

**Attachment A**  
**General Terms and Conditions**  
**Private - Day Care Home Provider**

**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.