

## CHILDCARE FACILITY AGREEMENT

Thank you for registering to be a provider temporary employment at your childcare facility (“**Childcare Facility**”) on the lastminutedaycarestaffing.com website (“**Website**”) that is owned and operated by Last Minute Daycare Staffing LLC (the “**Company**”). To use the Website, Childcare Facility agrees to the terms and conditions of this Childcare Facility Agreement (the “**Agreement**”) when utilizing the Website including when submitting any information to the Website or otherwise accessing the Website and, also, by posting or offering staffing engagements to the Website’s available childcare professional workers (“**Childcare Professionals**”).

WHEREAS, the Company is engaged in the business of providing Childcare Professionals to perform services for Childcare Facilities on a temporary basis; and

WHEREAS, Childcare Facility desires to engage Company to provide such services.

In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Digital Signature. The Website uses a scroll-wrap execution feature whereby you scroll to the bottom of this Agreement and agree to execute this Agreement. You acknowledge and agree that you have been provided the opportunity to review and agree the terms and conditions of this Agreement and the rules of the Website hereby provide your informed consent in executing this Agreement. By clicking to accept this Agreement after scrolling, Childcare Facility is deemed to have executed this Agreement electronically, effective on the date Childcare Facility clicks to accept pursuant to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., as may be amended from time to time (the “**E-Sign Act**”). Doing so constitutes an acknowledgement that you are able to electronically receive, download, and print this Agreement.

2. Order Process.

2.1 Upon execution of the Agreement, Childcare Facility shall be authorized to select available Childcare Professionals from the Website to fill available temporary employment needs (the “**Job**”) and shall provide the Childcare Professional with a description of the work to be performed, the dates and times (6-hour minimum), the person to whom the Childcare Professional shall report, and other information needed for the Job (“**Job Description**”).

2.2 It is Childcare Facility’s sole responsibility to select the specific Childcare Professional of Childcare Facility’s choice.

2.3 Once chosen by Childcare Facility, the Childcare Professional shall be notified by the Website of the Job and shall confirm the Childcare Professional’s acceptance of the Job. Company shall then process the order in accordance with Childcare Facility’s payment method with Company’s third-party payment processor (i.e. credit or debit cards through payment service providers like Stripe, and/or others) and an authorization hold shall be placed on the Childcare Facility’s credit or debit card pending the completion of the Job, at which time the payment shall be finalized.

2.4 The completion of a Job shall occur the earlier of Childcare Facility manually closing out the Job on the Website or automatically five (5) minutes from the scheduled expiration set forth in the Job. Upon completion of the Job, a final fee will be calculated based on the actual

amount of hours worked by the Childcare professional, and the Childcare Facility will be charged the lesser of the actual hours worked and 6 hours, provided that any pre-authorized amount of time in excess of 6 hours that was not completed shall be credited against the final fee. Please note that closing out a Job prior to the expiration time for any reason does not and will not reduce the 6 hour minimum commitment or modify any other terms of the Job

2.5 Childcare Facility acknowledges and agrees that all Jobs are subject to additional charges above the pay rates in the Job, which shall be set forth on the Job by Company and may include, but not be limited to, Website administration fees and merchant processing fees.

3. Company Duties and Responsibilities. Company shall:

3.1 recruit, screen and interview the Childcare Professionals available through the Website;

3.2 pay the Childcare Professionals their wages after collecting the fees paid by the Childcare Facility; and

3.3 ensure Childcare Professionals are legally authorized to work in the United States.

4. Childcare Facility Duties and Responsibilities.

4.1 Childcare Facility shall:

(a) inform Childcare Professionals of the Childcare Facility's work to be performed, and Childcare Facility shall be responsible for its business operations, products, services, and intellectual property;

(b) properly safeguard and control its premises, processes, or systems, and shall not permit Childcare Professionals to operate Childcare Facility's vehicles or mobile equipment, or entrust them with unattended premises, property, or other valuables; and

(c) provide Childcare Professionals with a safe worksite and provide appropriate information, training, and safety equipment.

4.2 Childcare Facility shall not change Childcare Professional Job duties without Company's express prior written approval.

5. Childcare Facility Insurance. Childcare Facility warrants, represents and covenants that Childcare Facility carries and will maintain for the duration of this Agreement, insurance coverage to protect the Childcare Professionals. Without limiting the generality of the foregoing, Childcare Facility acknowledges and agrees that: (a) Childcare Facility will properly classify the Childcare Professionals (and will provide Company evidence that such classification is proper upon Company's request) and that in no event will any Childcare Professionals be deemed employees of Childcare Facility; (b) you will cover or maintain insurance for all of Childcare Professionals in accordance with applicable laws, including workers' compensation; and (c) if Company is required by any applicable law to pay any workers' compensation premiums with respect to Childcare Professionals or Childcare Facility, Childcare Facility will reimburse Company, as applicable, for such payment.

