



## Subsidy Vendor Agreement (SVA)

***Note: This document is for read-only purposes. Vendors will receive an attestation form with their program information to complete and sign verifying that they have read and will adhere to the terms of this agreement.***

This Agreement ("Agreement") shall govern the purchase of child care services from the Vendor on behalf of parents eligible for child care assistance through the Child Care Subsidy Program (the "Program").

### **1. Instructions for Viewing the Subsidy Vendor Agreement**

The Subsidy Vendor Agreement (SVA) provided below is for read-only purposes. This document outlines the terms and conditions for becoming a subsidy provider under the Child Care Subsidy Program. It is for informational purposes only. If you choose to apply to become a subsidy provider, an attestation form will be emailed to you, which will require you to agree to the terms and conditions outlined in the SVA. Carefully read and understand the SVA. If you decide to apply, follow the application process to receive the attestation form via email to complete.

### **2. Purpose.**

This Agreement is a contract between the Vendor and the Virginia Department of Social Services (VDSS) and the Virginia Department of Education (VDOE) for the provision of child care services by the Vendor to child care recipients of local departments of social services who are eligible for child care assistance through the Virginia Child Care Subsidy Program. The parties acknowledge that this Agreement and the services provided by the Vendor are governed by and subject to the federal and state laws and regulations for the Child Care and Development Block Grant (42 U.S.C. §§ 9858 et seq., 45 C.F.R. §§98.1 et seq.), the child care provisions of the Block Grant for Temporary Assistance for Needy Families (42 U.S.C. §§ 601 et seq., Va. Code §§ 63.2-600 et seq.), and the Child Care Program (8VAC20-790), and to the guidelines established in the Child Care Subsidy Program Guidance Manual and the Virginia Electronic Child Care system ("VA- ECC") Manuals, as amended from time to time.

### **3. Term of Agreement.**

This Agreement shall be in effect from the date a completed, signed, dated agreement is received by VDSS and VDOE, and the operating status is Open within VaCMS and will remain in effect for two years or until such time as a new agreement is entered into. This Agreement replaces and revokes any prior agreements between the Vendor and VDSS and/or VDOE under the Program. The Agreement may be renewed in writing by mutual agreement of the parties, within 90 days prior to the expiration hereof, for two successive one-year terms upon the end of the initial term.

#### **4. Termination of Agreement.**

- 4.1. This Agreement may be terminated by VDSS and VDOE if any of the following occur:
  - 4.1.1. The Vendor's license/certificate/permit/exemption to operate a child care facility is revoked, suspended, or denied. Payment to the Vendor shall not be issued for services rendered after the last day on which the Vendor's license/certificate/permit/exemption was still in effect.
  - 4.1.2. The Vendor's business location changes; ownership of the Vendor's business is assigned, sold, or otherwise transferred; the Vendor's business structure changes; the Vendor's employer identification number changes; the Vendor does not provide supporting tax identification documents such as a copy of the social security card, a copy of the IRS SS4 form or a copy of the IRS 147 C notice; or the Vendor's legal operating status becomes invalid for any reason. Payment to the Vendor shall not be issued for services rendered after the occurrence of these events.
  - 4.1.3. The Vendor commits fraud; provides false information to VDSS, VDOE, or the local department of social services; fails to notify VDSS of a change in circumstances that affects payments received by the Vendor; accepts payments when the Vendor knows, or should reasonably have known, that the Vendor is not entitled to such payments; makes a claim for payment to which the Vendor is not entitled pursuant to the terms of this Agreement and all applicable rules, laws and regulations. The Vendor shall repay any amounts overpaid due to such actions unless otherwise provided by court order, if any; or
  - 4.1.4. The Vendor is in violation of paragraphs, 6.10, 9.5, 10.7, or 10.11, or any other paragraph that expressly provides for termination.
- 4.2. This Agreement may be terminated by VDSS and VDOE for the Vendor's violation or repeated violations of any term of this Agreement or of any state laws and regulations related to the Program and to the licensing or the exemption therefrom of child care providers, including but not limited to, the provision and maintenance of background checks of the Vendor, Vendor's employees, volunteers, agents involved in the day-to-day operation, and other individuals who come into contact with children or other adults residing in the home.
- 4.3. Upon such termination of this Agreement by VDSS and VDOE pursuant to paragraphs 4.1 (including subparts) and 4.2, VDSS and VDOE may disqualify the Vendor from future participation in the Program permanently or for a determinate period of time. The Vendor, its owners, members or principals if the Vendor is a corporation, partnership, or limited liability company, shall be permanently disqualified from participating in the Program upon the first finding of any action described within paragraph 4.1.3 committed by the Vendor. Such disqualification shall apply to any person having any ownership or successor interest in the Vendor. The Vendor may appeal the termination of this Agreement and Program disqualification pursuant to section 11 of this agreement. The Vendor shall not receive any further Program subsidy payments as of the effective date of termination by VDSS and VDOE whether or not the Vendor appeals the termination. The disqualified Vendor is prohibited from continuing its operations through surrogate, affiliates or successor businesses or individuals as the permanently disqualified status will apply to those entities. VDSS and VDOE shall

