North Carolina Department of Health and Human Services
Women's and Children's Health
Nutrition Services Branch
Special Nutrition Programs

AGREEMENT BETWEEN SPONSORING ORGANIZATION AND DAY CARE HOME (DCH) PROVIDER

Instructions: This Agreement must be signed by the Day Care Home (DCH) Provider and the Sponsoring Organization. A **completed and signed copy** of the Agreement shall be sent to the N.C. Department of Health and Human Services (State Agency). The **completed and signed original** Agreement should be retained by the Sponsoring Organization. The DCH provider should retain a copy of the Agreement.

This Agreement is hereby entered into by and between:

A. DCH Provider: _____ **B.** Date of Birth: _____

C. Mailing Address: _____

D. Street Address: _____ and

E. Sponsoring Organization:_____ **F.** Agreement Number: _____

This Agreement specifies the rights and responsibilities of the DCH Provider, Sponsoring Organization, State Agency, the United States Department of Agriculture (USDA), other state and federal agencies as participants in the Child and Adult Care Food Program (CACFP). The Agreement is governed by the General Terms and Conditions attached hereto as Attachment A. The entire contents of the Facility's program application are incorporated herein by reference.

This Agreement shall be effective upon State Agency approval.

Rights and Responsibilities of Sponsoring Organization, State Agency, United States Department of Agriculture, and other State and Federal Officials

1. The sponsoring organization, state agency, United States Department of Agriculture, and other state and federal officials have the right to make announced or unannounced reviews of the day care home's operations and to have access to its meal service and records during normal hours of child care operations.

2. The state agency has the right to restrict transfers of day care homes to no more than one time per federal fiscal year between sponsoring organizations.

Rights and Responsibilities of the Sponsoring Organization

The Sponsoring Organization shall:

1. Train the day care home's staff in program requirements.
2. Respond to the provider's request for technical assistance within five working days.
3. Provide CACFP recordkeeping forms to the provider.
4. Provide administrative services to the provider without a fee.
5. Accept final administrative and financial responsibility for program operations in the day care home under its jurisdiction.
6. Monitor the day care home to review its meal service and the required records during normal hours of child care operation.

- The sponsoring organization must review each day care home at least three times each year.
- At least two of the three reviews must be unannounced.
- At least one review must be made during the day care home's first four weeks of program operation.
- Not more than six months may elapse between reviews.

7. Collect applications and determine the eligibility of enrolled children for free or reduced price meals, upon request of a Tier II home.
8. Inform Tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children.
9. Ensure that all meals claimed for reimbursement are served to enrolled children without regard to race, color, national origin, sex, disability, or age and that all meals claimed meet the meal pattern requirements of the CACFP.
10. Distribute food service payments to the day care home provider within five working days of receipt of reimbursement from the State Agency. However, the food service payment can be reduced, with the provider's consent, by the costs for program foods or vended meals incurred on behalf of the day care home by the Sponsoring Organization.
11. Notify the State Agency of any change in the day care home provider's approval status.
12. Ensure that the provider is not participating under more than one Sponsoring Organization.
13. Give the DCH provider written guidance and training on the Sponsoring Organization's procedures for reviewing adverse actions taken by Sponsoring Organizations against them.
14. Give family or group day care home providers the opportunity to request an administrative review (appeal) of notice of intent to terminate the Agreement for cause or suspension of their participation as required by 7 C.F.R. §226.6(l)(1) and 7 C.F.R. §226.16(l)(3)(iii).

The following are rights of the sponsoring organization:

15. Termination of the agreement for cause or convenience upon ten (10) working days written notice prior to the date of termination. The sponsoring organization must provide a copy of the notice to the state agency, per 7 C.F.R. §226.16(l)(3)(iii).

Rights and Responsibilities of the Day Care Home Provider

The day care home provider shall:

1. Attend training sessions required by the Sponsoring Organization.
2. Comply with recordkeeping requirements, as specified in 7 C.F.R. §226.10(d) and §226.18(e). Failure to maintain such records shall be grounds for the denial of reimbursement.
3. Maintain daily records of menus and of the number of meals, by type, served to enrolled children, and the number of enrolled children who are present each day.
4. Provide meal count and menu records to the Sponsoring Organization by the _____day of each month. Failure to do so may result in delay of payment for that month. ***(Insert Day)***
5. Serve meal types specified in the approved application that meet CACFP meal pattern requirements for the ages of children being served, as specified in 7 C.F.R. § 226.20.
6. Serve meals during meal times as approved in the application.
7. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child per 7 C.F.R. §226.18.
8. Serve meals to all enrolled children without regard to race, color, national origin, sex, disability, or age.

