

**SPECIAL FORMULA DISTRIBUTION CENTER AGREEMENT**

**between**

**THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HEALTH  
BUREAU OF WOMEN, INFANTS AND CHILDREN**

**and**

**COMMUNITY ACTION PARTNERSHIP OF LANCASTER; MARYLAND  
DEPARTMENT OF HEALTH, WOMEN, INFANTS AND CHILDREN; WEST VIRGINIA  
BUREAU OF PUBLIC HEALTH, WOMEN, INFANTS AND CHILDREN; DELAWARE  
HEALTH AND SOCIAL SERVICES, WOMEN, INFANTS AND CHILDREN; NEW  
JERSEY DEPARTMENT OF HEALTH, WOMEN, INFANTS AND CHILDREN; AND  
THE COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH, DIVISION OF  
WOMEN, INFANTS AND CHILDREN**

**THIS AGREEMENT** is made by and among the Commonwealth of Pennsylvania (Commonwealth) acting through the Department of Health, Bureau of Women, Infants and Children (PA-WIC); the Community Action Partnership of Lancaster (CAP Lancaster); Maryland Department of Health, Women, Infants and Children; West Virginia Bureau of Public Health, Women, Infants, and Children; Delaware Health and Social Services, Women, Infants, and Children; New Jersey Department of Health, Women, Infants, and Children; and the Commonwealth of Virginia Department of Health, Division of Women, Infants and Children (collectively the “Parties”).

**WHEREAS**, in 1996, PA-WIC created the Special Formula Distribution Center (SFDC) at CAP Lancaster as a cost containment measure to mitigate the cost of purchasing infant formulas, exempt infant formulas, and WIC-eligible nutritionals from pharmacies.

**WHEREAS**, CAP Lancaster agreed to purchase infant formulas, exempt infant formulas, and WIC-eligible nutritionals directly from the manufacturers, taking a small Administrative Charge (defined herein), a percentage of the cost of products and shipping, for the purpose of covering the cost of operating the SFDC.

**WHEREAS**, in 1996, PA-WIC initially provided CAP Lancaster \$200,477 to purchase the original inventory of products for the SFDC, using funding from the United States Department of Agriculture Food and Nutrition Services (USDA-FNS) Operational Adjustment Funds.

**WHEREAS**, in 2000, PA-WIC proposed the idea of expanding the cost containment model to other state agencies to mitigate the increased cost and administrative burden of purchasing infant formulas, exempt infant formulas, and WIC-eligible nutritionals through pharmacies. The state agencies currently wishing to partner with CAP Lancaster and the SFDC are PA-WIC; Maryland Department of Health, Women, Infants and Children; West Virginia Bureau of Public Health, Women, Infants, and Children; Delaware Health and Social Services, Women, Infants, and Children; New Jersey Department of Health, Women, Infants, and Children; and the

Commonwealth of Virginia Department of Health, Division of Women, Infants and Children (collectively “State Agencies” or “SAs”).

**WHEREAS**, the USDA-FNS accepted PA-WIC’s proposal and appointed PA-WIC as the Lead State Agency (LSA) for the SFDC project, requiring PA-WIC to develop assurances that SFDC continues to operate for the purpose of cost containment and not revenue generation.

**NOW, THEREFORE**, the Parties, intending to be legally bound, hereby agree as follows:

**I. EFFECTIVE DATE**

This Agreement shall be effective from April 1, 2021, or the date that this Agreement has been fully executed by the Parties and all approvals required by the Commonwealth contracting procedures have been obtained, whichever is later (“Effective Date”), through March 31, 2026, subject to its other provisions, unless terminated earlier by a Party according to the termination provisions of Section VIII of this Agreement (“Ending Date”).

**II. OPERATING PROCEDURE**

PA-WIC is designated as the LSA.