conduct business only with responsible Vendors. Further, VDSS and VDOE have the discretion to disqualify or exclude any Vendor which is affiliated with the owners, directors, shareholders, limited liability company members, and managers of a disqualified Vendor.

- 4.4. This Agreement may be terminated by the Vendor with 7 days advance written notice to VDSS and VDOE. Upon such termination, the Vendor shall immediately notify all parents or families receiving the Child Care Subsidy Program assistance for whom the Vendor provides child care services of its termination of this Agreement.

## **5. Suspension of Payments and Enrollment.**

If the VDOE Office of Child Care Health and Safety (OCCHS) issues a notice of intent to suspend, revoke or deny the Vendor's license/certificate/exemption, no new children eligible for subsidy services may enroll in the Vendor's child care program after such action is taken against the facility.

If OCCHS issues a Provisional License to the Vendor's child care program, no new children eligible for subsidy services may enroll in the child care program during the provisional period (up to 6 months) unless the Vendor receives an exception in writing from the Deputy Superintendent or equivalent at the VDOE.

If VDSS receives a tax intercept for a Vendor from the Internal Revenue Service or the Virginia Department of Taxation, payments from VDSS to the Vendor can be reduced, depleted, or delayed to satisfy the federal and state payment intercept requirement. In some cases, it may delay any remaining payment to the Vendor by up to 10 business days from the day of anticipated deposit.

## **6. Program Participation Requirements.**

- 6.1. The Vendor shall have a working telephone at each site where child care is provided.
- 6.2. The Vendor shall comply with all applicable federal and state laws and regulations, including but not limited to laws and regulations related to the licensing or exemptions of child care providers; state regulations, policies, and guidelines for the Child Care Subsidy Program as set forth by VDSS and VDOE; state and local health and safety requirements related to child care providers; and requirements for reporting of suspected abuse or neglect of a child under Va. Code §63.2-1509. The Vendor shall be subject to at least one annual inspection by VDOE to ensure compliance with all such laws, regulations, and policies. Such inspections may be unannounced.
- 6.3. The Vendor shall keep all records pertaining to the children receiving child care assistance, including but not limited to attendance and payment records, up to date and accessible to VDSS and VDOE. The Vendor must make payment records available to parents upon their request for payments made on behalf of their children.
- 6.4. The Vendor agrees to retain all books, records, and other documents related to this Agreement for five (5) years after final payment for auditing purposes by any local, state or federal government agency. Failure to provide records may subject the Vendor to repayment of all subsidy monies received during the five year period. The Vendor agrees that VDSS, VDOE, its authorized agent(s), and/or State, Federal, and local fraud investigators and auditors shall have full access to and the

right to examine and/or remove any said materials during said period. If an audit or investigation begins before the five-year retention period ends, records must be kept until the completion of the audit. Should an audit by authorized local, state or federal officials result in disallowance of amounts previously paid to the Vendor, the Vendor shall reimburse the VDSS upon demand.

