

ALAMEDA UNIFIED SCHOOL DISTRICT

Excellence & Equity For All Students

Food Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and Bright Horizons Family Solutions LLC (Bright Horizons) a DE limited liability company with a principal place of business of 200 Talcott Avenue South Watertown, MA with regard to the child care center operated by it and known as Gamer Children's Center ("BRIGHT HORIZONS"). The parties agree as follows:

1. **Food Services.** AUSD shall prepare and deliver student meals to BRIGHT HORIZONS's facility located at 2275 North Loop Road, Alameda, CA 94502.
 - 1.1 Service shall include the necessary utensils and napkins.
 - 1.2 BRIGHT HORIZONS shall place its order for student meals with AUSD at least one week in advance.
 - 1.3 AUSD agrees to deliver meals in acceptable condition and shall have no responsibility for the condition or care of student meals after delivery.
 - 1.4 AUSD shall provide BRIGHT HORIZONS with a menu of meals at least one month in advance.
 - 1.5 AUSD and BRIGHT HORIZONS participate independently in the State and National School Lunch Programs.

Each party warrants to the other that it will comply with state and federal statutes and its respective performance under this Agreement, including but not limited to those promulgated by the local child care licenser, food service licenser, or applicable health department.

2. **Term.** This Agreement shall commence on July 1, 2019 and terminate on June 30, 2020 unless terminated earlier pursuant to the terms of this Agreement.

3. **Pricing & Delivery.** BRIGHT HORIZONS agrees to pay AUSD for high quality and healthy student meals according to the following price schedule:

Lunch \$3.50 per student meal.

Price includes milk.

BRIGHT HORIZONS shall not pay a delivery fee provided that BRIGHT HORIZONS orders at least a minimum of 100 meal units ("Minimum Daily Order"). In the event BRIGHT HORIZONS orders less than the Minimum Daily Order,

BRIGHT HORIZONS agrees to pay a \$10 delivery fee per delivery.

Cold lunches will be provided on District closure days. Meals will be delivered the day before.

4. **Invoicing.** AUSD shall invoice BRIGHT HORIZONS on a monthly basis for Food Services and BRIGHT HORIZONS shall pay AUSD within (thirty) 30 days of its receipt of invoice from AUSD.

Bright Horizons may remit payment to AUSD via ACH, paper check or credit card. If all or any portion of AUSD's invoice is

disputed, Bright Horizons shall pay the undisputed amount, and will notify AUSD in writing of the nature of the dispute with regard to the remainder and the preferred resolution. AUSD agrees to participate in and accept electronic payments through Bright Horizons' Buyer Initiated Payment (BIP) program administered by American Express.

5. **Notices.** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) or overnight mail with postage prepaid to the other party at the address set forth below:

AUSD Representative:

Name: James Assia

E-mail: jassia@alamedaunified.org

Site/Dept.: Food & Nutrition Services

Address: 2060 Challenger Drive, Alameda CA 94501

Phone: 510-337-7044

BRIGHT HORIZONS:

Attention: General Counsel

Bright Horizons Family Solutions LLC

200 Talcott Avenue

Watertown, MA 02472

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address.

6. **Anti-Discrimination.** It is the policy of AUSD that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore BRIGHT HORIZONS agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. BRIGHT HORIZONS shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation.
7. **Indemnification.** AUSD and Bright Horizons each agree to defend, indemnify and hold harmless the other, and the respective officers, directors, shareholders, employees, agents and affiliates of the other party, from and against any and all loss, liability, cost and expense, including reasonable attorneys' fees and expert witness fees, or claims for bodily injury, including death, or damages to property arising out of or in connection with any claims, lawsuits, arbitrations, awards, judgments or settlements (collectively "Third-Party Claims"), arising out of or relating to the negligence or misconduct of the employees, agents, visitors or guests of the party seeking indemnification in connection with the performance of this agreement. The indemnifying party shall have the right to control the defense and any related settlement negotiations, subject to the indemnified party's right to participate in the defense of Third-Party Claims at its own expense provided the indemnified party continues to cooperate with the indemnifying party. This provision survives termination of this agreement.

8. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
9. **Termination.** BRIGHT HORIZONS may at any time terminate this Agreement upon a 90-day written notice to AUSD for convenience and upon a 30-day written notice with an opportunity to cure for cause; however, Bright Horizons shall be entitled to terminate immediately if the health or welfare of children is jeopardized or if AUSD fails to provide food consistent with applicable laws and regulations, including but not limited to those promulgated by the local child care licenser, food service licenser, or applicable health department. BRIGHT HORIZONS shall compensate AUSD for Food Services provided through the date of termination. This Agreement may renew for successive one-year terms upon the mutual written agreement of the parties.
10. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
11. **Limitation of AUSD Liability.** BRIGHT HORIZONS shall accept or reject student meals upon delivery. Failure to inspect and accept or reject the student meals shall impose on BRIGHT HORIZONS the duty to pay for meals in accordance with the agreed-upon pricing set forth above. Notwithstanding any other provision of this Agreement, in no event shall either party be liable, regardless of whether any claim is based on contractor tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Food Services performed in connection with this Agreement.
12. **Conflict of Interest.** BRIGHT HORIZONS affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between BRIGHT HORIZONS's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to AUSD's attention in writing. Through its execution of this Agreement, BRIGHT HORIZONS acknowledges that it is familiar with the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event BRIGHT HORIZONS receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, BRIGHT HORIZONS agrees it shall notify AUSD of this information.
13. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
14. **Litigation.** This Agreement shall be performed in Alameda, California and is governed by the laws of the State of California. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs commensurate with such party's success on the underlying claims.