6. Overtime. Childcare Facility acknowledges and agrees that in the event a Childcare Professional works more than eight (8) hours in a day for Childcare Facility, that Childcare Professional is entitled to premium payment for overtime compensation as required under applicable federal, state, or local law. Company acknowledges and agrees that it is solely responsible for ensuring all hours worked by Childcare Professionals are paid at the legally required rate. Childcare Facility agrees to pay for any overtime hours worked at the rate required under applicable federal, state, or local law.

7. Security Background Checks and Required Information from Childcare Professionals. In compliance with local, state and federal law, Last-Minute Daycare Staffing requires all prospective Childcare Professionals to undergo and provide proof of a Level 2 security background check which at all times must be updated and current ("Background Check"), prior to being accepted and listed under the Program. In addition to the Background Check, to be enrolled as a Childcare Professional, all Childcare Professionals must furnish the Company with a recent photo of themselves for identification, a list of their relevant credentials, a valid CPR certificate and their transcript.

8. Refund Policy. Payment for all Jobs is finalized upon the completion of the Job as provided in Section 2 above. The payments made for all completed Jobs are final and non-refundable, unless agreed to otherwise by the Company, in its sole discretion. Notwithstanding the foregoing, Childcare Facility agrees that it is the Childcare Facility's responsibility to notify the Company and Childcare Professional at least 24 hours in advance of the start time of any scheduled Job if Childcare Facility seeks to cancel the engagement. For any cancellations within the 24 hours prior to start time of any scheduled Job, the Company reserves the right to bill Childcare Facility 50% of the Job Fee for the cancelled Job.

9. Monthly Subscription Fee. In addition to the Fees paid to Childcare Professionals providing services for a Job, Company may charge a monthly subscription fee commencing with the execution of this Agreement ("Monthly Subscription Fee") via Childcare Facility's payment method with Company's third-party payment processor and, if applicable, will charge Childcare Facility's credit card or via Electronic Funds Transfer on the first business day of each calendar month in the amount of the then-current Monthly Subscription Fee, as specified on the Website and subject to change. Any revised Monthly Subscription Fee will be effective as of the date posted. Childcare Facility agrees that failure to pay its Monthly Subscription Fee may result in a breach of this Agreement and the suspension of access to the Website.

10. Conversion Fees.

10.1 Company shall waive its right or claim to any placement fee, conversion fee, or liquidated damages in the event Childcare Facility hires directly onto its own payroll or engages as an independent contractor any Childcare Professional less than ninety (90) days after the completion of Childcare Professional's most recently completed Job with Childcare Facility.

10.2 In the event that Childcare Facility wishes to hire a Childcare Professional directly onto its own payroll or engage the Childcare Professional directly as an independent contractor of Childcare Facility within ninety (90) days from the completion of Childcare Professional's most recently completed Job with Childcare Facility, Childcare Facility shall notify Company and Company shall designate its employment agency affiliate ("Agency Affiliate") to fill the new engagement under terms to be agreed upon between Childcare Facility and Company's Agency Affiliate.

11. Relationship of the Parties. The services that Company and Childcare Professional renders to Childcare Facility under this Agreement will be as an independent contractor with respect to Childcare Facility. Nothing contained in this Agreement will be construed to create a joint venture or partnership, or the relationship of principal and agent, or employer and worker, between Company and either (i) the Childcare Facility or (ii) the Childcare Professional.

12. Limitation Of Liability. IN NO EVENT SHALL COMPANY BE LIABLE TO YOU FOR INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS (DIRECT OR INDIRECT), LOST REVENUES (DIRECT OR INDIRECT), LOSS OF DATA, LOSS OF GOODWILL, OR PUNITIVE DAMAGES, EVEN IF MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW, COMPANY'S AGGREGATE AND CUMULATIVE LIABILITY IN CONNECTION BY REASON OF WORKER'S WORK, THE AGREEMENT, YOUR USE OF THE WEBSITE, WHETHER IN CONTRACT, TORT, STATUTE, COMMON LAW OR OTHERWISE, WILL NOT EXCEED THE AGGREGATE AMOUNT OF ACTUAL PAYMENTS EARNED BY THE COMPANY DURING THE SIX-MONTH PERIOD PRIOR TO THE OCCURRENCE (NOT THE DISCOVERY) OF THE FIRST CLAIM GIVING RISE TO LIABILITY.

13. Confidential Information. Both parties may be given access to or acquire information which is proprietary or confidential to the other party and its affiliated companies, clients, and customers. Any and all such information obtained by either party shall be deemed to be confidential and proprietary information. Both parties agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purposes whatsoever other than the providing of services under this Agreement.