- 6.5. The Vendor shall allow parents of the children served unlimited access to their own children while under the Vendor's care.
- 6.6. The Vendor shall allow staff from VDSS, VDOE, and the local department of social services unlimited access to the children in care when the Vendor has a current purchase of service order (POSO) for one or more children who receive child care assistance. If, after two failed attempts to conduct an unannounced subsidy inspection during the Vendor's reported days/hours of operation, and subsequent contact with VDSS or VDOE staff is not made by the Vendor by telephone or email within 48 hours of an attempted inspection, the subsidy record will be CLOSED and the Vendor will need to reapply for Vendor approval. Payment to the Vendor shall not be issued for services rendered after the last day on which the Vendor's subsidy provider status was still in good standing.
- 6.7. The Vendor shall notify the VDSS Child Care Subsidy Program Vendor Relations immediately at (833) 551-7794 if it ceases to operate at its physical address designated herein or its legal operating status changes or becomes invalid. The Vendor shall notify VDSS and VDOE of any change in name, tax identification number, address, telephone number, email address, or authorized representative within 3 business days of any such change by sending an email to [vendor.manager@dss.virginia.gov](mailto:vendor.manager@dss.virginia.gov).
- 6.8. The Vendor shall provide the child care services under this Agreement. The Vendor shall not sell, assign, subcontract, or otherwise transfer any interest or duties and responsibilities under this Agreement. Payment for the services rendered pursuant to this Agreement shall be made only to the Vendor named in this Agreement for care provided at the location identified in this Agreement.
- 6.9. The Vendor shall notify the local department of social services immediately of any of the following:
  - 6.9.1. A child receiving child care assistance does not attend on the first authorized day of care.
  - 6.9.2. A child receiving child care assistance is officially withdrawn from enrollment.
  - 6.9.3. A child receiving child care assistance is absent for more than five consecutive days. VDSS will pay for up to five days of care after the last day of attendance when the child is unexpectedly withdrawn without prior notice. Payment of any fees not paid by VDSS is the responsibility of the parent.
  - 6.9.4. The parent does not have a VA-ECC card within one week of enrollment.
  - 6.9.5. The parent is unable or unwilling to use the VA-ECC card.
- 6.10. The Vendor agrees to comply with the inspection requirements ([8VAC20-790](#)) in addition to the regulatory requirements of their specific licensing, certifying,

and/or permitting agency. Failure of the Vendor to maintain compliance shall be grounds for termination of this Agreement.

- 6.11 Vendors must provide the VDSS a copy of the social security card, a copy of the IRS SS4 form or a copy of the IRS 147 C notice associated with the entity's tax filing status when applying to become a Child Care Subsidy Vendor, whenever the entity name, address or filings status changes, and whenever requested by VDSS.
- 6.12 In accordance with Code of Virginia (§ 22.1-289.03), all Vendors will be required to register to participate in VQB5, Virginia's statewide measurement and improvement system after August 1, 2023.
- 6.13 Goals of the Program. The overarching goal of the Child Care Subsidy Program is to improve access to high quality affordable child care options for eligible families, ultimately improving children's school readiness for kindergarten and beyond. Every Virginia child, regardless of background or zip code, is capable of and deserves to enter school ready so that he or she can achieve their full potential. There is also a strong connection between access to quality early childhood and out-of-school time (OST) programming and the health of Virginia's families and workforce. Having access to reliable, safe, nurturing and affordable early childhood and out-of-school time learning environments are key to parents' ability to be productive members of the workforce. Program Vendors serve an important role in providing access to quality early childhood and OST care and education for Virginia's children.

**7. Program Training and Notice of Program Changes by VDSS and VDOE.**

- 7.1. The Vendor and/or designee shall complete Virginia Preservice Training for Child Care Staff prior to the submission of this Agreement and ensure all staff members complete the training within the first 90 days of subsidy Vendor approval.
- 7.2. The Vendor and/or designee shall complete the Annual Health and Safety Update Course each year and ensure all direct-care staff members complete the training annually.
- 7.3. VDSS and VDOE shall provide the Vendor information or training on the use and handling of the point-of-service ("POS") hardware devices, including providing the necessary information to contact the POS hardware and system provider (i.e. Conduent) in the event of malfunction of the POS hardware or service. Should VDSS and VDOE contract with another POS hardware and system provider, VDSS and VDOE shall promptly notify the Vendor and provide any necessary further training or information pertaining to the POS hardware and system.
- 7.4. VDSS and VDOE shall provide notice to the Vendor of any changes or amendments to state regulations, policies, or guidelines for the Child Care Subsidy Program. Such notice may be by electronic communication.