15. **Signature Authority.** Each party has the full power and authority to enter into and perform the Agreement and the person signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.
16. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
17. **Independent Contractors.** Both parties acknowledge and agree that they are independent parties, and not an employee, servant, agent, partner or joint venture of the other party. Nothing herein shall be construed as creating the relations of employer and employee between the parties, its agents or its employees and the other party shall have complete charge and responsibility for the personnel utilized or employed by it. Neither party is responsible for any employer responsibilities associated with the other party, its agents or employees, including withholding, FICA or other employment taxes of any kind, or is either party or any of its agents or employees entitled to or eligible for workers' compensation, unemployment compensations, or any benefits including but not limited to, medical insurance, life insurance, paid vacations, paid holidays, 401(K), profit sharing, stock options, or Social Security from the other party on account of any services performed hereunder.
18. **Conduct on Bright Horizons Premises/Background Checks.** To the extent that AUSD renders services in the Center, AUSD agrees to abide by all of Bright Horizons' rules and regulations including, but not limited to, safety, health and Hazardous Material management rules, and other rules prohibiting misconduct on Bright Horizons' premises. Use of physical aggression against person or property, harassment, and theft are strictly prohibited and grounds for immediate termination. AUSD will work only in areas designated for its services. AUSD shall take all reasonable precautions to ensure safe working procedures and conditions for performance on Bright Horizons' premises and shall keep Bright Horizons' site neat and free from debris. AUSD will allow only individuals not listed in the national and state sex offender registry list to perform AUSD's services at Bright Horizons' facilities. In addition, any AUSD employee or agent who is considered a regular visitor (in the sole judgment of Bright Horizons and consistent with its Visitor Policy) shall submit to a criminal background check required under Bright Horizons' policies and procedures. Bright Horizons reserves the right to refuse any individual's access to any of its facilities, in its sole discretion, upon a refusal to comply or if any disqualifying incidents (consistent with Bright Horizons' internal policies) are discovered as a result. AUSD acknowledges that any work performed in or around a child care facility requires a high degree of awareness and sensitivity for the safety and well-being of children entrusted to Bright Horizons' care and agree that Bright Horizons may elect, in its sole, reasonable discretion, to terminate access to the Center of any AUSD employee or agent who Bright Horizons deems incompatible therewith.
19. **Supplier Code of Conduct.** AUSD, its employees, agents and subcontractors will adhere to Bright Horizons' Supplier Code of Conduct available at <http://www.brighthorizons.com/suppliercenter/supplier-code-of-conduct>. If AUSD suspects that this code has been violated by an employee, agent or subcontractor of either AUSD or Bright Horizons, then AUSD shall notify Bright Horizons' Chief Compliance Officer immediately as described in the Code. Bright Horizons shall have the right to terminate this Agreement, without further obligation, if AUSD, its employees, agents or subcontractors violate the code or AUSD fails to notify Bright Horizons.

20. **Insurance.** AUSD is required to obtain insurance coverage which meets the following criteria.

- a. Workmen's Compensation- Sufficient to comport with the laws of the state where services are to be provided.
- b. Commercial General Liability - Combined single limits for bodily injury and property damage, of not less than \$1,000,000 per occurrence and annual aggregate limits of not less than \$3,000,000, including contractual liability for liabilities assumed under this Agreement.
- c. Business auto liability insurance - including owned, non-owned and hired vehicles with combined single limits for bodily injury and property damage of not less than \$1,000,000 each accident (if applicable)
- d. Umbrella Coverage Umbrella liability insurance in excess of the employer's liability, commercial general liability and business auto liability insurance required above in an amount not less than \$2,000,000.
- e. Bright Horizons Family Solutions LLC will be included as an additional insured on AUSD's Commercial General Liability insurance policy.

£ AUSD shall provide Bright Horizons with a Certificate of Insurance evidencing the coverage and limits described above before commencing any work hereunder and a renewal certificate not more than ten (10) days after the expiration of the policy it renews. Certificate must have a clause requiring thirty (30) days cancellation/revision notice to Bright Horizons.

To the extent and for so long AUSD purchases and maintains insurance with additional coverages or higher limits than the minimum coverages and limits identified above, then such additional coverages and higher limits shall be considered purchased and maintained in furtherance of this Agreement for so long as such additional coverages and higher limits are purchased by AUSD and shall be applicable to the responsibilities undertaken by AUSD in this Agreement.

AUSD's insurance shall be primary with respect to responsibilities undertaken by AUSD in this Agreement to the extent such liabilities are the subject of AUSD's insurance, and any applicable insurance maintained by Bright Horizons shall be excess and non-contributing. AUSD shall waive and cause its insurer to waive any right of subrogation against Bright Horizons.

BRIGHT HORIZONS FAMILY SOLUTIONS LLC AT GARNER CHILDREN'S FACILITY:

DocuSigned by:
Signature: Mary Sakellarios Date: June 28, 2019
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ALAMEDA UNIFIED SCHOOL DISTRICT:

Signature: Sharon Hren Date: 7/2/19