

SUBCONTRACTOR AGREEMENT

This agreement (“Agreement”), is effective as of [REDACTED], 2021 (“Effective Date”) by and between National WIC Association, with offices located at 2001 S Street, NW, Suite 580, Washington, D.C. 20009 (“NWA”), and [REDACTED], with offices located at [REDACTED] (“Subrecipient”).

WHEREAS, NWA has entered into a letter of agreement with the Wal-Mart Foundation (“Grantor”) with a final execution date of December 16, 2019 (“Grant Agreement”) set forth in Attachment 1 under which Grantor grants NWA an award for the principal purpose of systematically building capacity within the larger WIC community to incorporate a health equity framework into WIC research, policy, and practice (“Project”); and

WHEREAS, NWA desires to engage Subrecipient to provide Services (defined below) in connection with the Project; and

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually agree as follows.

- Term. This Agreement is effective as of the Effective Date and shall continue thereafter in full force and effect through February 28, 2022 (the “Term”). The Term of this Agreement shall be extended only by the mutual agreement between NWA and Subrecipient, which agreement shall be set forth in writing, and signed by each party to this Agreement. The Services shall begin no later than July 12, 2021.
- Services. Subrecipient shall be responsible for creating a pilot program to address racial inequities in WIC staff or participants with the aim to achieve diversity and inclusion in WIC and providing those services set forth on Exhibit A (the “Work Plan”), attached hereto and fully incorporated herein all in accordance with the terms and conditions of this Agreement, including but not limited to the Grant Agreement (collectively the “Services”), including, but not limited to conducting a community needs assessment, developing objectives and a detailed community action plan with one or more promising practices that will promote racial equity in WIC, initiating program implementation activities, and project reporting (as described in more detail in Section 4) (collectively, the “Deliverables”). Subrecipient agrees to perform the Services in accordance with the Grant Agreement, instructions of NWA, and any delivery deadlines and requirements set forth in the Work Plan. The Services will be performed on a non-exclusive, no material interference basis throughout the Term. Subrecipient acknowledges and agrees that time is of the essence with respect to all Services performed hereunder. As between NWA and Subrecipient, no changes may be made to the nature or scope of the Services or Project without the express written consent of NWA.
- Compensation/Use of Funds. Provided that Subrecipient is not in breach hereunder, as full and complete consideration for Subrecipient’s Services under this Agreement, NWA agrees to pay to Subrecipient the total sum of Fifty Five Thousand U.S. Dollars (\$55,000.00 USD) (the “Compensation”) during the Term of this Agreement, payable within thirty (30) days of full execution of this Agreement. The Compensation must be used only for the Services provided hereunder during the Term, in accordance with the terms and conditions of this Agreement,

including but not limited to the Work Plan and the Grant Agreement. The Compensation shall be used for all expenses related to the Services, including without limitation, personnel, travel, project supplies, purchased services, indirect costs, and any other expenses necessary for successful completion of the Services. Subrecipient is responsible for any overages in connection with the Services beyond the Compensation. For the avoidance of doubt, none of the Compensation may be used for: providing a grant to an individual for travel, study, or similar purpose within the meaning of Section 4945(d)(3) of the Internal Revenue Code; campaigning for someone to be elected; carrying on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Internal Revenue Code; influencing the outcome of any specific public election or carrying on, directly or indirectly, any voter registration drive within the meaning of Section 4945(d)(2) of the Internal Revenue Code; supporting for-profit activities; and/or lobbying for any purposes. Any portion of the Compensation not used in accordance with this Agreement will be promptly returned to NWA before the expiration or termination of the Term. NWA shall have the right to modify the Compensation in the event Subrecipient underspends.

4. Monitoring and Reporting Performance. As part of the Deliverables, Subrecipient will provide the following reports to NWA or NWA's designee:

(a) Mid-Implementation Programmatic and Financial Report: Subrecipient shall provide a detailed programmatic and financial report to NWA, on or before November 15, 2021. The report shall detail the portion of the Compensation expended up until that point, with a line-by-line breakdown of each expenditure. Subrecipient shall also maintain copies of all subcontractor and/or employee invoices and receipts or detailed documentation of other expenses related to the fulfillment of the Services hereunder. Such support documentation shall be attached to the report. Subrecipient must also account for cost of personnel by maintaining monthly time sheets, sufficient to satisfy all applicable grant requirements. The report shall also detail qualitative and quantitative information on the progress towards achieving the Project targets and objectives, as of the date of submission.

