

## USDA Third Party Access Agreement

<b>Primary collaborator:</b>		<b>Project title:</b>	
<b>Supporting academic or nonacademic institution:</b>		<b>Start date:</b>	
		<b>Termination date:</b>	
<b>Licensed materials:</b>	Note: Any Licensed Materials to be received by the Collaborator(s) will be limited to the term set forth in the Licenses Agreement between the NPD Group, L.P. and the United States Department of Agriculture.		

### TERMS AND CONDITIONS

**Ownership.** The NPD Group, L.P. (“NPD”) Licensed Materials provided by the United States Department of Agriculture (“USDA”) and shared with the Primary Collaborator and Supporting Institution named above (collectively, “Collaborator”) are owned by NPD. Licensed Materials include reports, data, analyses (“Information”); data dictionaries, reference tools, data methodologies, disaggregated data, data characteristics and attributes (“References”); software (“Software”) or other intellectual property (“Property”), collectively, and the “Licensed Materials.”

**License.** Collaborator holds a limited, non-exclusive license to make use of the Licensed Materials solely for the specific purpose for which Collaborator has been retained by USDA. The scope of the specific purpose is described in the attached as Exhibit A. USDA will provide NPD with a copy of each proposed Exhibit A before sharing any Licensed Materials with Collaborator. NPD shall have a reasonable time (expected to be five (5) business days) to review the proposed collaboration and determine, in its reasonable discretion, whether NPD consents to the proposed collaboration, taking into consideration the likelihood that the proposed collaboration may have an adverse impact on NPD’s business or an NPD client. Collaborator may include limited analyses and findings derived from Licensed Materials (“Derived Data”) in its research results for USDA and/or for disclosure in USDA publications, presentations, or other similar outlets. Derived Data are data created by Collaborator or USDA as a result of combining, processing, changing, converting, or aggregating the Licensed Materials or any portion thereof with other data and which (i) is not intended and cannot be readily employed as a substitute for Licensed Materials and (ii) cannot be readily reversed engineered, disassembled, or decompiled such that a third party may access the Licensed Materials via the Derived Data. COLLABORATOR MAY NOT, under any circumstances:

- (i) identify any food service establishments or respondents/consumers;
- (ii) disclose any food service establishments-identifiable or respondents/consumer-identifiable information, including specific brands or product names; and/or
- (iii) disclose any food service market share data at any identifiable market level.

Before releasing to the public or disseminated to individuals beyond authorized users under this Agreement, Collaborator must submit to USDA draft copies of all papers, publications, and/or products to be reviewed strictly for confidentiality purposes. In addition, USDA will review the draft papers, publications and/or products to ensure consistency with the scope of the purposes described in Exhibit A and that they conform to NPD’s licensing non-disclosure terms, as stated above. In all published writings by Collaborator, any portions of the Licensed Materials that are disclosed must show NPD’s copyright; be accurately labeled; and not be presented in a misleading manner. Collaborator agrees to make available to NPD the results of Collaborator’s published research. Subject to copyrights, NPD may use and disclose the published results in its business. Collaborator will use NPD’s Licensed Materials ONLY for specific purposes described in Exhibit A and on behalf of the USDA.

**Use Restrictions.** Unless expressly authorized by this Agreement, Collaborator may not:

- (i) use the Licensed Materials provided under this Agreement for any research or project outside of the scope that has been pre-specified and pre-approved, as set forth in Exhibit A;
- (ii) host or distribute the Licensed Materials through the Internet or any other medium;
- (iii) use the Licensed Materials to perform projects initiated by other organizations including, but not limited to, commercial entities, foundations, industry groups, government agencies, or non-profit organizations, or in the performance of work (including without limitation, litigation support) for any another person, firm, consortium, or institution, however legally organized;
- (iv) provide the Licensed Materials to any affiliate or members of any joint venture or consortium to which Collaborator belongs;
- (v) distribute the Licensed Materials to any organization providing Collaborator with a grant or funding;
- (vi) decompile, reverse engineer, disassemble, sublicense, distribute, dispose of, modify, adapt, translate, and/or remove any proprietary or copyright legend from any Licensed Materials; and/or
- (vii) use the Licensed Materials for consulting purposes of any kind. Collaborator may apply for and receive funding from sources including, but not limited to, universities, Federal agencies and research foundations for the approved research as specified in Exhibit A using the Licensed Materials provided under this Agreement.

**Prohibition Against Non-Specified Use.** ANY USE OR DISCLOSURE OTHER THAN AS SPECIFIED IN THIS LICENSE IS PROHIBITED WITHOUT NPD'S PRIOR WRITTEN CONSENT.

**Confidentiality.** Collaborator shall maintain the security and confidentiality of the Licensed Materials, as well as any information Collaborator may learn about the terms of the relationship and/or contracts between NPD and the USDA, as it would its own highly confidential information and subject to confidentiality obligations no less stringent than those contained in collaborator's agreement with USDA. Collaborator may only disclose Information to its employees (each a "Recipient") with a need to know in connection with the specific purpose identified Exhibit A who have signed a non-disclosure agreement with Collaborator with confidentiality obligations no less stringent than those contained in this Agreement. Recipients of Licensed Materials shall maintain such information in an encrypted state. Collaborator shall maintain record of each Recipient requiring access to Licensed Materials. Collaborator shall have in place monitoring tools and controls sufficient to alert of any unauthorized attempt to access Licensed Materials or breach any controls that have been put in place to insure the confidentiality of Licensed Materials. Collaborator shall notify NPD within 24 hours of breach or unauthorized access attempt. Collaborator shall submit annual attestation to the presence and sufficiency of access and monitoring controls. Collaborator shall cause each Recipient to comply with the terms and conditions of this Agreement and shall be responsible for any breach of this Agreement applicable to the use of Licensed Materials by any such Recipient.