14. Compliance with Law.

14.1 Both parties represent and warrant to each other that they are in compliance with all applicable laws.

14.2 Childcare Facility and Company affirm and agree that they are equal employment opportunity employers and are in full compliance with any and all applicable anti-discrimination laws, rules, and regulations. Childcare Facility and Company agree not to harass, discriminate against, or retaliate against any worker of the other because of his or her race, national origin, age, sex, religion, disability, marital status, or other category protected by law; nor shall either party cause or request the other party to engage in such discrimination, harassment, or retaliation. In the event of any complaint of unlawful discrimination, harassment, or retaliation by any Childcare Professional, Childcare Facility and Company agree to cooperate in the prompt investigation and resolution of such complaint.

14.3 As Childcare Facility controls the facilities in which Childcare Professional's work, Childcare Facility agrees that it is primarily responsible for maintaining a safe worksite in compliance with the Occupational Safety and Health Act and comparable state laws and regulations thereunder, to the extent those laws apply to Childcare Professionals assigned to Childcare Facility's worksite, except as may be otherwise agreed in writing signed by the parties hereto. Any such agreement shall be included as an addendum to this Agreement.

15. Cooperation. Childcare Facility and Company agree to cooperate fully and to provide assistance to one another in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought by or involve any of the Childcare Professionals.

16. Term and Termination.

16.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the services specified in the Job, unless sooner terminated.

16.2 This Agreement may be terminated by either party upon written notice to the other Party provided that if such written notice is given before a then-current Job has been completed, then the termination shall not become effective until seven (7) days after the termination of said then-current Job.

17. Governing law, jurisdiction, and venue. This Agreement and all related documents and all matters arising out of or relating to this Agreement and the services provided hereunder, whether sounding in contract, tort, or statute, for all purposes shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles that would cause the laws of any other jurisdiction to apply. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in any state or federal court located in the State of Florida, County of Suffolk. The parties hereby irrevocably submit to the exclusive jurisdiction of these courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in such venue.

18. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement or any breach or termination of this Agreement, including but not limited to services provided under this Agreement, and any alleged violation of any federal, state, or local statute, regulation, common law, or public policy, whether sounding in contract, tort, or statute, shall be submitted to and decided by binding arbitration. Arbitration shall be administered by the American Arbitration Association (“AAA”) and held in Florida before a single arbitrator, in accordance with the AAA's rules, regulations, and requirements. Any arbitral award determination shall be final and binding upon the parties. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

19. Non-Solicitation. Childcare Facility and Company agree not to directly or indirectly solicit or induce for employment, or employ or engage as an independent contractor, any personnel of the other party during the term of this Agreement and for a period of six (6) months thereafter without the prior written consent of the other party.

20. Force Majeure.

20.1 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire, earthquake, or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or act, riot, or other civil unrest; actions, embargoes, or blockades in effect on or after the date of this Agreement; national or regional emergency; compliance with any law or governmental order, rule, regulation, or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota, or other

restriction or prohibition, or failing to grant a necessary license or consent; strikes, labor stoppages or slowdowns, or other industrial disturbances; shortage of adequate power or telecommunications or transportation facilities; or any other event which is beyond the reasonable control of such party (each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party within three (3) days of the Force Majeure Event, stating the period of time the occurrence is expected to continue.

20.2 During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

20.3 The affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause.

## 21. Miscellaneous.

21.1 Each party shall, upon the request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

21.2 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

21.3 Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21.4 This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

21.5 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21.6 This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

21.7 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

## **Childcare Professional Program**

### **Terms and Conditions**

**Last Updated: April 1, 2020**

These Terms and Conditions (the "Agreement"), contains all of the terms and conditions between Last Minute Daycare Staffing LLC ("Last-Minute Daycare Staffing" or "Company") and you ("Childcare Professional," or "You") as a Childcare Professional (as defined below) and govern your access and participation in the Last-Minute Daycare Staffing Childcare Professional Program described herein (the "Program") offered on the Company's online website located at [www.lastminutedaycarestaffing.com](http://www.lastminutedaycarestaffing.com) ("Website"), including any content, functionality, and services (the "Services") offered on or through the Website.

Please read this Agreement before enrolling or using the Website as a Childcare Professional. By enrolling as a Childcare Professional on the Website, You hereby represent, warrant, understand, agree to and accept all terms and conditions contained herein. If you object to anything in this Agreement, do not use the Website as a Childcare Professional. The terms and conditions of this Agreement are subject to change by Last-Minute Daycare Staffing at any time, effective upon posting on the Website and your participation in the Program after such posting will constitute acceptance by you of such changes.