(b) Final Implementation Programmatic and Financial Report: Within fifteen (15) days of expiration, repayment, or termination of this Agreement, Subrecipient shall submit to NWA a final implementation programmatic and financial report. At a minimum, the report shall include actual expenditures reported as of the date of the report against the approved line item budget in addition to: (i) a statement of progress made toward the achievement of originally stated aims and any problems or obstacles encountered in the effort to achieve the Project purposes; (ii) description of results (positive or negative) considered significant; and (iii) list of publications resulting from the project, with plans, if any, for further publication.

5. Books, Records, Access, Audit. Subrecipient shall maintain and show the Compensation separately on its book of account and shall keep and maintain books and records with respect to the Services rendered hereunder in such form and manner as is consistent with accounting standards and any requirements of NWA, including as required by Grantor in the Grant Agreement. Subrecipient shall retain all records and other supporting documents relating to this Agreement for four (4) years after the Agreement's termination or expiration date. NWA and/or its designated entity shall have the right to audit Subrecipient's books related to the Project or

Services during the Term and the one-year period thereafter, provided that NWA gives Subrecipient reasonable notice of such request and that any such audit is conducted during Subrecipient's regular business hours and at the sole expense of NWA. Further, at the expense of NWA and/or its designated entity, NWA and/or its designated entity may monitor and conduct an evaluation of Subrecipient's operations under the Agreement, which may include visits to observe Subrecipient's procedures and operations and to discuss the same with Subrecipient's personnel.

6. Independent Contractor Status. It is the express intention of the parties to this Agreement that Subrecipient shall not be treated as an employee, agent, partner, owner or member of NWA. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between NWA and Subrecipient.

7. Ownership. The parties acknowledge and agree that NWA shall own all right, title and interest in and to the Services and any results and proceeds thereof, including but not limited to any research and Deliverables provided hereunder (collectively, the "Works"), and all trademarks, copyrights and moral rights (and extensions and renewals thereof) therein, and shall have the exclusive right in perpetuity to use, exploit, advertise, exhibit, and otherwise turn to account all of the foregoing in all media, whether now known or unknown, throughout the universe, in all languages. Any materials written or contributed by Subrecipient or any other third party pursuant to this Agreement are intended by Subrecipient and NWA to be a "work-made-for-hire" pursuant to Section 201 of Title 17 of the United States Code. In the event such materials are found not to be works-made-for-hire, then Subrecipient hereby irrevocably grants, assigns and transfers to NWA, free and clear of all claims for royalties or other compensation except as may be expressly set forth herein, all rights, including all copyrights and copyright renewals, extensions and revivals, with respect to the Works, and any part thereof, exclusively and perpetually, throughout the universe, in all media, now or hereafter known. In the event of termination, suspension or expiration, NWA shall retain ownership of all development materials in the Works.

8. Approvals and Controls. All Deliverables shall be subject to the requirements determined by NWA. NWA will collaborate with Subrecipient in good faith in connection with the performance of all Services and the development and implementation of all Deliverables under this Agreement.

9. Confidentiality/Proprietary Information. The provisions of this Section 9 shall survive the termination of this Agreement regardless of the cause of or reason for such termination.

(a) Publicity. Subrecipient shall not issue any press release or engage in public promotion concerning the Project, NWA, Grantor or Subrecipient's Services hereunder without consulting NWA prior to such action.

(b) Confidential Information. Subrecipient acknowledges and agrees that it will have access to, or be involved in the making or development of, confidential and proprietary information concerning the business and financial activities of NWA and/or information and technology regarding the Project; NWA's services, research and development, including without

limitation properties, employees, marketing plans, processes, data and know-how, improvements, inventions, discoveries, studies, techniques, specifications, computer programs (in source and object code), databases, products (actual or planned) and any intellectual property; and confidential or proprietary information from third parties subject to a duty on NWA's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Such information, whether documentary, written, oral or digital format, shall be deemed to be and referred to as "Proprietary Information."

