;
- (g) the Agency shall indemnify and hold harmless Niagara Region from all claims, damages, costs incurred by Niagara Region as a result of entering into this Agreement save and except those costs Niagara Region incurs pursuant to section 2.5;
- (h) the Agency shall not engage in any activity that places it in an actual, or reasonably perceived conflict of interest relative to its obligations under this Agreement; and
- (i) the provisions of this section 2.6 and sections 2.7, 2.8, 2.9, 3.1, 3.5, 3.7 and 3.8 shall survive the expiration or termination of this Agreement.

2.7 Documents, Privacy and Confidentiality

- (a) All information, materials, reports, statistics, records, documents, data, ideas and graphics prepared, created, obtained, developed, gathered or delivered by the Agency in connection with the documentation of Serious Occurrences, in whatever form, whether written, electronic or otherwise readable by machine, including without limitation all programs, compact discs, tapes and listings (the "Documents"), as well as all copyright and all other intellectual property in the Documents, shall be owned by and remain the sole property of Niagara Region.
- (b) The Documents shall be used by the Agency only for purposes within the scope of this Agreement, and shall not be used for any other purpose without the express prior written consent of Niagara Region. The Documents shall not be revealed, released, reproduced, published or disclosed to any person or persons without Niagara Region's prior written consent unless otherwise required by Applicable Law.
- (c) The Agency agrees that all personal information, including all personal health information, that the Agency accesses or of which the Agency acquires knowledge as a result of the Services, will be used, retained, protected, disclosed and disposed of in accordance with all applicable municipal, provincial and federal laws and regulations governing the collection, use, retention, disclosure and disposal of such information, including without limitation, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA") and the *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A ("PHIPA"). Furthermore, the Agency agrees that all personal health information collected will only be shared with those individuals for whom written consent and/or legislative authority exists.
- (d) This Agreement and all Documents and information resulting from this Agreement are subject to the MFIPPA and, where applicable, PHIPA and all applicable federal and provincial privacy legislation, as well as Niagara Region's obligations thereunder. The Agency shall at all times comply with the requirements of such

legislation. The Agency shall protect all personal and confidential information of Niagara Region and any person as required by the foregoing legislation.

2.8 Insurance

The Agency shall purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:

- 1) Commercial General Liability Insurance ("CGL")
CGL insurance insuring the Agency and covering all Services as described in the Agreement to a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence and in the aggregate. The policy will be extended to include:
 - a) bodily injury, death and property damage;
 - b) cross liability and severability of interest;
 - c) blanket contractual;
 - d) premises and operations;
 - e) personal and advertising injury;
 - f) broad form property damage;
 - g) products and completed operations;
 - h) owner's and contractors protective;
 - i) non-owned Automobile to a limit of not less than TWO MILLION DOLLARS (\$2,000,000);

The CGL policy shall be endorsed to:

- a) include Niagara Region as an additional insured; and
- b) contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

The policy shall not contain an exclusion for sexual abuse and molestation by the Agency, and shall provide a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00);

- 2) Automobile Insurance ("OAP 1")
OAP1 for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000). The OAP 1 policy shall contain an undertaking by the insurers to give fifteen (15) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.
- 3) Other Insurance
Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.
- 4) Policy Requirements
All policies of insurance shall:

- a) be written with an insurer licensed to do business in Ontario;
 - b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Owner;
- 5) Certificates of Insurance
Certificates of insurance originally signed by authorized insurance representatives shall be delivered to the Owner prior to the commencement of the Services, on a form of Certificate of Insurance which is acceptable to Niagara Region. The Certificate of Insurance must comply with these insurance requirements and must be on Niagara Region's form of Certificate of Insurance, which can be found on Niagara Region's website – www.niagararegion.ca/business/fpr/cert-insurance.aspx. If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the Agency acknowledges and agrees that Niagara Region is fully entitled to treat any such Certificate as an original and that the Agency will be responsible for the accuracy and validity of the information contained therein. If required by Niagara Region, certified copies of all the above-mentioned policies shall be delivered to Niagara Region. All subsequent policy renewals and certificates of insurance thereafter, during the time that this Agreement is in force, shall be forwarded to Niagara Region within fifteen (15) days of their renewal date.
- 6) The Agency shall, upon request of the Director, provide a valid, current Clearance Certificate declaring that the Agency is registered with Workplace Safety and Insurance Board ("WSIB"), and has an account in good standing, or, if WSIB coverage is not required by law to be carried by the Agency, one of the following (as the case may be):
- (i) an Exemption Letter from WSIB, satisfactory to the Director of Legal Services;
 - (ii) a Letter of Good Standing issued by WSIB; or,
 - (iii) an Independent Operators Status Certificate issued by WSIB.

