DATA EXCHANGE AGREEMENT FOR VERIFICATION OF ELECTOR INFORMATION RELATED TO THE HELP AMERICA VOTE ACT AND 2015 WI ACT 261
between
THE WISCONSIN DEPARTMENT OF TRANSPORTATION and THE WISCONSIN ELECTIONS COMMISSION

I.   PARTIES

The parties to this Data Exchange Agreement for Verification of Elector Information Related to the Help America Vote Act and 2015 WI Act 261 (the Agreement) by and between the Wisconsin Department of Transportation (hereinafter referred to as "WisDOT") and the Wisconsin Elections Commission (hereinafter referred to as "WEC") hereby agree to the terms and conditions set forth herein.

II.   AUTHORITY

This Agreement is entered into pursuant to Wis. Stat. §§. 85.61, 343.14(2j), and 343.50(8)(c)(3).

III.   PURPOSE

The purpose of this Agreement is to detail the mechanisms and practices to be followed by WisDOT and WEC related to data exchanges between WisDOT and WEC required under Wis. Stat. § . 85.61 regarding the Help America Vote Act of 2002, P.L. 107–252 ("HAVA") as amended and to assist WEC in meeting its obligations under Wis. Stat. § 6.36(1)(ae) regarding its requirements relating to the Electronic Registration Information Center, Inc., ERIC agreement. WisDOT and WEC agree to manage said exchanges in order to comply with state and federal law . The WEC Administrator and WisDOT Secretary are required by Wis. Stat. § 85.61(1), to enter into an agreement to verify the accuracy of information obtained by WEC during the voter registration process with personally identifiable information maintained by WisDOT.

Currently data exchanges include the following:

1. Compliance with the federal **Help America Vote Act of 2002 (HAVA)** as required by Wis. Stat. § 85.61. The Secretary of Transportation and the administrator of the elections commission shall enter into an agreement to match personally identifiable information on the official registration list maintained by WEC under §. 6.36 (1) and the information specified in §. 6.34 (2m) with personally identifiable information in the identification card and operating record file database under ch. 343 and vehicle registration records under ch. 341 to the extent required to enable the Secretary of Transportation and the administrator of the elections commission to verify the accuracy of the information provided for the purpose of voter registration.

2. **Electronic Voter Registration** as required by Wis. Stat. § 6.30(5). An eligible elector who holds a current and valid operator's license issued under ch. 343 or a current and valid identification card issued under §. 343.50 may register electronically in the manner prescribed by WEC. An

elector who registers by electronic application is not required to provide proof of residence if the elections commission can verify the elector's data with WisDOT, as defined in §6.34(2m).

3. Under, Wis. Stat. §. 6.36(1)(ae), WEC is required to enter into a membership agreement with Electronic Registration Information Center (ERIC), Inc. for the purpose of maintaining the official registration list. To assist WEC in complying with this membership agreement, WisDOT shall provide information, as permitted by §. 343.14(2j) and §. 343.50(8)(c)(3), for the sole purpose of WEC compliance with the ERIC agreement.

IV. STATEMENT OF INTENDED USE

1. HELP AMERICA VOTE ACT ("HAVA")
HAVA requires the WEC Administrator to verify certain voter data with records of WisDOT's Division of Motor Vehicles (DMV) or the Social Security Administration (SSA). This Agreement relates to the exchange of data for persons who hold a driver license or identification card as well as persons who do not hold a driver license or identification card but do have a social security number. WEC is responsible for compiling and transmitting a list of these voters for access by DMV.

For each record transmitted by WEC that includes a driver license or identification card number, DMV will compare identifying information provided by WEC with the DMV database records for the person with that driver license or identification card number. DMV will provide a response to WEC for each person identified by WEC stating whether DMV personally identifiable information on file for the person matches or does not match the data provided by WEC. The DMV response will be one of the following values:

- "1" An exact match.
- "2" The name and date of birth do not match.
- "3" The number and date of birth match, but the name does not.
- "4" The number and name match, but the date of birth does not.
- "5" A record does not exist for this number.
- "6" The number submitted is invalid. First position is not alphabetic, or the remainder is not numeric.
- "7" The name submitted is invalid.
- "8" The date of birth submitted is invalid.

If WEC does not provide a driver license or identification card number for a person, and WEC provides the last 4 digits of that person's social security number, name (First, Middle, if applicable, and Last) and date of birth, the DMV will transmit the data it receives from WEC to SSA by utilizing the Help America Vote Verification (HAVV) IT application. This application allows a jurisdiction motor vehicle agency such as WisDOT to verify voter registration and identity information with the SSA. Upon prompting from WEC, DMV will submit inquiries containing a person's personally identifiable information to the SSA via the HAVV application, and the SSA,

via the HAVV application, responds and reports whether the data transmitted to it is consistent with SSA's data for that individual.

The SSA will compare the data it receives from WisDOT and respond to WisDOT as to whether the data submitted matches or does not match data it has on file for the person. DMV will report the SSA's determination to WEC. DMV's actions under this paragraph will facilitate the transmission of the records between WEC and SSA and will not involve comparing data exchanged between WEC and SSA with records in the DMV database.