(i) Proprietary Information shall be deemed to include any and all proprietary information disclosed by or on behalf of NWA irrespective of form, but excluding information that (A) was known to Subrecipient prior to its association with NWA and can be so proven by Subrecipient by documentary evidence; (B) shall have appeared in any printed publication or patent of a third party or shall have become a part of the public knowledge except as a result of a breach of this Agreement by Subrecipient; or (C) shall have been received by Subrecipient from a third party having no obligation to NWA.

(ii) Subrecipient agrees and declares that all Proprietary Information and rights in connection therewith shall be the sole property of NWA and any of its assignees. During the Term and thereafter, Subrecipient will keep in strict confidence and trust all Proprietary Information, and Subrecipient will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of NWA, except as may be necessary in the ordinary course of performing Subrecipient's duties under this Agreement in the best interests of NWA.

10. Subrecipient's Representations, Warranties and Covenants. Subrecipient hereby warrants and represents that:

(a) Subrecipient is free to enter into and to perform fully this Agreement, and has full right, power, and authority to enter into this Agreement, and there is no agreement, obligation or other encumbrance to which Subrecipient is a party or to which Subrecipient is bound which conflicts with the provisions of this Agreement;

(b) Subrecipient shall provide all Services hereunder, and any Works shall be produced, in accordance with all applicable laws, statutes, ordinances, rules, regulations and requirements of all governmental agencies and regulatory bodies, both domestic and foreign, having jurisdiction with respect to Subrecipient's Services under this Agreement;

(c) Subrecipient's Works shall be original and not infringe upon any intellectual property or any other right of any other person, and have not previously been published;

(d) Subrecipient has obtained and will maintain at all times during the Term of Subrecipient's provision of Services hereunder any and all work permits, immigration clearances and other clearances necessary to enable Subrecipient to perform the Services hereunder;

(e) Subrecipient is familiar with operating a local WIC clinic and conducting activities to enhance the WIC participant experience;

(f) Subrecipient has the capacity to manage programmatic and fiscal responsibilities for the Agreement, troubleshoot any logistical issues within its agency related to contracting and wiring funds, and attend a mandatory training that may require traveling out of state;

(g) Subrecipient has experience collaborating with public health partners in a coalition or workgroup to improve community health, if applicable to the promising practices pursued for this project;

(h) Subrecipient shall conduct the research in compliance with the ethical standards and the criteria for approval and conduct of research set for in United States Department of Health and Human Services policy for the protection of human research subjects (45 C.F.R. Part 46 and related guidance, as amended from time to time) and all other federal and state laws applicable to the research project. Such requirements may include, but are not limited to, obtaining and maintaining institutional review board (IRB) approval and obtaining informed consent of participating research subjects; and

(i) Subrecipient shall comply all applicable federal and state statutes and regulations regarding the privacy and security of such information including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 201 et seq., as amended, and its applicable implementing regulations, 45 C.F.R. Part 164 (HIPAA). Any health information reported to the Grantor will be de-identified within the meaning of the HIPAA privacy rule or will be consistent with the research subject's signed HIPAA authorization or will be otherwise permissible under law.

11. NWA's Representations and Warranties. NWA hereby warrants and represents that:

(a) NWA is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and this Agreement has been duly authorized and constitutes the legally valid and binding obligation of NWA, enforceable against NWA in accordance with its terms;

(b) the consent of no other person or entity is necessary for NWA to enter into and fully perform this Agreement; and

(c) there is no matter, litigation, tax claim, proceeding or dispute pending or threatened against or affecting NWA or its property, the determination of which would materially impair NWA's ability to perform its obligations hereunder.