9. Claim children of the day care home provider of a Tier I home only when such children are eligible for free or reduced-price meals and have a validly approved current application on file. Claim no more than two meals and one supplement or one meal and two supplements per child per day.

10. Allow representatives from the Sponsoring Organization, the State Agency, and the USDA to come into the provider's home for the purpose of reviewing the CACFP operation. This will be done several times a year during normal hours

of operation. At least two of the visits will be unannounced. Anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.

11. Submit enrollment forms to Sponsoring Organization.

12. Within five working days, notify the Sponsoring Organization of the names of any children added or dropped from enrollment, and of any changes in the home's licensing and/or approval status.
13. Notify the Sponsoring Organization **in advance** whenever the provider is planning to be out of the home during the meal service period. If this procedure is not followed and an unannounced review is conducted when the children are not present in the day care home, claims for meals that would have been served during the unannounced review will be disallowed.
14. Distribute to parents a copy of the Sponsoring Organization's notice to parents as defined in 7 C.F.R §226.16(b), if so instructed by the Sponsoring Organization.

The day care home provider shall have the following rights:

1. In accordance with 7 C.F.R. §226.6(l)(2) and §226.18(b)(15), the DCH Provider may request administrative review (appeal) in the event a Sponsoring Organization issues a notice of proposed termination or the day care home's Program Agreement, or in the event a Sponsoring Organization suspends participation due to health and safety concerns.
2. The DCH Provider has the right to receive in a timely manner the full food service rate for each meal served to enrolled children for which the Sponsoring Organization has received payment from the State Agency.
3. The DCH Provider has the right to transfer from one Sponsoring Organization to another just one time during each federal fiscal year; additional transfers during a single federal fiscal year are not permitted.
4. The DCH Provider has the right to terminate the Agreement for convenience upon written notice at least ten (10) days prior to the date of termination.

The DCH Provider's certifications are attached hereto as Attachment B.

We certify that this information is true and correct to the best of our knowledge, and that we will comply with the terms, conditions, and responsibilities outlined in this Agreement. We also certify that the day care home provider is not participating in the CACFP under any other Sponsoring Organization. We further certify that neither this facility nor any of the responsible principals are on the National Disqualified List. We understand that this information is being given in order to qualify for the receipt of federal funds that state and federal agency officials may verify this information, and that deliberate misrepresentation may subject us to prosecution under applicable state and federal criminal statutes.

5 (a) _____ 5(c) _____
Signature of DCH Provider Date

5(b) _____
(Typed or printed name)

5(d) _____ 5(f) _____
Signature of Sponsoring Organization's Authorized Representative Date

5(e) _____
(Typed or printed name)

Attachment A
General Terms and Conditions

Relationships of the Parties

Independent Contractor: The DCH Provider is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The DCH Provider represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be deemed to be employees of, or have any individual contractual relationship with, the Sponsoring Organization, the State Agency, or the USDA.

Subcontracting: The DCH Provider shall not subcontract any of the work contemplated under this Agreement.

Assignment: No assignment of the DCH Provider's obligations or the Provider's right to receive payment hereunder shall be permitted.

Beneficiaries: Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Sponsoring Organization and the named DCH Provider. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Sponsoring Organization and DCH Provider that any such person or entity, other than the Sponsoring Organization or the DCH Provider, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only. Notwithstanding the foregoing, the parties expressly state that they understand and agree that the State Agency and the USDA may monitor the parties' performance under this Agreement and take any civil or administrative action necessary to enforce the laws governing the Child and Adult Care Food Program.

Indemnity

Indemnification: The DCH Provider agrees to indemnify and hold harmless the Sponsoring Organization, the State of North Carolina, the USDA, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the DCH Provider in connection with the performance of this Agreement.

Default and Termination

Termination for Cause or Convenience: The sponsoring organization may terminate this Agreement for cause by giving written notice to the other party in accordance with 7 C.F.R. § 226.16(l). Either party may terminate this Agreement for convenience by giving written notice to the other party at least ten (10) working days before the effective date of the termination.

Default: The filing of a petition for bankruptcy by the DCH Provider shall be an act of default under this Agreement

Waiver of Default: Waiver by one party of any default or breach by the other party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in a written amendment signed by authorized representatives of the parties.

Availability of Funds: The parties to this Agreement agree and understand that the payment of the sums specified in this Agreement is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the State Agency.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Compliance with Applicable Laws

Compliance with Laws: The DCH Provider shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The DCH Provider shall comply with all federal and State laws relating to equal employment opportunity.

Oversight

Access to Persons and Records: The Sponsoring Organization, the State Agency, the USDA, and other state and federal officials shall have the right to make announced or unannounced reviews of the day care home's operations and to have access to its meal service, records, and personnel during normal hours of child care operations. The State Auditor shall have access to persons and records in accordance with General Statute 147-64.7.