**8. Rates.**

8.1. Maximum Reimbursable Rates ("MRR") have been established for child care services using Virginia’s cost estimation model to determine the cost to provide quality child care. Virginia’s model, which was developed by national experts and received federal approval:

- Sets separate estimates for child day centers and family day homes and accounts for differences in size and setting;
- Accounts for geographic variations in wages and other operating costs;
- Is based on Virginia licensing standards and accounts for the cost of meeting basic health and safety standards, including age-based group sizes and teacher-child ratios; and
- Assumes the need to offer competitive compensation and support for educators as part of meeting expectations in [VQB5](#).

Subsidy Vendor payment rates can be found at [www.childcareva.com](http://www.childcareva.com) for each locality in the state according to the type of care provided. MRRs may be adjusted from time to time only by VDOE in accordance with state law or regulation and are published in the appendices of the Child Care Subsidy Program Guidance Manual available at [www.childcareva.com](http://www.childcareva.com).

The Purchase of Services Order (“POSO”) shall state the rate to be paid to the Vendor. Payments to the Vendor shall be subject to the terms regarding holidays and absent days stated herein this Section where applicable. The rates and number of authorized days for which the Vendor may be paid shall be stated on the POSO entered into by the Vendor and local department of social services. Child care services shall not be provided prior to receiving a POSO for the child or prior to verification of an approved authorization in the VA-ECC Web Portal. Any services provided prior to the issuance of an authorization may not be paid by the Program.

The MRR are established for both Level 1 and Level 2 Vendors. Level 2 Vendors are paid at a higher rate than Level 1 home-based providers based on the amount of regulatory oversight for Level 2 Vendors (Licensed Family Day Homes, Licensed Family Day System Approved Homes, and Local Ordinance Approved Homes).

Child Care Subsidy Program Guidance Manual Appendix E: Maximum Reimbursable Rates per Type of Vendor

Level 1 Home-Based Programs Receive Level 1 Maximum Reimbursable Rate	Level 1 Center-Based Programs Receive Level 2 Maximum Reimbursable Rate	Level 2 Programs Receive Level 2 Maximum Reimbursable Rate
Unlicensed and Unregulated Home-Based Vendors	Local Government-Approved Recreation Programs	Licensed Family Day Homes

<p>In-Home Vendors (In-Home Vendors are paid at a rate not less than the greater of the federal minimum wage or the Virginia minimum wage, not to exceed Level 1 MRR for # of children in care)</p> <p>Voluntarily Registered Family Day Homes</p>	<p>Local School Division Programs (if unlicensed)</p> <p>Religiously-Exempt Child Day Centers</p> <p>Certified Preschools</p>	<p>Local Ordinance Approved Vendors (that meet or exceed Standards for Licensed Family Day Homes)*</p> <p>Licensed Family Day System-Approved Family Day Homes</p> <p>Licensed Child Day Centers (including Short-Term Child Day Centers)</p> <p>Child Care Centers run by the United States Department of Defense</p>
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*\* Localities that approve providers by local ordinances (in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia) must have guidelines that meet or exceed the Standards for Licensed Family Day Homes to pay at Level 2 MRR.*

- 8.2. Vendors will be paid the MRR for the locality in which the Vendor is located, less any required copayment where applicable. The MRR is set by Virginia’s cost estimation model and is based on the Ready Region in which the Vendor is located. If the MRR is higher than the rate a program charges the general public, the Vendor will still be paid the MRR. If a Vendor prefers to receive a lower rate than the MRR, the Vendor must contact VDSS.
- 8.3. The Department will not pay more than the established MRR for the locality in which the Vendor is located. Any amount the Vendor charges the general public above the amount of the MRR may be charged to the family. For children who meet the definition of children with special needs in 8VAC20-790 of the Virginia Administrative Code, payment of up to two times the amount of the MRR for the child's age shall be allowed when it is appropriate, as determined by the local department of social services in consultation with the parent(s), the Vendor, and appropriate medical or mental health professional(s).
- 8.4. For data collection purposes, Vendors shall inform the State of the rates charged to the general public. These rates will not impact Vendor payment; Vendors will receive the MRR based on their locality unless they request a lower rate from VDSS. The Vendor shall provide written notice of rates when requested to do so by VDOE or VDSS. If the Vendor does not comply with VDSS and VDOE’s data requests to submit rates information, the Vendor may be deemed ineligible to remain an approved subsidy Vendor.
- 8.5. Vendors may be paid for up to 15 days of planned closure for holidays (including those listed below), vacations, and professional development or planning time on which no child care services are provided as identified in the Vendor Agreement.