As part of its service, Last-Minute Daycare Staffing maintains certain information from approved Childcare Professionals ("Childcare Professionals" or "You") and presents such information to interested users ("Users") of the Website, as appropriate in its sole discretion, which may be included in search results and otherwise. Users have the ability, at their option, to request information about You or Your services via the method or methods offered on the Website, which may include completing a request for information form on the Website, which Last-Minute Daycare Staffing will then email to You, calling You via a phone number posted on our Website, and/or other methods as determined by Last-Minute Daycare Staffing and agreed to by You. In return for listing Your information on the Website and facilitating contact by Website Users, You agree and acknowledge that you will receive the hourly rates agreed to between you and the Company and that additional amounts ("Fees") are paid to Last-Minute Daycare Staffing by the users. The difference between the fees paid by our users and the amount you receive for your services is the money that the Company receives to support the Website.

#### **1. About the Last-Minute Daycare Staffing Services**

Purpose. Last-Minute Daycare Staffing provides the Services to allow its end users to access Last-Minute Daycare Staffing's network of independent contractor Childcare Professionals to identify local Childcare Professionals to meet needs for services in connection with providing childcare services to schools, educational programs and other childcare facilities. The Childcare Professionals designate their available days and times for engagements and the users select Childcare Professionals to fulfill their temporary daycare needs.

We are Not an Employment Agency. Last-Minute Daycare Staffing is not an employment agency. Last-Minute Daycare Staffing does not select or endorse any Childcare Professionals to service a specific end user. We do not make any warranty, guarantee, or representation as to the legal ability,



competence, quality, or qualifications of any Childcare Professional, except for any applicable required governmental licensing and security credentials required in order to enroll as a Childcare Professional through our Website. Last-Minute Daycare Staffing encourages end users to research any Childcare Professional before hiring.

We do not vouch for any of our Users. Last-Minute Daycare Staffing simply provides a platform on which end users may transact with Childcare Professionals. Last-Minute Daycare Staffing does not approve, monitor, endorse, warrant, or make any representations about any of the Users and does not sanction statements that Users make through the Services.

Engagements among end users and Childcare Professional. When an end user selects a Childcare Professional such engagement is a contractual relationship directly between the end user and Childcare Professional. Except for the Fees paid by the users and the fees paid to the Childcare Professionals, the users and Childcare Professionals have complete discretion with regard to whether to enter into an engagement with each other and with regard to the terms of any such engagement, except for the Fees. You acknowledge, agree, and understand that Last-Minute Daycare Staffing is not a party to any engagement, that the formation of engagement between end users and Childcare Professionals will not, under any circumstance, create an employment or other service relationship between Last-Minute Daycare Staffing and any Childcare Professional or a partnership or joint venture between Last-Minute Daycare Staffing and any User.

Withholding; Indemnification. Childcare Professional acknowledges and agrees that Childcare Professional is solely responsible (a) for all tax liability associated with payments received from Last-Minute Daycare Staffing, and that Last-Minute Daycare Staffing will not withhold any taxes from payments to Childcare Professional; (b) to obtain any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by law, and that Childcare Professional is not covered by or eligible for any insurance from Last-Minute Daycare Staffing. Childcare Professional agree to indemnify, defend and hold Last-Minute Daycare Staffing harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on Last-Minute Daycare Staffing by the relevant taxing authorities with respect to any compensation paid to Childcare Professional.

## **2. Enrollment as a Childcare Professional**

Security Background Checks and Required Information from Childcare Professionals. In compliance with local, state and federal law, Last-Minute Daycare Staffing requires all prospective Childcare Professionals to undergo and provide proof of a Level 2 security background check which at all times must be updated and current ("Background Check"), prior to being accepted and listed under the Program. In addition to the Background Check, to be enrolled as a Childcare Professional, all Childcare Professionals must furnish the Company with a recent photo of themselves for identification, a list of their relevant credentials, a valid CPR certificate and their transcript.

Dress Code. The Company dress code policy is designed to help all Childcare Professionals provide a consistent professional appearance to our users. The appearance of the providers reflects on the Company. Accordingly, the Company requires that all Childcare Professionals dress in business casual attire and strive to present a clean professional appearance. As further guidance, please know that we encourage Childcare Professionals to either wear khakis and a clean polo shirt or plains scrubs, depending on the engagement.