CAP Lancaster, through the SFDC, shall provide infant formula, exempt infant formula, and WIC-eligible nutritionals to WIC participants and local agency clinics of the SAs in accordance with each SA’s existing policies. The Parties may order infant formula, exempt infant formula, and WIC-eligible nutritionals from the SFDC, and shall reimburse the SFDC for the costs of any infant formula, exempt infant formula, and WIC-eligible nutritionals ordered, the costs in accordance with Section III of this Agreement, and address any administrative issues concerning the delivery and receipt of said products in accordance with procedures which are agreeable to both the individual SAs and the SFDC. Each SA is responsible for documenting its specific operating procedures and obtaining written approval from the SFDC prior to using the SFDC’s services.

**III. SPECIAL FORMULA DISTRIBUTION CENTER PRICING OF PRODUCTS**

The SFDC pricing shall include the wholesale price of the infant formula, exempt infant formula, and WIC-eligible nutritionals, the cost to ship those products to the local agency clinic or participant, and an administrative charge (“Administrative Charge”). As of the Effective Date, the Administrative Charge shall not exceed 9.5% of the total cost of the infant formula, exempt infant formula, WIC eligible nutritionals, and shipping and shall be subject to change in accordance with Section VII of this Agreement.

**IV. MAINTENANCE OF DOCUMENTATION**

- A. CAP Lancaster and the SFDC shall maintain the following documentation:
  - 1. All orders for infant formula, exempt infant formula, and WIC-eligible nutritionals from the manufacturers.
  - 2. All shipping receipt documents from the manufacturers.
  - 3. All processed Special Formula Request Forms received from the SAs.
  - 4. All shipping information for shipments of infant formula, exempt infant formula, and WIC-eligible nutritionals sent by the SFDC.
  
- B. Such documentation shall be maintained for a period of four years following the Ending Date or until all active audits, litigations, claims, or other actions involving the documentation for the period are resolved, whichever is longer.

## **V. LSA RESPONSIBILITIES**

The LSA will conduct two inventory reviews of the SFDC per federal fiscal year. After each review, the LSA will make SFDC staff aware, in writing, of any problems or concerns relating to the SFDC's operations.

## **VI. SFDC RESPONSIBILITIES**

CAP Lancaster, through the SFDC, shall:

- A. Submit wholesale pricing information for SFDC products to the LSA on a quarterly basis or more frequently if prices of the products change before the end of a quarter. Wholesale pricing information shall be submitted in writing to the LSA no later than seven calendar days after the close of the quarter (January 7, April 7, July 7, and October 7) or no later than seven calendar days after a price change goes into effect if that price change takes effect before the end of a quarter.
  
- B. Submit to the LSA, in writing, for review and approval all plans to change or upgrade SFDC's software system or online ordering system prior to SFDC initiating any changes or upgrades.
  
- C. Provide the LSA and SAs with no less than 30 calendar days' advance written notice of known temporary closings (for example, holiday closings) and shall provide the LSA and SAs with written notice of temporary emergency closings as soon as SFDC becomes aware of the closing (for example, weather related closings). Further, CAP Lancaster, through the SFDC, shall provide written notice to the LSA and SAs of order processing delays, product shortages, shipping delays, computer system problems, or any circumstance that may interfere with normal operations of the SFDC and the processing of orders within 24 hours of the SFDC becoming aware of the problem.

- D. Strictly comply with the confidentiality provisions of 7 C.F.R. § 246.26(d) which restricts the disclosure and use of information related to SA applicants and participants. The SFDC shall obtain written permission from the LSA prior to releasing or providing statistical information to any third party other than the SAs.
- E. Upon request from the LSA, make available a copy of documentation outlined in Section IV of this Agreement. If the LSA's review of the documentation submitted reveals any improper charges, the SFDC shall reimburse any such improper charges to the appropriate SA.