Family Day Home providers in the Child Care Subsidy program may be paid for

up to three sick days to care for themselves or a family member.

- 8.6. The following 11 holidays will be paid even if the Vendor is closed and unavailable to the parent. Closures for these holidays count towards the 15 days of planned closure described above. The Paid Holiday Schedule and the Pay Date Documents can be found on the Providers section of [www.childcareva.com](http://www.childcareva.com).

Paid holidays:

1. New Year's Day
2. Martin Luther King, Jr. Day
3. President's Day
4. Memorial Day
5. Juneteenth
6. Independence Day
7. Labor Day
8. Veteran's Day
9. Thanksgiving Day
10. Day after Thanksgiving
11. Christmas Day

- 8.7. Absent Days: An absent day means any day that a child is authorized to be in the Vendor's care but is not in attendance, and child care would have been provided had the child been present.

The Department shall issue payments to Child Care Subsidy Program Vendors for authorized enrollment, subject to the attendance threshold established by the Department of Education.

While the child is still enrolled, the Department will pay Vendors no more than the maximum allowable absent days for the relevant fiscal year (June 1-May 31) as policy permits. The total number of allowable absent days will be available upon case approval and at the beginning of each fiscal year thereafter.

- 8.8. A single annual registration fee per child may be paid to Level 2 Vendors only if the Vendor charges this as a separate fee to the general public. The Level 2 Vendor may receive up to \$100 for the annual child registration fee per fiscal year (June 1 – May 31). The registration fee must not exceed \$100 nor be higher than the fee the Vendor charges the general public. Payments for registration fees will not be made to Level 1 Vendors.

**9. Attendance.**

- 9.1. The Vendor shall keep attendance records current and in accordance with this Agreement. Records that are not accessible, not current, or are unverifiable could result in overpayment subject to repayment by the Vendor to VDSS.
- 9.2. The Vendor shall retain all original attendance records and reports required by this Agreement for a period of 5 years.
- 9.3. The Vendor shall make all attendance records accessible for inspection by the local department of social services and/or its authorized agents, VDSS staff, VDOE staff



and/or its authorized agents, and any local, state, or federal auditors upon request.

- 9.4. Each child's parent or guardian shall record the child's arrival and departure into the VA-ECC system using the point-of-service (POS) hardware device issued to the Vendor or the interactive voice response (IVR) telephone system utilizing the Vendor's telephone that is registered with the Program.
- 9.5. The Vendor shall not report attendance using Vendor Attendance Reports except under the circumstances listed in paragraph 9.6. Excessive or unauthorized use of Vendor Attendance Reports may result in nonpayment, the termination of this Agreement and/or disqualification of the Vendor from future participation in the Program.
- 9.6. The Vendor forfeits payment for services if the original signed/dated Vendor Attendance Reports used in accordance with this section are not received by VDSS within 30 days of the end of the service period that is being reported. A service period is either the first through the fifteenth or the sixteenth through the last day of the month.

The Vendor shall allow staff from VDSS, VDOE, and the local department of social services to inspect the Vendor's facility for VA-ECC cards or any billing information. Upon discovery of any such materials that indicate fraudulent or questionable billing practices, VDSS, VDOE, and the local department of social services shall have the right to seize VA-ECC cards and/or the POS hardware and to be given copies of billing records.