12. Indemnification. Subrecipient agrees to indemnify and hold NWA, and each of its parents, subsidiary and affiliated entities, affiliates, and their respective officers, directors, members, managers, partners, joint venturers, third-party employees and agents harmless from any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses), relating to or arising out of (i) any agreement, representation or warranty made by Subrecipient under this Agreement, and/or (ii) any materials contributed by Subrecipient hereunder.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL NWA BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES OR PROFITS. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

14. Suspension and Termination.

(a) This Agreement may be suspended or terminated at any time:

(i) By mutual written agreement of NWA and Subrecipient; or

(ii) By NWA if any representation or warranty of Subrecipient shall be inaccurate or breached; if Subrecipient shall have breached any of the covenants set forth in this Agreement or failed to perform the obligations hereunder, as amended from time to time; if in NWA's sole judgment, Subrecipient becomes unable to carry out the purposes of the grant and ceases to be an appropriate means of accomplishing the purposes of the grant.

(b) The suspension or termination of this Agreement shall not affect the exclusive ownership by NWA of the results and proceeds of Subrecipient's Services hereunder, or alter any of the rights, licenses or privileges of NWA in connection therewith. If this Agreement shall be suspended or terminated under any of the provisions herein contained, then Subrecipient and NWA shall each be relieved of any further obligations hereunder (or in the event of suspension, until NWA lifts the suspension), with the exception of any final reports to be completed by Subrecipient as may be required by NWA. Further, in the event of termination of this Agreement, Subrecipient agrees to cooperate with NWA to facilitate a transition of the Works completed as of the date of termination to NWA, as determined by NWA in its sole discretion. Termination also shall not affect any other rights or remedies that either party may have at law or in equity.

15. No Obligation to Use. NWA shall have no obligation to use any of the results of Subrecipient's Services or any proceeds thereof, or to exercise any of the rights granted to NWA hereunder.

16. Changed Circumstances; Regulatory Action. Subrecipient shall promptly notify NWA in writing if there is any change in circumstances that might affect Subrecipient's ability to carry out the grant; Subrecipient undergoes a merger, division or other corporate reorganization; Subrecipient becomes subject to a proceeding under the Bankruptcy Code or other law relating to insolvency or makes an assignment for the benefit of creditors; Subrecipient becomes subject to an investigation or proceeding brought by the Attorney General or any other regulatory agency; or Subrecipient receives notice of any litigation or other legal action relating to the Agreement or is served with a subpoena or other legal process seeking to compel production of or obtain access to any data related to the Compensation.

17. Force Majeure. If the activities of the Project are hampered, interrupted, or prevented due to an event of force majeure, including, without limitation, an Act of God, war (whether declared or undeclared), riot, civil commotion, fire, casualty, strike (including a strike by the members of any guild or labor union), boycott, labor dispute, act of any federal, state or local authority, pandemic, epidemic, or for any other similar or dissimilar reason beyond NWA's reasonable control, NWA shall have the right to suspend this Agreement, including all payment obligations hereunder, while such event continues (and for such period after its abatement as may be required to resume the activities under the Project). In the event of a force majeure continues for a period of two (2) months, NWA may elect to terminate this Agreement.

18. Remedies. NWA and Subrecipient expressly understand and agree that if NWA breaches this Agreement, the damage, if any, caused to Subrecipient thereby will not be irreparable or otherwise sufficient to entitle Subrecipient to injunctive or other equitable relief. The rights and remedies available to Subrecipient in any such event shall be strictly limited to the right, if any, to recover damages in an action at law, as specified hereinabove, and Subrecipient shall not be entitled by reason of any such breach to restrain NWA's exercise of any of NWA's rights hereunder, to enjoin NWA's use of any work product, or to restrain the development, production, release, broadcast, distribution, advertisement, exploitation or other use of any deliverables or any materials produced in connection with the Project or any print and advertising materials.

19. Non-exclusivity. Subrecipient's Services with respect to the Agreement are non-exclusive. NWA may enter into contracts with other parties in connection with the Project.

20. No Waiver. No waiver by either party of any breach of this Agreement and no failure by either party to exercise any right granted to such party herein shall constitute a waiver of such breach or of such right, nor shall it constitute a waiver of any other breach of, or rights granted in, this Agreement.

21. Further Assurances. Each party hereto shall, at the request of the other party hereto, from time to time, execute and deliver such further instruments and other documents (consistent with the terms and conditions hereof), as may be reasonably necessary to further evidence, perfect, maintain, effectuate or defend any and all of the respective rights and obligations of the parties hereto. Subrecipient agrees to execute such further documents as NWA may require in order to effectuate the purposes and intents of this Agreement.