**Charges.** USDA is responsible for only those charges associated with its license grant, pursuant to a separate agreement with NPD in addition to any additional fees agreed by the parties for a particular project where USDA or the Collaborator requires additional Licensed Materials or servicing from NPD. No additional charges will apply pursuant to this Agreement, provided that NPD may suspend this license in the event of nonpayment by USDA under its agreement with NPD.

**Breach.** NPD would lack an adequate remedy at law and would suffer irreparable injury if this Agreement is violated. In case of violation or imminent violation of this Agreement by Collaborator or any of its employees, NPD shall be entitled to injunctive relief without having to prove irreparable injury, lack of an adequate remedy at law posting bond, or waiving any other rights or remedies. Collaborator will reimburse NPD for all expenses (including, but not limited to, attorneys' fees and expenses of investigation) incurred by NPD in enforcing its rights if Collaborator is shown to have breached this Agreement. NPD may also terminate this Agreement immediately upon notice to Collaborator in the event of breach.

**Indemnification.** Because NPD products and services are intended for internal use by Collaborator for the benefit of USDA, each signatory agrees to jointly and severally indemnify and hold harmless NPD, its officers and directors against all claims, damages, losses, expenses, or other liabilities arising from the disclosure of Information or use of the Licensed Materials other than in strict compliance with the terms and conditions of this Agreement.

**Accuracy.** Information consists primarily of estimates, representing NPD's opinion, based on projections using statistical procedures NPD deems appropriate. It is subject to inherent coverage, error rate, and other statistical factors. Sources of information are not always under NPD's control.

**Limitation of Liability.** Because this license is granted by NPD as an accommodation to USDA, Collaborator agrees that NPD will not be liable, whether in contract, tort (including negligence), or otherwise, for any loss, expense, injury, or damage of any kind including, without limitation, any actual, direct, indirect, special, incidental, or consequential damages, whether suffered by Collaborator, or any other person or entity, even if NPD is advised or has knowledge of the possibility thereof, resulting, directly or indirectly, from NPD's failure to furnish any Licensed Materials; any errors, inaccuracies, or omissions in the Licensed Materials; or the use of the Licensed Materials by Collaborator or others.

**Termination.** The license granted to Collaborator under this Agreement remains in effect for three (3) years from the date of approval by NPD and extensions may be granted at the sole discretion of USDA, subject to termination in the event of any of the following:  
 (i) USDA has terminated its agreement with Collaborator; or  
 (ii) the research project performed by Collaborator for USDA has ended.

Extension requests must be received by USDA at least sixty days (60) prior to the expiration of this Agreement. Notwithstanding the foregoing, NPD may terminate this Agreement at any time upon written notice to Collaborator. Upon termination, Collaborator shall return, destroy, or purge all copies of the Licensed Materials and provide written certification of destruction and purging. NPD shall have the right, at its sole expense, to audit compliance with the terms and conditions of this Agreement, upon reasonable notice, during business hours, and in a manner that is not disruptive to Collaborator's business.

**General Provisions.** This Agreement and the parties' respective rights and duties shall be interpreted and governed in accordance with the laws of the State of Illinois.

[INSERT NAME OF PRIMARY COLLABORATOR]	BY:	DATE:	
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[INSERT NAME OF SUPPORTING INSTITUTION]	BY:	DATE:	
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<b>[INSERT NAME OF ADDITIONAL COLLABORATOR]</b>	<b>BY:</b>	<b>DATE:</b>	
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<b>[INSERT NAME OF ADDITIONAL COLLABORATOR]</b>	<b>BY:</b>	<b>DATE:</b>	
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<b>[INSERT NAME OF ADDITIONAL COLLABORATOR]</b>	<b>BY:</b>	<b>DATE:</b>	
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<b>USDA/ERS</b>	<b>BY:</b>	<b>DATE:</b>	
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<b>The NPD Group, L.P.</b>	<b>BY:</b>	<b>DATE:</b>	
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## Exhibit A: Project Description

- I. **Project Working Title**
- II. **Primary Collaborator and Supporting Institution** *Please list all contact information, including email address.*  
Primary Collaborator:  
  
Academic/Nonacademic Supporting Institution:
- III. **USDA/ERS Contact:** *List ERS contact or investigator(s), including contact information, branch, and division.*
- IV. **Specific Purpose and Expected Output**  
*Please be as specific as you can; include conference presentations, journal articles, web postings, ERS publications, and any other release of the findings. Please include this standard language in this section:*

Derived Data may be included in output, but under no circumstances will any retailer-identifiable or manufacturer-identifiable information be released from this project. Anything published from this work will be an aggregated estimate based on regression analysis or cross-tabulated means. All manuscripts and talks will be cleared through USDA/ERS before submission or presentation.

### **Data Requirements:**

- A. **Type of Licensed Materials**
  - I. Indicate if any of the following types of data are requested (check all that apply):
- B. NPD Consumer Reported Eating Share Trends (CREST) Data
- C. NPD CREST Performance Alerts (CREST PA) Data
- D. NPD National Eating Trends (NETS) Data
- E. NPD NET COVID Supplemental Data
- F. NPD ReCount

### Additional Collaborators:

*Please list all non-USDA individuals who will be involved in the research, including students and research assistants, along with their contact information, including email address.*

**Summary:**

*Short, 3–5 sentence (maximum) description of the project. It should be a concise statement which can stand alone. Include the years of NPD data you intend to use.*

**Background and Rationale**

*Provide a detailed description, including the issue to be addressed and potential findings.*

**Objectives and Key Questions**

*List the questions, objectives, or hypotheses.*

**Value of Research to USDA/ERS**

*Include USDA/ERS research objectives and policy implications.*