In addition to the indemnification provided by the Agency elsewhere in this Agreement, the Agency agrees to indemnify Niagara Region for all losses, claims, expenses (including reasonable legal fees) or other charges related to the Agency's status with WSIB.

2.9 Indemnification

The Agency shall indemnify and save harmless Niagara Region and its respective elected officials, employees, agents, successors and assigns from and against all claims, demands, actions, losses, damages, suits, proceedings, expenses, costs, including all legal fees and disbursements, of every nature and kind whatsoever which Niagara Region and its respective elected officials, employees, agents, successors, and assigns may suffer, arising out of, or attributable to the acts or omissions of the Agency, its board members, officers, directors, servants, employees, agents, successors, assigns and anyone for whom at law the Agency is responsible, in the performance of its obligations under this Agreement.

ARTICLE 3 – GENERAL

3.1 Binding Effect and Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their successors and assigns.

3.2 Assignment of Agreement

The Agency shall not assign or transfer this Agreement without obtaining the prior written consent of Niagara Region, which consent may be withheld by Niagara Region in its sole and absolute discretion.

3.3 Entire Agreement

The Agreement including **Schedules "A", "B" and "C"** constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between the Parties other than those expressly set forth in this Agreement.

3.4 Jurisdiction, Amendments and Waivers

This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all the Parties hereto. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and unless otherwise provided in the written waiver, shall be limited to the specified breach waived.

3.5 Severability

In the event that any provision or term of this Agreement is deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement remain in full force and effect.

3.6 Notice

- (a) Any notice given or required under this Agreement shall be deemed to be sufficiently and effectually given if delivered by hand or mailed by prepaid registered post, or sent via facsimile transmission addressed as follows:
 - i) In the case of Niagara Region:

The Regional Municipality of Niagara
1815 Sir Isaac Brock Way, P.O. Box 344
Thorold, Ontario L2V 3Z3
Attention: Administrator
Fax: (905) 984-3685

- ii) In the case of the Agency:
[Address]
[Town, City, Township], Ontario
[Postal Code]
Attention: Administrator

or to such other address or number of which either party may from time to time notify the other in writing.

- (b) If any such notice is so given, it shall be conclusively deemed to have been given and received on the date of delivery if delivered, on the next business day if transmitted by facsimile transmission, and on the fifth calendar day following the mailing thereof, if sent by mail as aforesaid.

3.7 Compliance with Laws

The Agency shall comply with all laws, rules and regulations applicable to the provision of the Services, including without limitation, the Act, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.I, the *Workplace Safety and Insurance Act*, 1997, c.16, the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O., 2005, c. 11, the French Language Services Act, R.S.O. 1990, c F.29, all other Applicable Law, all Guidelines and all by-laws, Policies and Procedures of Niagara Region.

3.8 Accessibility Training

Where the Agency's Services are subject to the *Accessibility for Ontarians with Disabilities Act*, 2005, (the "AODA"), the Agency shall comply with the AODA and the Regulations thereunder with regard to the provision of the Services to persons with disabilities and shall ensure the training required under the said AODA and its regulations is provided to the Agency's employees, agents, volunteers or otherwise, and shall further provide to Niagara Region, upon Niagara Region's request and in a form acceptable to Niagara Region, documentation evidencing completion of the required accessibility training.

3.9 Signing in Counterparts

The parties agree that the execution of this Agreement may be facilitated through a facsimile copy and/or this Agreement may be executed in several counterparts and any such facsimile copy and any such counterpart shall be deemed to be an original and such facsimile copies or such counterparts together shall constitute one and the same instrument and shall have the same force and effect as an executed original.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed by their duly authorized signing officers as of the date first above written.

EXECUTED at _____, Ontario this _____ day of _____, 2017.
(City/Town) (Date) (Month)

AGENCY

Witness

Name
Title:

I have authority to bind the Corporation.

EXECUTED at Thorold, Ontario this _____ day of _____, 2017.

THE REGIONAL MUNICIPALITY OF NIAGARA

Per: _____

Title: Director, Children's Services

I have the authority to bind the Corporation.