## **VII. LSA REVIEW OF SFDC'S FINANCIAL OPERATIONS**

- A. The SFDC shall submit to the LSA CAP Lancaster's unaudited financial statements related to the SFDC for the Pennsylvania state fiscal year no later than September 30th. For example, the SFDC must submit CAP Lancaster's unaudited financial statements from the state fiscal year ending June 30, 2021 no later than September 30, 2021. The SFDC shall submit to the LSA CAP Lancaster's audited financial statements upon receipt and no later than March 31<sup>st</sup> of the following fiscal year.
- B. SFDC shall use revenue generated from the sale of infant formula, exempt infant formula, and WIC-eligible nutritionals for the SFDC's operational expenses. In any given Pennsylvania state fiscal year, the SFDC shall make reasonable efforts to ensure that the operating surplus shall not exceed a 2.5% threshold of income over expenses. If the surplus exceeds 2.5% of income over expenditures, the SFDC agrees to reduce the Administrative Charge to a level that would bring the operating surplus to or below 2.5%. If an operating deficit of expenditures over income exists, the SFDC will negotiate with the LSA to increase the Administrative Charge to a level that will eliminate the operating deficit for the Pennsylvania state fiscal year under review.
- C. Any increase or decrease to the Administrative Charge will be implemented by the SFDC no later than May 1<sup>st</sup> of each year. The LSA may adjust the Administrative Charge at any time to account for an operating surplus exceeding 2.5% or for an operating deficit after negotiating with the LSA. The SFDC shall provide written notice of such rate change to all SAs. The notice of rate change, from the SFDC, will be considered an addendum to this Agreement and shall be effective upon the Parties upon issuance of written notice by the SFDC. Any Party that is not in agreement with any rate change may opt to terminate its participation in this Agreement in accordance with the termination provisions set forth in this Agreement.
- D. Any operating surplus (of income over expenditures) the SFDC generates, shall be used by CAP Lancaster as follows:
  - i. No less than one-third of the surplus funds will be used to further the CAP Lancaster WIC Program and to offset the funding provided by PA-WIC to the

CAP Lancaster WIC Program, used to offset any financial deficit experienced in the CAP Lancaster WIC Program, and/or used as additional funding for the CAP Lancaster WIC Program at the mutual discretion of the PA-WIC Director and the CEO of CAP Lancaster.

- ii. No more than two-thirds of the surplus funds may be used for other charitable activities that fall within the scope of CAP Lancaster's status as a charitable organization under section 501(c)(3) of the Internal Revenue Code.
- E. CAP Lancaster shall account for any income earned from operation of the SFDC as "program income" and in accordance with 7 C.F.R. § 246.15 and 2 C.F.R. Part 200, Subpart D, and any references contained therein. Specifically, CAP Lancaster shall abide by requirements on management; payment; program income; financial reporting; monitoring and reporting program performance; and retention requirements for records in 2 C.F.R. §§ 200.302, 200.305, 200.307, 200.328, 200.329, and 200.334, respectively.
- F. CAP Lancaster, through the SFDC, shall assume all risks and costs associated with the replacement of necessary equipment to operate the SFDC.

## **VIII. TERMINATION**

With the exception of the LSA, any SA that wishes to terminate its participation in this Agreement shall provide 30 calendar days' written notice to the SFDC and the LSA. In the event one or more SAs, exclusive of the LSA, terminates its participation with the SFDC, this Agreement shall continue pursuant to the terms set forth herein. If the LSA wishes to terminate its participation as the LSA, it must do so in writing, giving 90 calendar days' notice of its intent to terminate its participation in this Agreement to all SAs and the SFDC. CAP Lancaster, through the SFDC must provide the LSA and all SAs no less than six months' written notice of its intent to terminate its participation in this Agreement except in the event of an extraordinary circumstance. Any such extraordinary circumstance would be so designated after consultation with, and permission from, the LSA. In the event that either the LSA or SFDC, on behalf of CAP Lancaster, wishes to terminate its participation in this Agreement, this Agreement shall terminate in its entirety. If this Agreement is terminated in its entirety, the SFDC must remit payment to PA-WIC in the amount of \$200,477.00 as repayment for the cost of the original formula inventory that PA-WIC initially provided the SFDC.

## **IX. COMMONWEALTH HELD HARMLESS**

The SFDC, through CAP Lancaster, shall hold the Commonwealth (including the Department of Health), its officers, agents and employees, harmless against any and all claims, demands and actions based upon or arising out of any activities performed by the SFDC and its officers, agents and employees under this Agreement and shall, at the request

of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

## X. SOVEREIGN IMMUNITY

In any actions against the Commonwealth, the Commonwealth retains the right to raise sovereign immunity defense as allowed by Commonwealth law. Nothing in this Agreement is intended to, or does, operate to waive any legal protections or immunities applicable to the parties, including but not limited to sovereign immunity.