Vendor Attendance Reports will be accepted by VDSS for entry into the VA-ECC system under the following circumstances only:

- 9.6.1. VA-ECC Card: The parent/family has not yet been issued their VA-ECC swipe card. Attendance can be recorded manually using the Vendor Attendance Report prior to the parent's receipt of their VA-ECC swipe card. If the parent does not have a VA-ECC swipe card within one week, the local department of social services must be notified per subsection 6.9.
- 9.6.2. POS/IVR Problems: The POS device has not yet been installed or the POS/IVR system was not functioning for the parent/guardian to check in/out. In the event this occurs, the Vendor shall report the system or device malfunction to the manufacturer within 24 hours and shall document the making of such report.
- 9.6.3. Retroactive Authorization: If a local department of social services issues a POSO with an effective beginning date prior to the date of issuance, authorized attendance recorded outside of the nine-day back swipe limit, defined as the current day plus previous eight days, may be reported manually.

Vendor Attendance Reports will not be processed if submitted for invalid reasons.

- 9.7. Only parents, guardians and alternate cardholders named by the parent(s) of children receiving child care assistance are authorized to possess and swipe the VA-ECC card issued to them on the Vendor's POS machine or use the IVR system to report attendance. **The Vendor shall not be in possession of or swipe any**

**parents' or guardians' VA-ECC card or use the IVR system to report attendance; nor shall the Vendor ask the cardholder for his Personal Identification Number (PIN).**

- 9.8. The Vendor shall not ask or require a parent or guardian to swipe or otherwise report attendance for a day the child/children does/do not attend except as listed in paragraphs 8.5, 8.6, and 8.7.
- 9.9. The Vendor shall ensure that claimed attendance submitted via the VA-ECC system is correct and shall void any incorrect transactions within the nine-day swipe limit, defined as the current day plus previous eight days.
- 9.10. The Vendor shall not move the POS device to another facility.
- 9.11. The Vendor shall follow the instructions included in the POS User Manual and/or the IVR User Manual and train all staff on the proper use and requirements of the POS device.

**10. Billing/Payments.**

- 10.1. VDSS shall provide prompt payment to the Vendor for services rendered pursuant to this Agreement.
- 10.2. The provision of services authorized by the POSO is considered to be acceptance of that POSO.
- 10.3. VDSS payments to the Vendor for child care services rendered shall be according to the rates stated on the POSO in accordance with all terms of this Agreement, less any monthly co-payment to be made by the parents or guardians, if applicable. Payments to the Vendor shall be based on the agreed rate and the number of days the child actually attended, subject to the terms regarding holidays and absences in section 8.
- 10.4. Payment is restricted to services provided at the location specified on the POSO.
- 10.5. The Vendor shall maintain a bank account with which to receive payments by direct deposit if the Vendor is organized as a corporation, partnership, estate, trust, government entity, non-profit organization, or tax-exempt charitable organization under Internal Revenue Code § 501(c)(3). If the Vendor is an individual or operates as a sole proprietorship, the Vendor may receive payment by debit card or by direct deposit.
- 10.6. All incorrect and/or incomplete attendance transactions must be reconciled and verified prior to payment being made.
- 10.7. Payment for attendance submitted via Vendor Attendance Reports shall be issued by VDSS up to thirty days after complete Vendor Attendance Reports forms are received. VDSS or VDOE may, at their discretion, review Vendor records to verify the accuracy and/or completeness of manual attendance report forms received. If VDSS and VDOE determine that the Vendor is submitting Vendor Attendance Reports forms for any reason other than for those circumstances stated in paragraph 9.6 (including subparts), this Agreement may be terminated and VDSS shall have no obligation to make any payments for the period covered by such manual attendance report forms.