### **3. Last-Minute Daycare Staffing Service Listings**

The Website provide end Users with a marketplace Platform to procure certain defined childcare services (“Listed Services”), at prices determined by Last-Minute Daycare Staffing, that are delivered by the authorized Childcare Professionals. By enrolling as a Childcare Professional, You authorize Last-Minute Daycare Staffing to publish certain information ("Content") about You, submitted by You in the enrollment process or thereafter, on the Website in the form of a listing as an authorized Childcare Professional to fulfill the Listed Services available on the Last-Minute Daycare Staffing Platform. Last-Minute Daycare Staffing reserves the right to refuse any content or data that You provide or to cancel the inclusion of You as a Childcare Professional in any Listed Services for any reason, including but not limited to the failure to fulfill the obligations set forth in this Agreement, or for no reason. By submitting Content to the Website You automatically grant, and You represent and warrant that You have the right to grant, to Last-Minute Daycare Staffing, its affiliates, licensees and successors, during the term of this relationship, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such Content and to prepare derivative works of, or incorporate into other works, such Content, and to grant and authorize sublicenses of the foregoing, in each case: (i) for the purposes of identifying You to Users, identifying You on the applicable service category pages of the Website or otherwise fulfilling Last-Minute Daycare Staffing's obligations hereunder, (ii) to promote and market the Website and Your representation thereon, and (iii) for purposes otherwise expressly approved in advance, in writing, by You. You further represent and warrant that public posting and use of Your Content by Last-Minute Daycare Staffing will not infringe or violate the rights of any third party.

Listed Services Content. You agree to provide true, accurate, current and complete information about You and Your services. Failure to provide information in such manner may result in Last-Minute Daycare Staffing suspending or terminating inclusion as a Childcare Professional in the Listed Services in the Company's sole discretion. Your Childcare Professional Content will appear in the Listed Services areas of the Website selected in the enrollment process and will be in a style and format consistent with other similar Listed Services in those areas. Last-Minute Daycare Staffing reserves the right to change the style, form, content and appearance of the Website at any time. You agree to maintain the accuracy of information contained in Your Content. If any information included in Your Content is or becomes inaccurate, including your availability, you will promptly update Your Content and notify Last-Minute Daycare Staffing. The Listed Services and any changes thereto are subject to approval by Last-Minute Daycare Staffing. Certain changes that You make to Your Content may require review by Last-Minute Daycare Staffing prior to posting. If such changes are approved, they will be promptly reflected in Your Content. If they are declined, Last-Minute Daycare Staffing will notify you as to the reason for the rejection and provide You an opportunity to revise and re-submit them.

### **4. Assignment(s)**

Childcare Professional understands and acknowledges that each offer of temporary employment with Last-Minute Daycare Staffing (an “Assignment”) is subject final selection by a Client and that Childcare Professional shall not be entitled to any Fees unless actually engaged by a Client to work a specific Assignment for a Client. Childcare Professional may not be notified of Assignment(s) if the Childcare Professional has reached 35 hours a week unless the Client is willing to pay overtime. Assignment(s) are offered to Childcare Professional at the sole discretion of Clients, which may include the evaluation of the needs of the Client and the ratings of Childcare Professional submitted by

previous Users. Childcare Professional understands that this Agreement will not be effective until Childcare Professional actually works on the agreed upon Assignment. Childcare Professional acknowledges and understands that Childcare Professional's engagements procured through the Website are not controlled by Last-Minute Daycare Staffing and no certain level of engagements have been offered or promised, and that Childcare Professional or Last-Minute Daycare Staffing may terminate Childcare Professional's participation in the Website, with or without cause, at any time. In the event that an Assignment is cancelled by a user and is subject to a cancellation penalty, Last-Minute Daycare Staffing shall pay twenty-five percent (25%) of any cancellation penalty after it is received by Last-Minute Daycare Staffing as payment to Childcare Professional for the cancelled Engagement.

Last-Minute Daycare Staffing Responsibilities with Respect to Orders Placed Through the Website and Platforms ("Orders"). After publication of the Listed Services on the Website, Last-Minute Daycare Staffing or its agents may forward to You any requests for information forms completed on the Website.

Childcare Professional Responsibilities with Respect to Orders. You agree to respond to all Orders as soon as possible, but in any event no more than 24 hours after receipt. You agree to utilize Orders solely for purposes directly related to fulfilling or responding to them. Without limiting the foregoing, You agree not to distribute or re-sell any Order information whatsoever to any third party without the express consent of the User or to utilize any Order for purposes of cross-selling products and services not sold by You. Further, You agree to comply with all applicable privacy, marketing and other laws and regulations in connection with Your handling and use of Order information, including without limitation any and all obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the CAN-SPAM Act of 2006 (CAN-SPAM), and the Telephone Consumer Protection Act of 1991 (TCPA).

Other. Last-Minute Daycare Staffing is not responsible for any failure to receive Orders due to spam filters, address-book filters, filters imposed by internet service providers, or failure on the part of Your communications vendors to deliver the Orders without any negligence on the part of Last-Minute Daycare Staffing. Any other provision of this Agreement notwithstanding, Last-Minute Daycare Staffing shall have the right to withhold the forwarding of any Order information to You for any reason in its sole discretion and You will be paid only for those Orders that are actually fulfilled by You and that are paid by the Users. You agree to adhere in all of Your dealings in connection herewith to the substance and spirit of the following Code of Conduct provisions:

- You will honestly and accurately represent Your services to Users.
- You will accurately portray Your accreditations, if any.
- You will interact with Users in a polite, professional manner.
- You will perform all of Your obligations hereunder in accordance with industry standards and in compliance with all applicable laws and regulations.