## XI. CONTRACTOR INTEGRITY PROVISION

It is essential that those who seek to contract with the Commonwealth of Pennsylvania observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

A. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. “**Affiliate**” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders own more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
2. “**Consent**” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this Agreement.
3. “**Contractor**” means the individual or entity that has entered into this Agreement with the Commonwealth.
4. “**Contractor Related Parties**” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
5. “**Financial Interest**” means either:
  - a. Ownership of more than five percent interest in any business; or

- b. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
6. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order, 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.
7. **“Non-bid Basis”** means a Contract awarded or executed by the Commonwealth with a Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, the Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where this Agreement’s services are performed shall satisfy this requirement.
3. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Agreement, except as provided in this Agreement.
4. Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material under this Agreement, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the Agreement. Contractor shall disclose the

financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the Agreement signed by Contractor.

5. Contractor certifies to the best of its knowledge and belief that within the last five years Contractor or Contractor Related-Parties have not:
  - a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - c. had any business license or professional license suspended or revoked;
  - d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; or
  - e. been, and is not currently, the subject of a criminal investigation by any Federal, State, or local prosecuting or investigative agency and/or civil anti-trust investigation by any Federal, State, or local prosecuting or investigative agency.

If Contractor cannot certify to the above, then it must submit prior to signing the Agreement a written explanation of why such certification cannot be made and the Commonwealth will determine whether an Agreement may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the Effective Date of the Agreement through the Ending Date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the Agreement it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the Agreement for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the Agreement.

6. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa. C.S. §13A01 et seq.)* regardless of the method of award. If this Agreement was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
7. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity



Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

8. Contractor, by execution of this Agreement, and by the submission of any bills, invoices or requests for payment pursuant to the Agreement, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any Agreement negotiations or during the term of the Agreement, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other Agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
9. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor noncompliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this Agreement. Contractor shall incorporate this paragraph in any agreement, Contract or subcontract it enters into in the course of the performance of this Agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of Contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.
10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other Agreement with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another Contractor to complete performance under this Agreement, and

debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of anyone shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## **XII. CONTRACTOR RESPONSIBILITY PROVISIONS**

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform goods, supplies, services, leased space, construction or other activity, under a contract, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes permittee, licensee, or any agency political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- A. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Agreement, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Agreement, a written explanation of why such certification cannot be made.
- B. The Contractor also certifies, in writing, that as of the date of its execution of this Agreement it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the Federal government, or any other State or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the Federal government shall constitute an event of default of the Agreement with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the

Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- F. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

### **XIII. NONDISCRIMINATION/SEXUAL HARASSMENT**

CAP Lancaster, on behalf of the SFDC, agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subagreement, Contract, or subcontract, a Contractor, a subcontractor, or any person acting on behalf of the SFDC shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable Federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. The SFDC, any Contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable Federal laws, against or intimidate any of its employees.
- C. Neither the SFDC nor any Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable Federal laws, in the provision of services under the Agreement, subagreement, Contract or subcontract.
- D. Neither the SFDC nor any Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- E. The SFDC, any Contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the

Agreement services are performed shall satisfy this requirement for employees with an established work site.

- F. The SFDC, any Contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable Federal laws, against any subgrantee, Contractor, subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- G. The SFDC, and each Contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable Federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The SFDC and each Contractor and subcontractor further represents that is has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have Federal government Contracts of first-tier subcontracts and have 50 or more employees. The SFDC, any Contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities, for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- H. The SFDC, any Contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subagreement, Contract or subcontract so that those provisions applicable to Contractors or subcontractors will be binding upon each Contractor or subcontractor.
- I. The SFDC’s and each Contractor’s and subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the SFDC and each Contractor and subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- J. The Commonwealth may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place CAP Lancaster, Contractor, or subcontractor in the Contractor Responsibility File.