22. Assignment. This Agreement, at the election of NWA, shall inure to the benefit of NWA's administrators, successors, assigns, licensees, grantees, and associated, affiliated and subsidiary companies, and Subrecipient agrees that NWA and any subsequent assignee may freely assign this Agreement and grant its rights hereunder, in whole or in part, to any person, firm or corporation. This Agreement may be assignable by Subrecipient only with the prior written consent of NWA.

23. Third-Party Beneficiary. NWA and Subrecipient agree that Grantor is an intended third-party beneficiary of this Agreement and shall be entitled to enforce any and all obligations of Subrecipient as if it were a party to this Agreement.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia applicable to contracts executed and to be fully performed therein, without giving effect to any law that would cause the laws of any jurisdiction other than the District of Columbia to be applied.

25. Dispute Resolution.

(a) The parties will attempt to settle any claim or controversy between the parties arising out of or relating to any Project through consultation and good faith negotiation. However, after thirty (30) days of good faith negotiations, either party may by written notice demand that any dispute between the parties arising out of or relating to a Project, except disputes between the parties that relate to the misuse or violation of either party's intellectual property rights, be submitted to arbitration. Any such dispute shall be submitted to binding arbitration before a mutually acceptable arbitrator in Washington, D.C., in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association notwithstanding the amount in controversy, provided that:

(i) the arbitration shall be conducted by one (1) arbitrator;

(ii) the selection of the arbitrator shall be made utilizing the "alternate strike method" from a panel of potential arbitrators provided by the AAA;

(iii) the parties shall request the arbitrator to award *reasonable* legal, accounting and expert-witness fees to the prevailing party; and

(iv) the parties agree that any arbitration hereunder shall be consummated within 180 days of the assertion of a claim before the AAA, unless otherwise determined by the arbitrator.

(b) In any arbitration, judgment upon the award rendered by the arbitrator, which shall be final and binding upon the parties, may be entered in any court having jurisdiction thereof. This section shall survive termination of any Project.

26. Notices. Any notices required to be given hereunder by any party hereto shall be in writing and may be effected either by personal delivery in writing or by certified mail, facsimile transmission or email communication to such party as follows:

If the notice is to NWA:

National WIC Association
2001 S Street, NW, Suite 580
Washington, D.C. 20009
Attention: Georgia Machell

with a courtesy copy to:

Mitchell Silberberg & Knupp LLP
1818 N. Street, N.W., Suite 800
Washington, D.C. 20036
Telephone: (202) 355-7917
Email: goo@msk.com
Attention: Gregory O. Olaniran

If the notice is to Subrecipient:

[Subrecipient]
[ADDRESS]
Telephone:
Email:
Attention:

All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by facsimile or email (with acknowledgment received), or three (3) business days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one (1) business day after the same are sent by a reliable overnight courier service, with acknowledgment of receipt.

27. Entire Agreement. This Agreement, (a) contains the complete and exclusive statement of the terms and conditions of the Agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof and (b) may not be changed orally but only by a writing signed by each of the parties hereto.

28. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective permitted successors and permitted assigns.

29. Headings. The heading references herein are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to govern, limit, modify or otherwise affect any of the provisions hereof.

30. Severability. The provisions of this Agreement shall be deemed severable and if any provision hereof shall be held invalid and unenforceable by any court of competent jurisdiction or as a result of future legislative action, the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof, so long as the remaining provisions, taken together, are sufficient to carry out the overall intentions of the parties hereto as evidenced hereby.

31. Counterparts. This Agreement may be executed by facsimile (including by scanned PDF copy) in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement and shall become effective when one or more

counterparts have been signed by each of the parties and delivered to the other party, it being understood that both parties need not sign the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

NATIONAL WIC ASSOCIATION

[SUBRECIPIENT]

By: _____
Douglas Greenaway, President

By: _____

Printed Name: _____

Title: _____

ATTACHMENT 1
GRANT AGREEMENT

[Insert]

EXHIBIT A
WORK PLAN

[Insert]