## **5. Fees**

Last-Minute Daycare Staffing is not a Party to Contracts. End users may contract with Childcare Professionals through Listed Services postings and acceptance. Such contracts are solely between the end user and the Childcare Professional. Last-Minute Daycare Staffing will not be a party to any contracts for Childcare Professional services submitted through our Service. Last-Minute Daycare

Staffing facilitates these contracts by supplying a platform for communication management and payment processing.

Last-Minute Daycare Fee Payment Process. Last-Minute Daycare Staffing does not provide the Childcare Professional services. Prior to launching the Listed Service posting, the end user will see the charge for the Childcare Professional (“Estimated Childcare Professional Fees”). The actual charges may be less than the Estimated Childcare Professional Fees, but not more, provided that all Listing shall be for a minimum of six (6) hours. After the Listed Service posting is public and viewable to the Childcare Professionals, and both the Childcare Professional and end user confirmed one another, the Estimated Childcare Professional Fees will be “charged” on the end user’s credit card or other approved methods of payment. After the Listed Service posting is complete and all work is completed per the Listed Service posting terms, then the charge from the end user is captured. The hourly fees for Listings fulfilled by You as the Childcare Professional will be paid on a weekly basis within seven (7) days from the conclusion of each calendar week for all Fees owed to you by Last-Minute Daycare Staffing during said week.

Service Fees for Childcare Professional. Childcare Professionals who provide services through Last-Minute Daycare Staffing shall receive payment through the service for all transactions related to that end user, including subsequent transactions not necessarily related to the initial request for services. If an end user is either unwilling or unable to make payment via Last-Minute Daycare Staffing, Childcare Professional agrees to notify Last-Minute Daycare Staffing of any new payment arrangement.

Non-Circumvention Covenant. The parties acknowledge that Last-Minute Daycare Staffing uses substantial labor and effort to connect end users with Childcare Professionals. Childcare Professional represents and warrants that it will not circumvent or attempt to circumvent Last-Minute Daycare Staffing or this Agreement, or in any way provide services for an end user outside of the Website, without Last-Minute Daycare Staffing’s prior written consent (“Non-Circumvention Covenant”). If Childcare Professional wishes to buyout the right to transact business directly with any specific end user that Childcare Professional met through the Website outside of the Website, then the Childcare Professional may make a proposal to Company and the parties shall negotiate a release from Company for that specific end user which shall only be approved at the mutual written agreement of both Company and Childcare Professional (“Buyout”). Failing the agreement of an approved Buyout, should Childcare Professional breach its Non-Circumvention Covenant, Childcare Professional shall pay Last-Minute Daycare Staffing a one-time fee equal to the greater of: 1) twenty-five percent (25%) of the Childcare Professional’s estimated annual compensation from end user calculated by Company based on previous end user payments; or 2) \$10,000 as liquidated damages.

## **6. Indemnification**

By agreeing to the terms of this Agreement, You agree to indemnify, defend and hold harmless Last-Minute Daycare Staffing and its affiliates, officers, directors, employees, stockholders, representatives and agents from and against any and all claims, losses, expenses or demands of liability, including attorneys' fees and costs incurred by them in connection with any claim by a third party (including an intellectual property claim) arising out of: (i) any breach by You of Your obligations under this Agreement, (ii) any willful misconduct or negligent act, omission or misrepresentation by You, Your agents or Your employees, (iii) any violation by You of any federal, state or local, law, rule or regulation, (iv) any disputes between You and any User, or (v) the violation or alleged violation of third-party intellectual property rights or proprietary rights by the materials and content you submit,

post or transmit through the Website or otherwise provide to Last-Minute Daycare Staffing for inclusion on the Website. You may not settle any claim subject to indemnification without the prior written consent of Last-Minute Daycare Staffing. In addition, Last-Minute Daycare Staffing may, at its sole expense, participate in the defense and settlement of the claim.

## **7. Warranties; Disclaimers**

Warranties. Each party represents and warrants to the other party that (i) this Agreement constitutes a valid and binding obligation of such party, enforceable in accordance with its terms; (ii) such party has full power and authority to enter into this Agreement and perform its obligations hereunder; (iii) the making of and performance under this Agreement by such party does not violate any agreement or obligation existing between such party and any third party; (iv) the making of and performance of this Agreement does not infringe upon any third parties' rights and (v) each party shall, at all times, comply with all applicable federal, state and local laws, regulations and ordinances. You represent, warrant and covenant that: (i) all of the information provided to Last-Minute Daycare Staffing hereunder, including information submitted in connection with the content You provide to Company, is truthful and not misleading, fraudulent, defamatory, libelous, threatening, harassing, or obscene; (ii) You are authorized to provide the products and services set forth in the Listed Services; (iii) You have the right to use each copyright, trademark, trade name, service mark, graphic, photograph, or any other intellectual property in the way it is used under this Agreement; and (iv) any advertising copy or materials and any linked advertising shall comply with all applicable laws and regulations.