#### **XIV. ADDITIONAL PROVISIONS RELATING TO NONDISCRIMINATION/SEXUAL HARASSMENT**

CAP Lancaster, on behalf of the SFDC, agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor, shall not discriminate by reason of religion, age, handicap or national origin, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Contractor nor any subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any of its employees on account of religion, age, handicap or national origin.
- C. The SFDC, any Contractor or any subcontractor shall not discriminate by reason of religion, age, handicap or national origin against any contractor, subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- D. The Contractor and any subcontractors shall ensure that any services or benefits available to the public or other third parties by way of this Agreement shall not be denied or restricted for such persons due to race, creed, color, religion, gender, sexual orientation, gender identity or expression, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, The Age Discrimination Act of 1975, applicable provisions of the Omnibus Reconciliation Act of 1981 and Pennsylvania Management Directive 215.16.
- E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Diversity, Inclusion and Small Business Opportunities for purposes of investigation to ascertain compliance with the provisions of this Additional Provisions relating to Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Diversity, Inclusion and Small Business Opportunities.
- F. The Commonwealth may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Paragraph, Additional Provisions Relating To Nondiscrimination/Sexual Harassment Clause. In addition, the Department of Health may proceed with debarment or suspension and may place CAP Lancaster, Contractor, or subcontractor in the Contractor Responsibility File.

**XV. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT**

During the term of this Agreement, CAP Lancaster, on behalf of the SFDC, agrees as follows:

- A. Pursuant to Federal regulations promulgated under the authority of the Americans With Disabilities Act; 28 C.F.R. §35.101 et seq., the SFDC understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the SFDC agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The SFDC shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the SFDC's failure to comply with the provisions of sub-paragraph A above.
- C. The SFDC shall include the provisions of sub-paragraph A above in every subcontract under this Agreement so that such provision binds each subcontractor.

## **XVI. DISPUTE RESOLUTION**

- A. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Agreement or any part thereof or any breach of contract arising thereunder must be filed as a written claim with the Contracting Officer within six months after the cause of action accrues. The claim shall be filed as of the date of receipt by the agency. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If a party fails to file a claim or files an untimely claim, the party is deemed to have waived its right to assert a claim in any forum.
- B. The Contracting Officer shall review timely-filed claims and issue a determination, in writing, regarding the claim. The determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send the written determination to the Contractor. If the Contracting Officer fails to issue a determination within the 120-day period, (unless extended by the consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be considered to be a decision of a subordinate officer and shall be appealable to the Agency Head or his or her designee within 10 business days pursuant to 1 Pa. Code § 35.20. The matter before the agency shall be- subject to 2 Pa. C.S. Ch. 5, Subch. A (relating to practice and procedure of Commonwealth Agencies), and the rules set out in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The Agency

Head shall issue a final order which shall be appealable pursuant to 2 Pa. C.S. Ch. 7, Subch. A (relating to Judicial Review of Commonwealth Agency Action).

- C. The remedy set forth in this Paragraph (XVI) shall be the exclusive remedy for the Contractor to resolve such questions and disputes if the Contractor and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to Contractor.

## **XVII. MISCELLANEOUS**

- A. This Agreement supersedes any previous agreement CAP Lancaster, on behalf of the SFDC, has had with the PA-WIC; Maryland Department of Health; Commonwealth of Virginia, Department of Health; West Virginia WIC Program; Delaware WIC Program; and the New Jersey WIC Program.
- B. This Agreement may be modified or amended to include additional state agencies that are not a Party to this Agreement. However, the Agreement may not be modified or amended without the express written consent of all the existing Parties. The Parties shall make every good-faith attempt to agree to any necessary alteration or amendment of the terms in this Agreement.
- C. Any amendment to this Agreement shall be in writing and shall include the same formalities as the original.
- D. Notwithstanding any provision herein, this Agreement in no way obviates or nullifies the obligations of the Parties under any applicable provision of Federal, State, or local law or regulations.
- E. No term, provision, or right granted in this Agreement shall be assignable by any Parties and any attempt to make such assignment shall be void.
- F. 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 of Pennsylvania and 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.
- G. 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.
- H. PA-WIC reserves the right, upon notice to the Parties; to extend the term of the Agreement for up to six months upon the same terms and conditions.

