

DATA SHARING AGREEMENT
Between the
Commonwealth of Pennsylvania
Department of Health
Bureau of Women, Infants and
Children and

This Data Sharing Agreement (“**Agreement**”) is entered into by and between the **Commonwealth of Pennsylvania**, acting through the **Department of Health, Bureau of Women, Infants and Children (“PA DOH”)**, and the (the **“Foreign WIC Program” or “FWP”**). In consideration of the mutual understandings and covenants set forth herein, the parties agree as follows:

I. PURPOSE

PA DOH and FWP enter into this Agreement for the purpose of detecting and preventing dual participation among participants of the WIC program as required by 7 CFR 246.7(I)(1)-(4).

II. TERM

This Agreement shall become effective either January 1, 2023 or when it is fully executed by the parties and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature, whichever is later, and shall remain in effect for five (5) years thereafter.

III. CONDITIONS

On a semi-annual basis, the parties will compare their lists of participants in their respective WIC programs in a mutually agreed upon electronic format. The data exchanged will be for the contiguous service areas located across borders. If dual participation is suspected, the parties will take appropriate follow-up action within 120 calendar days of detecting instances of suspected dual participation.

IV. DATA FLOW

- A. FWP shall post its electronic file for PA DOH comparison on a semi-annual basis. The electronic file posted by January 15th each year shall contain data for the six previous months of December, November, October, September, August, and July. The electronic file posted by July 15th each year shall contain data for the six previous months of June, May, April, March, February, and January. FWP data will be provided on the secure website for download by PA DOH and will be in an XML schema format. PA DOH will provide the “Interstate Dual Participation State

Guide” with the XML schema details. As needed the PA DOH will update and share the guidance to FWP.

- B. The provided electronic file shall contain data elements for categorically eligible individuals only, as identified in **Attachment A: Data Elements**.
- C. The return electronic file will contain matched categorically eligible individuals. The file shall contain the data of the submitting state and the data of the matched state for each categorically eligible individual matched. This report will be provided in a csv file.
- D. Use the data participation reports, upon receipt, to match and investigate potential dual participation.
- E. Take the following actions, per the WIC Federal regulations, if dual participation has occurred:
 - a. Termination from one program immediately. The continuing WIC program shall be chosen based upon the participant’s state of residence.
 - b. In cases of intentional misrepresentation, the collection of improperly issued benefits in accordance with 7 CFR 246.12(u)(2) and 246.23(c)(1).

V. DESTRUCTION OF DATA

PA DOH will destroy the data provided by the FWP for the purpose of this Agreement in accordance with the retention requirement for records set forth at 2 CFR § 200.334 (effective November 12, 2020) unless a FWP requests in writing that PA DOH retain such data for a listed exception at 2 CFR § 200.334. Any such request by the FWP must be made to PA DOH as soon as the circumstances giving rise to the exception arise and must notify PA DOH by September 1 of every year of a continued need for such data to be retained. PA DOH will destroy data as set forth in this provision absent FWP requesting that such data be retained or FWP notifying PA DOH of a continued need for such data.

VI. INCORPORATION BY REFERENCE

The following is incorporated by reference into this Agreement, including all authorities and law cited, incorporated by reference, or otherwise made part of therein:

- A. The *Interstate Dual Participation: State Procedures*, as it may be updated. FWP may obtain a copy by requesting one by PA DOH;
- B. 42 USC § 1786; and

- C. WIC Federal regulations, specifically those found under Part 246 of Subchapter A of Chapter II of Subtitle B of Title 7 of the Code of Federal Regulations (7 CFR §§ 246.1-246.29).

VII. CONFIDENTIALITY

The parties agree that data shared pursuant to this Agreement is confidential pursuant to 7 CFR 246.26(d). The parties further agree to restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration of enforcement of the WIC program whom the parties determine have a need to know the information for WIC program purposes as provided in 7 CFR 246.26(d)(1)(ii).

The parties shall not disclose, release, or otherwise grant access to the data covered by this Agreement to any third party for any purpose unless permitted by law.