DISCLAIMERS. OTHER THAN SET FORTH HEREIN, LAST-MINUTE DAYCARE STAFFING MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR NON-INFRINGEMENT OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE LAST-MINUTE DAYCARE STAFFING COMPANY APPS, ANY PRODUCTS, SERVICES OR INFORMATION PROVIDED THROUGH THE LAST-MINUTE DAYCARE STAFFING COMPANY APPS, OR THE ACCURACY OF, OR RESULTS TO BE OBTAINED BY USING, THE LAST-MINUTE DAYCARE STAFFING COMPANY APPS. Last-Minute Daycare Staffing is not involved in any actual transactions between Users and You through the Program. Thus, Last-Minute Daycare Staffing has no control over the interest or ability of Users to pay for services or the suitability of any User for Your services. Last-Minute Daycare Staffing cannot and does not control whether or not Users will complete the purchase services for which they have requested information. Because user authentication on the Internet is difficult, Last-Minute Daycare Staffing cannot and does not guarantee that each User is who he or she professes or claims to be. You assume all risk when using the Website, including but not limited, to all of the risks associated with any online or offline interactions with Users of the Website, and Last-Minute Daycare Staffing disclaims any liability arising out of or in any way connected with such interactions.

## **8. Ratings & Reviews**

Last-Minute Daycare Staffing may use features that rate or review, or allow end Users to rate or review, your services and your performance as a Childcare Professional and Last-Minute Daycare Staffing may make these ratings publicly available. Last-Minute Daycare Staffing will have no liability to you for the content or accuracy of any ratings or reviews. You will have no ownership interest in or license to use any rating or reviews posted on the Website.

You understand and agree that Last-Minute Daycare Staffing may review and delete any Content, in each case in whole or in part, that in the sole judgment of Last-Minute Daycare Staffing violates this Agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users of the Website. We reserve the right to remove, screen, edit, or reinstate ratings and reviews from time to time at our sole discretion and without notice to you. You may encourage others to write reviews about your services. However, you agree not to, and will not assist or enable others to write a fraudulent or defamatory review, trade reviews with other businesses, compensate anyone to write a review on your behalf, or write a review that you were paid for either directly or indirectly by the business being reviewed.

## **9. Limitation of Liability**

Incidental Damages and Aggregate Liability. In no event will Last-Minute Daycare Staffing be liable for any indirect, special, incidental, punitive, or consequential damages, losses or expenses arising out of or relating to Your participation in the Program, including without limitation damages related to any information received from the Website, removal of content from the Website, including profile information, any email distributed to any User or any linked website or use thereof or inability to use by any party, or in connection with any termination of Your participation in the Program or ability to access the Website, failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure, even if Last-Minute Daycare Staffing or its representatives are advised of the possibility of such damages, losses or expenses. UNDER NO CIRCUMSTANCES WILL LAST-MINUTE DAYCARE STAFFING'S AGGREGATE LIABILITY, IN ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES PAID BY YOU IN THE PREVIOUS SIX (6) MONTHS, OR, IF YOU HAVE NOT PAID LAST-MINUTE DAYCARE STAFFING FOR THE USE OF ANY SERVICES, THE AMOUNT OF US \$25.00 OR ITS EQUIVALENT.

No Liability for non-Last-Minute Daycare Staffing Actions. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LAST-MINUTE DAYCARE STAFFING BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, PUNITIVE, AND/OR INCIDENTAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE COMPANY APPS INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM INTERACTIONS WITH OTHER USERS OF THE COMPANY APPS, WHETHER ONLINE OR OFFLINE. THIS INCLUDES ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM THE CONDUCT OF USERS WHO HAVE REGISTERED UNDER FALSE PRETENSES OR WHO ATTEMPT TO DEFRAUD OR HARM YOU.

## **10. Waiver of Client Liability for Workplace Injuries**

In consideration of any engagement discovered through Last-Minute Daycare Staffing, Childcare Professional hereby acknowledges, understands, and agrees that the following will constitute terms and conditions of any such engagement. In recognition of the fact that any work related injuries which might be sustained by Childcare Professional may or may not be covered by state workers' compensation statutes, and to avoid the circumvention of such state statutes that may result from suits against the users, if applicable, based on the same injury or injuries, and to the extent permitted by law, Childcare Professional, on Childcare Professional's own behalf, hereby waives and forever releases any rights Childcare Professional might have to make claims or bring suit against Last-Minute Daycare Staffing for damages based upon workplace injuries or illnesses sustained while on engagements with

users. Childcare Professional agrees to notify Last-Minute Daycare Staffing if Childcare Professional believes that there are any unsafe conditions at the user's worksite or facility.