Record Retention: Records shall not be destroyed, purged or disposed of without the express written consent of the State Agency. The State Agency's basic records retention policy requires all records to be retained for a minimum of three years following completion or termination of the Agreement. If the Agreement is subject to Federal policy and regulations, record retention will normally be longer than three years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Agreement has been started before expiration of the three year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period described above, whichever is later.

Miscellaneous

Choice of Law: The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, are governed by the laws of North Carolina.

Amendment: This Agreement may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Sponsoring Organization and the DCH Provider.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the Agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Agreement.

Attachment B
DCH Provider's Certifications

CERTIFICATION OF TRUTH AND ACCURACY

The representations made herein on behalf of the DCH Provider are true and correct to the best of my knowledge. I understand that these representations are being made in connection with the receipt of federal funds and that deliberate misrepresentation may subject me to prosecution under applicable state and federal criminal statues.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

I. By execution of this Agreement, the DCH Provider certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the DCH Provider's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;
(2) The DCH Provider's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee engaged in the performance of the Agreement be given a copy of the statement required by paragraph (A).

D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the Agreement, the employee will:

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

E. Notifying the Sponsoring Organization within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;

F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
(3) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

II. The site for performance of work done in connection with this Agreement is specified on page 1 of this Agreement.

The DCH Provider will inform the Sponsoring Organization of any additional sites for performance of work under this Agreement.

False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment (Title 4 CFR Sections 85.615 and 86.620).

CERTIFICATION REGARDING LOBBYING

The undersigned, on behalf of the DCH Provider, certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the DCH Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee or a member of Congress in connection with the awarding of any Federal Contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The DCH Provider shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) that receive federal funds of $100,000 or more and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor Facility owned or leased or contracted for by an entity and used routinely or regularly for the provision 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, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. 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.

By signing and submitting this Agreement, the DCH Provider certifies that it will comply with the requirements of the Act. The DCH Provider further agrees that it will require the language of this certification be included in any subawards that contain provisions for children's services and that all subgrantees shall certify accordingly.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Agreement, the DCH Provider (lower tier participant) is providing the certification set out below.

2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the DCH Provider knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the State Agency may pursue available remedies, including suspension and debarment.
3. The DCH Provider will provide immediate written notice to the Sponsoring Organization if at any time the DCH Provider learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the State Agency for assistance in obtaining a copy of those

regulations.

5. The DCH Provider agrees by entering into this Agreement that it shall not knowingly enter any lower tier covered transaction (subcontract) with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction (Agreement) unless authorized by the State Agency.
6. The DCH Provider further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" without modification, in all lower tier covered transactions (subcontracts) and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized in paragraph 5 of these instructions, if the DCH Provider knowingly enters into a lower tier covered transaction (subcontract) with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this Agreement, in addition to other remedies available to the Federal government, the State Agency may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion-Lower Tier Covered Transactions

1. The DCH Provider certifies, by entering into this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this Agreement by any Federal department or agency.
2. Where the DCH Provider is unable to certify to any of the statements in this certification, the DCH Provider shall attach an explanation to this Agreement.

CERTIFICATION REGARDING CRIMINAL CONVICTIONS

The DCH Provider certifies that neither the DCH Provider nor any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the state agency. Facilities and individuals providing false certifications will be placed on the National disqualified list and will be subject to any other applicable civil or criminal penalties.

Signature Warranty: The undersigned represents that he or she is authorized to make the foregoing certifications on behalf of the DCH.

3(a)_____
Signature of DCH Provider

3(c)_____
Date

3(b)_____
Printed Name and Title

Instructions for Completing the Agreement between Sponsoring Organization and Day Care Home (DCH) Provider

If there are two names listed on a license, the Sponsoring Organization must submit one agreement for each provider.

Page 1

A. Provide the name of the day care home provider as it appears on the license.
B. Provide the date of birth for the provider.
C. Provide the mailing address for the provider.
D. Provide the street address for the provider as it appears on the license.
E. Provide the name of the Sponsoring Organization.
F. Provide the 4 digit agreement number for the sponsoring organization.

Page 2

Number 4, provide the day of the month that the provider must provide meal counts and menu records to the sponsoring organization.

Page 3

5(a) Provide the signature of the provider.
5(b) Type or print the name of the provider.
5(c) Provide the date the provider signed the form.
5(d) Provide the signature of the sponsoring organization's authorized representative.
5(e) Type or print the name of the sponsoring organization's authorized representative.
5(f) Provide the date the sponsoring organization's authorized representative signed the form.

Page 8

3(a) Provide the signature of the provider.
3(b) Type or print the name of the provider.
3(c) Provide the date the provider signed the form.