- I. CAP Lancaster, on behalf of SFDC, agrees that the Commonwealth may offset the amount of any state tax liability or other obligation of the SFDC or its subsidiaries to the Commonwealth against any payments due the SFDC under any Agreement with the Commonwealth.
- J. The Parties agree that this Agreement constitutes the entire Agreement.
- K. This Agreement is subject to the Commonwealth of Pennsylvania's standard *Right-To-Know* Law provision, 65 P.S. §§ 67.101-3104.
- L. The SFDC, through CAP Lancaster, hereby agrees that it will 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 USDA-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 the SFDC receives Federal financial assistance from USDA-FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.

By providing this assurance, the SFDC agrees 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 non-discrimination 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.

This assurance is given 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-FNS. 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.


This assurance is binding on the SFDC, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Pennsylvania Department of Health. The person or persons whose signatures appear on the Agreement are authorized to sign on the behalf of the SFDC.

#### **XVIII. EXECUTION**

This Agreement may be executed in counterparts each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Agreement shall not be legally binding until CAP Lancaster, on behalf of the SFDC, the LSA, and any SA execute the Agreement and all signatories for the aforementioned Parties, including those signing their approvals for form and legality, have signed the Agreement.

**[SIGNATURE PAGE FOLLOWS]**

WHEREFORE, the Parties hereby acknowledge that the foregoing paragraphs accurately state the full and complete terms and conditions of their understanding and have affixed their signatures hereto:

BY:  DATE: March 5, 2021  
Signature

Chief Executive Officer

Vanessa Philbert

Title, CAP Lancaster

Print or Type Name


BY: Lori Diehl Digitally signed by  
Lori Diehl  
Date: 2021.03.11  
15:13:58 -05'00' DATE: \_\_\_\_\_

Commonwealth of Pennsylvania  
Department of Health


Approved as to form and legality:

BY: George Bivens Digitally signed by George Bivens  
Date: 2021.03.11 14:46:56 -05'00' DATE: \_\_\_\_\_

Office of Legal Counsel, Department of Health

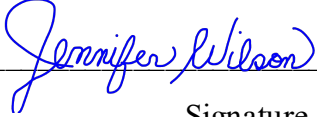
BY:  Digitally signed by pcross@pa.gov  
DN: cn=pcross@pa.gov  
Date: 2021.03.25 11:51:43 -04'00' DATE: \_\_\_\_\_

Office of General Counsel, Commonwealth of PA

BY:  Digitally signed by David E. Stover  
DN: cn=David E. Stover, o=PA Office of  
Attorney General, ou,  
email=dstover@attorneygeneral.gov, c=US  
Date: 2021.04.16 15:23:14 -04'00' DATE: \_\_\_\_\_

Office of Attorney General, Commonwealth of PA

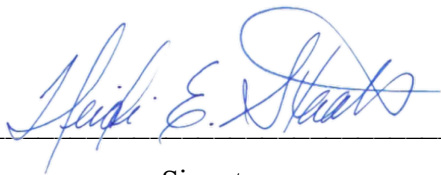
Department of Health  
Women, Infants and Children  
The State of Maryland

BY:  DATE: 03/12/2021  
Signature

Jennifer Wilson, State Director  
Print or Type Name & Title

West Virginia Bureau of Public Health

Women, Infants and Children

BY:  DATE: March 11, 2021  
Signature

Director, Office of Nutrition Services - WV WIC Program

Print or Type Name & Title

Delaware Health and Social Services Women, Infants and Children

BY: Tina Rexrode

DATE: 03/19/2021

Signature

Tina M. Rexrode, WIC Fiscal Mgr.

Print or Type Name & Title

Department of Health  
Division of Community Nutrition  
The Commonwealth of Virginia

BY: Paula Garrett

DATE: March 18, 2021

Signature

Paula Garrett, Division Director

Print or Type Name & Title

Department of Health  
New Jersey WIC Program

BY:   
Signature

DATE: 3/11/2021

Nancy Scotto Rosato, WIC Executive Director

Print or Type Name & Title