- 10.8. If the Vendor disputes the amount of payment made for a reported time period, the Vendor must submit a written statement to VDSS Child Care Subsidy Program Vendor Relations detailing the dispute within thirty (30) days from the date the payment was received. Such written statement shall include the reasons the Vendor disputes the payment amount and shall be accompanied by any documentation to support the Vendor's claim. If the Vendor fails to submit such a written statement within the thirty-day time period, the payment made for such reported time period shall be deemed final.
- 10.9. In instances when a Vendor charges the difference between the Vendor's rate and the MRR, the parents shall be responsible for paying the Vendor any rates that exceed the local MRR. At the time of the child's enrollment, the Vendor must have a written agreement with the parent for payment of any rates and/or fees that exceed the allowable charges, if that is the Vendor's policy. It is the Vendor's responsibility to collect any past due payments or outstanding balances.
- 10.10. The Vendor shall not charge or otherwise hold the parents or guardians of the children served by the Program financially liable or responsible for any amounts of Program subsidy payments not made by VDSS due to the Vendor's failure to comply with the terms of this Agreement.
- 10.11. The Vendor shall repay the full amount of any overpayments made by VDSS to the Vendor that are not the result of fraud or intentional misrepresentation. The Vendor may continue to participate in the subsidy program as long as the Vendor enters a repayment agreement with the VDSS Division of Benefit Programs and payments are made according to such agreement.

**11. Appeals.**

- 11.1. The Vendor may appeal decisions by VDSS or VDOE regarding: (i) payment for services rendered hereunder, subject to the provisions of paragraph 10.6, (ii) termination of this Agreement, and (iii) disqualification of the Vendor from future participation in the Program.
- 11.2. To initiate an appeal of a VDSS or VDOE decision, the Vendor shall notify VDSS or VDOE in writing that it is appealing the decision within 30 days of the date of the written notice of the decision.
- 11.3. Upon receiving the Vendor's notice of appeal, VDSS shall hold an informal conference at which the Vendor may provide such further information or present any additional facts for VDSS to reconsider its action. VDSS shall render a decision within 15 business days from the conclusion of the informal conference. The Vendor may waive the holding of the informal conference and request the formal hearing described in paragraph 11.4 in its written notice of appeal to VDSS and VDOE.
- 11.4. The Vendor may appeal the decision from the informal conference by requesting an administrative hearing with VDOE within 30 days of the date of the decision from the informal conference. The administrative hearing shall be held in accordance with §2.2-4020 of the Code of Virginia and shall be presided over by a hearing officer designated by the Supreme Court of Virginia pursuant to subsection A of §2.2- 4024 of the Code of Virginia. Within 30 days of the administrative hearing, the hearing officer shall recommend a decision to the

Superintendent of Public Instruction at VDOE. The Superintendent shall issue a final decision within 30 days of receipt of the hearing officer's recommended decision in accordance with subsection C of §2.2-4021 of the Code of Virginia.

- 11.5. The Vendor may seek court review of the Superintendent's decision pursuant to the applicable sections of the Virginia Administrative Process Act (§§ 2.2-4025 *et seq.* of the Code of Virginia).

The parties agree that this shall be the sole remedy for disputes under this Agreement and thereby waive their right for judicial review in the courts of the Commonwealth of Virginia except as provided herein.

## **12. General Conditions.**

- 12.1 INDEMNIFICATION: For those Vendors which are not owned or operated by the Commonwealth of Virginia, which includes its agencies, the Vendor shall indemnify and hold VDSS, VDOE, and the local department of social services harmless from any and all claims for damages, either in law or equity, directly or indirectly, arising out of or by virtue of the actions or inactions of the Vendor or its agents, servants, or employees in the provision of child care services in accordance with this Agreement. This paragraph does not apply to child care facilities operated by a state or local government.

For those state or local governmental agencies, which operate child day or child care programs, those governmental agencies shall be responsible for the negligent acts and omissions of its staff. Execution of this agreement shall not operate as a waiver of any sovereign immunity or the qualified immunity defenses.

- 12.2. AUTHORITIES:

12.2.1 Nothing herein shall cause the Vendor or its agents and employees to be deemed employees or agents of VDSS or VDOE during the term of this Agreement. VDSS will issue IRS Form 1099 annually to report payments to the Vendor that total at least \$600 if applicable. Neither party shall make any commitments that will bind the other party beyond the scope of services contained herein. Note: Form 1099 is not issued for nonprofit agencies or corporations.