## 11. Notices

Unless otherwise specified herein, in the enrollment process or on our Website, any notice by one party hereto to the other shall be in writing (which may include email) and either personally delivered, delivered by Internet email, or sent via reputable overnight courier or certified mail, postage prepaid and return receipt requested. Notices will be sent to you at the Internet email address or the mailing address specified in your account profile and to us at [Last-Minute Daycare Staffing], Attn.: Legal Department. All paper notices will be deemed effective on the date of personal delivery, upon signed receipt from an overnight courier, or five days after deposit with the U.S. Postal Service, as applicable. All email notices will be deemed effective when sent by us to the email address specified in your account, whether actually received or not, and all notices on our Website will be deemed effective upon posting on our Website, whether or not reviewed by you.

## 12. **Dispute Resolution.** *Please read this Arbitration Agreement carefully. It is part of your contract with Last-Minute Daycare Staffing and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

Applicability of Arbitration Agreement. All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by Last-Minute Daycare Staffing that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Last-Minute Daycare Staffing, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns.

Notice Requirement and Informal Dispute Resolution. Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("Notice") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Last-Minute Daycare Staffing should be sent to: [Last-Minute Daycare Staffing], Attn.: Legal Department. After the Notice is received, you and Last-Minute Daycare Staffing may attempt to resolve the claim or dispute informally. If you and Last-Minute Daycare Staffing do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

Arbitration Rules. Arbitration shall be initiated through the American Arbitration Association ("AAA"), an established alternative dispute resolution provider ("ADR Childcare Professional") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Childcare Professional. The rules of the ADR Childcare Professional shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any judgment on the award

rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Childcare Professional.

Additional Rules for Non-Appearance Based Arbitration. If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

Time Limits. If you or Last-Minute Daycare Staffing pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

Authority of Arbitrator. If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Last-Minute Daycare Staffing, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Last-Minute Daycare Staffing.

Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Last-Minute Daycare Staffing in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND LAST-MINUTE DAYCARE STAFFING WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE PROVIDER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER PROVIDER.

Confidentiality. All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

Severability. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force



and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

Right to Waive. Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

Survival of Agreement. This Arbitration Agreement will survive the termination of your relationship with Last-Minute Daycare Staffing.

Small Claims Court. Notwithstanding the foregoing, either you or Last-Minute Daycare Staffing may bring an individual action in small claims court.

Emergency Equitable Relief. Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

Claims Not Subject to Arbitration. Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

Courts. In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Florida, for such purpose.

**13. Independent Contractors.** The relationship between Last-Minute Daycare Staffing and the Childcare Professional is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No monies disbursed to Childcare Professional from Last-Minute Daycare Staffing will be subject to withholding by the Company for the payment of any social security, federal, state or any other employee payroll taxes. The Company will regularly report amounts paid to Childcare Professional by filing Form 1099 MISC with the Internal Revenue Service as required by law and/or make such other reports as deemed necessary or appropriate by the Company under applicable laws and Childcare Professional shall only provide Childcare Professional's own social security number or Employer Identification Number to be used for this purpose.

#### **14. Miscellaneous**

- Last-Minute Daycare Staffing does not approve of, or endorse, any product or service by electronically publishing the Listed Services.
- Last-Minute Daycare Staffing may publish entries or listings for any other party at any time.
- This Agreement shall be governed by the laws of the State of Florida without regard to its conflict of law provisions.
- Any claims or legal actions by one party against the other shall be commenced and maintained exclusively in any state or federal court located in Florida, and both parties hereby submit to

the jurisdiction and venue of any such court and agree not to bring any claim or legal action in any other jurisdiction or venue.

- The invalidity, illegality or unenforceability of any term or provision of this Agreement shall in no way affect the validity, legality or enforceability of any other term or provision of this Agreement. In the event a term or provision is determined to be invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.
- The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- You may not assign this Agreement or any of your rights or obligations hereunder without Last-Minute Daycare Staffing's prior written consent.
- This Agreement constitutes the entire agreement between Last-Minute Daycare Staffing and You and supersedes any prior verbal or written agreements regarding the subject matter hereof.
- You will not use the name, logo, trademarks or trade names of Last-Minute Daycare Staffing or any of its affiliates or otherwise, directly or indirectly, refer to Last-Minute Daycare Staffing or any of its affiliates in any publicity release, promotional material, customer or partner list, advertising, marketing or business-generating effort, whether written or oral, without the prior written consent of Last-Minute Daycare Staffing.