VIII. CIVIL RIGHTS ASSURANCE

Both parties agree to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000), all provisions required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq); and FNS directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which either party receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By providing this assurance, both parties agree to compile data, maintain records and submit records and reports as required to permit effective enforcement of the nondiscrimination laws, and to permit U.S. Department of Agriculture personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the U.S. Department of Agriculture shall have the right to seek judicial enforcement of this assurance.

Both parties give this assurance in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable

expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

IX. INDEMNIFICATION

FWP shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the FWP and its employees and agents under this Agreement, provided the Commonwealth gives FWP prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to FWP, the Commonwealth will cooperate with all reasonable requests of FWP made in the defense of such suits.

Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow FWP to control the defense and any related settlement negotiations.

X. GOVERNING LAW

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. FWP consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. FWP agrees that any such court shall have in person jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

XI. SEVERABILITY

The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of

Pennsylvania or of the United States or of the laws of the Commonwealth, the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected

XII. AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto with the same formality as the original.

XIII. INTEGRATION

When fully executed by the parties, this Agreement shall be the final and complete Agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement, unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement, except as expressly set forth in this Agreement.

XIV. TERMINATION

PA DOH or FWP may terminate this Agreement at any time for any reason, including failure to comply with any condition of this Agreement, upon 30 days' advance written notice. The written notice shall state the reason for termination.

XV. EXECUTION

This Agreement may be executed in counterparts, each of which shall be deemed an original and shall have the full force and effect as an original but all of which shall constitute one and the same instrument.

XVI. RIGHT-TO-KNOW

This Agreement is subject to the Commonwealth of Pennsylvania's Right-To-Know Law requirements, which are attached hereto and made a part hereof as **Attachment B**. All references therein to "Contractor" are applicable to FWP.

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XVII. NOTICE TO PARTIES

Whenever any notice, statement, or other requirement is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

<u>Notices to PA DOH shall be sent to:</u> Sally Zubairu-Cofield, MPH Pennsylvania WIC Program Pennsylvania Department of Health 625 Forster Street, 7 th Floor West Harrisburg PA 17120-0701	<u>Notices to FWP shall be sent to:</u>
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XVIII. SIGNATURES

The parties having read and understanding the foregoing terms of this Agreement do, by their respective signatures dated below, hereby agree to the terms thereof:

WIC Program:

BY: _____
Signature

DATE: _____

Title

Print or Type Name

PA DOH:

BY: _____

**Commonwealth of Pennsylvania
Department of Health**

DATE: _____

Approved as to form and legality:

BY: _____

Office of Legal Counsel, Department of Health

DATE: _____

BY: _____

Office of General Counsel, Commonwealth of PA

DATE: _____

BY: _____

Office of Attorney General, Commonwealth of PA

DATE: _____

ATTACHMENT A: DATA ELEMENTS

I. Required Data Elements

The electronic file for categorically eligible individuals shall include the following required data elements for each categorically eligible individual:

- a. Last Name
- b. Date of Birth
- c. Sex

II. Optional Data Elements

The electronic file for categorically eligible individuals may include the following optional data elements for each categorically eligible individual:

- d. First Name
- e. Middle Name
- f. Participant Identification Number
- g. Family Identification Number
- h. Endorser First Name
- i. Endorser Last Name
- j. Proxy 1
- k. Proxy 2
- l. Proxy 3
- m. Proxy 4
- n. Proxy 5
- o. Proxy 6
- p. Local Agency Name
- q. Clinic Name
- r. WIC Clinic Number
- s. Certification Start Date
- t. Certification End Date
- u. Termination Date
- v. Participant Status Code
- w. Date of Last Food Benefits to Use
- x. Date of Last Transaction
- y. Street Address 1
- z. Street Address 2
- aa. City
- bb. County
- cc. State
- dd. Zip Code
- ee. Primary Telephone Number
- ff. Secondary Telephone Number
- gg. Email Address

ATTACHMENT B: RIGHT-TO-KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
- 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.