12.2.2 The Vendor certifies that if organized as a stock or nonstock corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, it is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into an agreement with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the agreement. A public body may void any agreement with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 12.3 **NONTRANSFERABILITY:** This agreement is not assignable or transferable. The Vendor shall not assign, sublet, subcontract, or otherwise transfer its rights, duties, and obligations hereunder to another person or entity. Should ownership of the Vendor's business change, be sold, or otherwise transferred, this Agreement shall terminate and the person or entity receiving, purchasing or gaining such ownership must enter into a new agreement with VDSS and VDOE in order to participate in the Program.
- 12.4 **DISCRIMINATION:** The Vendor shall not discriminate against any recipient/child because of race, religion, color, sex, national origin, age, disability, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or any other basis prohibited by state law relating to discrimination.
- 12.5 **CONFIDENTIALITY:** All information and data obtained as to personal facts and circumstances related to children and their parents or guardians shall be kept confidential by the parties, during and following the term of this Agreement, and shall not be disclosed without the individual's, VDSS's, and VDOE's written consent and only in accordance with federal law or the Code of Virginia. Vendors who utilize, access, or store personally identifiable information as part of the performance of this Agreement shall safeguard this information and immediately notify VDSS and VDOE of any breach or suspected breach in the security of such information. Vendors shall allow the VDSS and VDOE to both participate in the investigation of incidents and exercise control over decisions regarding external reporting.
- 12.6 **PERFORMANCES:** All services provided by the Vendor pursuant to this Agreement shall be performed to the satisfaction of VDSS, VDOE, and the local department of social services, and in accordance with the applicable federal, state, and local laws, ordinances, rules and regulations. Vendors shall not receive payment for work found by VDSS, VDOE, and/or the local department of social services to be unsatisfactory, or performed in violation of federal, state or local laws, ordinances, rules or regulations.
- 12.7 **MODIFICATION OF AGREEMENT:** VDSS and VDOE may issue written modifications to this Agreement, to include but not limited to, the scope of work, deliverables, and compensation. Any and all modifications to this Agreement shall be in writing and signed by the parties named below or their official designees.
- 12.8 **AVAILABILITY OF FUNDS:** The Vendor acknowledges that the Child Care Subsidy Program, as described in Section 2 herein, is funded in part or in full by federal monies pursuant to the Child Care and Development Block Grant (42 U.S.C. §§ 9858 et seq., 45 C.F.R. §§98.1 et seq.) and the child care provisions of the Block Grant for Temporary Assistance for Needy Families and that such federal funds are available for a limited period of time as set by federal law and regulation. The Vendor further acknowledges that some portions of the Child Care Subsidy Program may be funded by a combination of state and federal monies, with state monies made available in accordance with Virginia law and regulation, including

appropriations acts. VDSS and VDOE shall be bound to the terms herein under this Agreement only to the extent that such state and federal funds are made available by such state and federal laws and regulations and within such limited periods of time as proscribed therein.

12.9 DRUG-FREE WORKPLACE: During the performance of this Agreement, the Vendor agrees to provide a drug-free environment. For the purposes of this section, "drug-free environment" means the site for the care of children provided by the Vendor in accordance with this Agreement, in which the Vendor is prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

12.10 SMOKE FREE ENVIRONMENT: Vendors certify that they will comply with the requirements of Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), which requires that smoking not be permitted in any portion of any indoor facility owned or leased or granted for by an entity and used routinely or regularly for the provisions of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant. The Standards for Subsidy Program Vendor Requirements for Family Day Homes (8VAC20-790-270) state that the Vendor shall ensure that no person smokes or uses an electronic smoking device: a. Indoors while children are in care, b. In a vehicle when children are transported, or c. Outdoors in an area occupied by children. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

12.11 SEVERABILITY: If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions of this Agreement, which shall be given effect without regard to the invalid provision or application.

**13. Backup Withholding.**

The parties acknowledge that a backup withholding of 24% of the Vendor's payment, as required by the Internal Revenue Service, will be withheld when incorrect or unverifiable Vendor name and/or tax identification number is provided to VDSS.

**Vendors must provide the VDSS a copy of the social security card, the IRS SS4 form, or the IRS 147C notice associated with the entity's tax filing status when applying to become a Child Care Subsidy Vendor; whenever the entity name, address, or filing status changes; and whenever requested by VDSS.**

**14. Vendor Representative/Designee**

The Vendor may designate a representative for any matter related to the Child Care Subsidy Program, but such representative shall not be an individual or entity that has been disqualified from the Program.