

PROVIDER AGREEMENT

This PROVIDER AGREEMENT (the "Agreement") is entered into on this ____ day of _____, 2020 (the "Effective Date") between **PRESCHOOL PROMISE, INC**, an Ohio nonprofit corporation ("Preschool Promise"), and _____ (the "Provider").

WHEREAS, Provider wishes to participate in the Preschool Promise COVID-19 Tuition Assistance Program (the "Program").

WHEREAS, in consideration of Provider's participation in the Program and the benefits arising therefrom, Provider agrees to be bound by the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Term.** Upon execution of this Agreement by both parties, Preschool Promise agrees to allow Provider to participate in the Program beginning on the Effective Date, with such Program ending upon the first to occur of: (i) the Program's funds have been exhausted, or (ii) when the Director's Stay at Home Order issued on March 22, 2020, as may be thereafter amended, has terminated. By participating in the Program, Provider agrees to follow and be bound by the terms and conditions set forth in this Agreement.
2. **Authorized Representatives.** The individual(s) listed below shall be the authorized representative(s) of Provider in relation to this Agreement and Provider's participation in the Program:
 - a. _____
Name Title
 - b. _____
Name Title
 - c. _____
Name Title
3. **Duration.** Provider agrees to participate in the Program until the end of the Program, unless otherwise terminated earlier by Preschool Promise in accordance with Section 8 of this Agreement.
4. **Representations and Warranties.** Provider represents and warrants that all information given to Preschool Promise throughout Provider's participation in the Program, including any information previously stated by Provider in the Program's application, the JFS 01259 form or confirmation of student enrollment shall be true, complete and accurate. Provider shall inform Preschool Promise if any information provided by Provider is or becomes false, incorrect or misleading.
5. **Indemnification.** To the extent provided by law, Provider agrees to defend, indemnify, and hold harmless Preschool Promise, Inc.; The Dayton Foundation; Montgomery County Educational Service Center; the City of Dayton, Ohio; Montgomery County, Ohio; and their officers, officials, contractors, directors, trustees, employees, agents, affiliates, representatives, successors, and assigns (collectively, the "PP Agents") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments,

settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorney fees) that may arise out of Provider's preschool program or Provider's participation in the Program.

6. **Release.** Except in regards to any payments from Preschool Promise to Provider as set forth in this Agreement, Provider expressly waives and releases any and all claims now known, or hereafter known, in any jurisdiction, against Preschool Promise and the PP Agents, on the account of Provider's involvement with the Program or any advice or mentoring given to Provider or its preschool program, whether arising out of the negligence of Preschool Promise, the PP Agents, or any third parties.
7. **Breach.** If Provider breaches any term or condition of this Agreement, then Preschool Promise shall notify Provider in writing of such breach, setting forth the nature of the breach in reasonable detail. If the breach is curable, Provider shall have thirty (30) days after receipt of the foregoing notice to cure the breach to the reasonable satisfaction of Preschool Promise. If the breach is not cured within thirty (30) days, then Preschool Promise may choose to terminate and revoke Provider's participation in the Program in accordance with Section 8 of this Agreement.
8. **Termination/Remedies/Survival.** Preschool Promise may terminate this Agreement and revoke Provider's participation in the Program for the following reasons: (a) any uncured breach of this Agreement by Provider as set forth in Section 7; (b) any violation by Provider, its governing board, directors, officers, representatives, or employees of applicable federal, state or local laws or regulations relating to Provider's preschool program and the services provided thereunder; or (c) for good cause as determined by Preschool Promise in its sole discretion. If Provider's participation in the Program is terminated or revoked by Preschool Promise due to an intentional act or omission by Provider which constitutes fraud or deceit, Preschool Promise may request and receive a refund from Provider for any and all costs or tuition assistance arising from Provider's participation in the Program paid by Preschool Promise during the Program. Notwithstanding the foregoing, Preschool Promise reserves its right to enforce any and all other remedies against Provider it may have in law or in equity arising from Provider's breach or Preschool Promise's early termination of this Agreement. If not otherwise terminated by Preschool Promise under this Section 8, this Agreement shall naturally conclude at the end of the Program, unless extended by the parties in writing. Sections 5, 6, 8, and 9 of this Agreement shall survive the termination or conclusion of this Agreement.
9. **Disclosure.** By participating in the Program, Provider agrees and acknowledges that it may be required to furnish, to the extent permitted by law, certain information relating to Provider's participation in the Program, including but not limited to an accounting of money received by Preschool Promise during the Program, to certain governmental bodies or agencies in connection with any audits or investigations into Preschool Promise by such governmental bodies or agencies. The information to be furnished by Provider under this Section 9 is only intended to include books, records, and accounts of Provider as it relates to the Program or Provider's participation in the Program, and is not intended to included the general disclosure of Provider's business books, records, or accounts not otherwise related to the Program or Provider's participation in the Program.
10. **Assignment.** Provider's obligations under this Agreement may not be assigned or transferred to any other provider, entity, or other third party, unless Provider receives prior written consent from Preschool Promise. Preschool Promise may assign this Agreement at any time.

11. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and there are no other promises or conditions hereunder whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
12. **Amendment.** This Agreement may be modified or amended in a writing signed by both parties; provided, however, that Preschool Promise may unilaterally amend the Temporary Pandemic Child Care Tuition Assistance Program in Montgomery County Through Preschool Promise, Inc. Guidelines, which is attached hereto as **Exhibit A**, at any time during the Program.
13. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
14. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
15. **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio.
16. **Alternative Dispute Resolution.** For any dispute, controversy or claim arising out of or relating to this Agreement, the parties shall use their best efforts to find resolution through mediation by using a trained, experienced mediator selected by mutual agreement of the parties, the cost of which shall be shared equally by the parties. If the dispute, controversy or claim is not resolved within sixty (60) days to the satisfaction of both parties by such mediation, such dispute, controversy or claim shall be settled by final and binding arbitration in conformance with the rules of the American Arbitration Association. The place of arbitration shall be Montgomery County, Ohio or any other place as mutually agreed upon by the parties in writing. Cost of such arbitration shall be shared equally by the parties. Each party shall be responsible for its own attorney fees.
17. **Notice.** All notices shall be in writing and deemed given when delivered in person or sent by certified mail, postage prepaid, or confirmed overnight courier to the party at the address below, or such other address designated by previous notice.

To Preschool Promise:	Robyn Lightcap, Executive Director Preschool Promise, Inc. 4801 Springfield Street Dayton, OH 45431
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To Provider:	_____ _____ _____ _____
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[signature page follows]

IN WITNESS WHEREOF, the parties have executed this PROVIDER AGREEMENT as of the date first written above.

“PROVIDER”

PRESCHOOL PROMISE, INC.

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

EXHIBIT A

**Temporary Pandemic Child Care Tuition Assistance Program in Montgomery County
Through Preschool Promise, Inc. Guidelines**

See attached.