Information will be exchanged between DMV, WisDOT, and SSA using secure protocols.

In the event WisDOT discovers that personally identifiable data provided to it by a driver license or identification card applicant is not consistent with data provided to WEC, WisDOT may take action to investigate and, if appropriate, cancel the license or identification card as required by Wis. Stat. §§ 343.25(1) and 343.50(10)(a).

2. **ELECTRONIC VOTER REGISTRATION**
   The electronic voter registration system allows eligible electors to enter their Wisconsin driver license or identification card number, personal identifiers, and Wisconsin residence address into the WEC application to electronically register to vote via WEC's internet application. The WEC application will submit the customer's information electronically to WisDOT for verification. WisDOT will compare the driver license or identification card number, customer name, date of birth, and current Wisconsin zip code submitted by the WEC application, with information in the WisDOT customer database, and provide one of the following responses:

   a. ERROR – Missing or invalid input
   b. ERRNSD – Customer not found based on driver license number provided
   c. ERRDOB – Date of birth mismatch
   d. ERRDEAD – Deceased
   e. ERRNAME – Name mismatch
   f. ERRPRDT – Not current and valid product
   g. ERRZIP – Zip code mismatch
   h. MATCH – Customer match

   DMV will carry out the data match check in the order set forth above and will cease checking if any of the 7 errors set forth above occur. DMV will notify WEC if there is a customer match or, if one of the errors numbered a to g above occurred, of the point that the check ceased. DMV notification to WEC under this paragraph will be transmitted through the verification system.

   Wis. Stat. § 6.30(5) requires WEC to obtain copies of "electronic signatures" for persons who register by electronic application. WisDOT will provide a copy of such signature as acquired through its verification process relating to driver licenses and identification cards upon request by WEC .

3. **ELECTRONIC REGISTRATION INFORMATION CENTER (ERIC)**
   WEC represents that the membership agreement, per Wis. Stat. § 6.36(1)(ae) it entered into with ERIC requires WEC to obtain a file from WisDOT at least once every 60 days, that contains

all of the following data fields for U.S. citizen Wisconsin driver license and identification card holders:

a. All name fields
b. All address fields
c. Driver license or state ID number
d. Last 4 digits of Social Security Number
e. Date of birth
f. Last activity date (excluding cancellation)
g. Current record status
h. This dataset will be encrypted by WisDOT and made available to WEC through a secure protocol with mutual consent. WEC shall be responsible for communicating to ERIC its duties and responsibilities under the federal Driver's Privacy Protection Act of 1994 with respect to handling data obtained from WisDOT driver and identification card data files.

V.   DATA CONFIDENTIALITY AND USE

It is understood that WEC and WisDOT will use the data exchanged between the parties only for government purposes as defined in this Agreement and as authorized by state and federal law. WEC and WisDOT agree to comply with all state and federal laws and regulations regarding use of any data. WEC and WisDOT each agree to be responsible for any intentional or unintentional actions they respectively commit, and for the actions of their respective employees, or their contracted third parties, related to use of, access to, or disclosure of the data.

VI.   PROTECTION AGAINST UNAUTHORIZED USE, ACCESS, OR DISCLOSURE

WEC and WisDOT agree to comply with the following measures to protect the information provided under this Agreement against unauthorized access or disclosure:

1. The data subject to this Agreement shall be used only to the extent necessary to carry out WEC's official government functions as set forth in Section IV "Statement of Intended Use".
2. No one with access to data exchanged under this Agreement may share, disclose, or release any data that identifies or contributes to the identification of individuals except to carry out authorized government functions of WEC.
3. WEC and WisDOT shall have internal standards and disciplinary procedures that will apply to employees involved in handling or exchanging data under this Agreement.

VII.   WisDOT AGREES

WisDOT agrees that it will:

1. Only use or disclose any data provided to it by WEC under this Agreement for purposes listed in Section IV "Statement of Intended Use" or as otherwise permitted by prior written approval from WEC.
2. Provide data verification or responses to data submissions to WEC in accordance with Section IV "Statement of Intended Use" of this Agreement.
3. Promptly notify WEC if WisDOT becomes aware of the following:
    a. Any known misuse of and/or breach of security or confidentiality involving data provided under this Agreement in writing not later than 48 hours of discovering the breach or misuse of data.
    b. Any litigation or notice of claim involving the content or handling of data furnished by WEC to WisDOT within three (3) business days of the earlier of the time WisDOT receives notice of the claim or is served with process.
4. Notify WEC if required matching with WisDOT is unavailable due to WisDOT computer system failure.
5. Ensure adequate means exist for WEC and WisDOT to test the data exchange and validation provisions of this agreement outside a production environment.

VIII. <u>**WEC AGREES**</u>

WEC agrees that it will:

1. Only use or disclosure any data provided under this Agreement for purposes listed in Section IV "Statement of Intended Use" unless WEC obtains prior written approval from WisDOT.
2. Never refer to or use the names of the State of Wisconsin Department of Transportation or the Division of Motor Vehicles or their respective abbreviations, or any state official or employee for commercial purposes. Notwithstanding the foregoing, WEC may disclose that WisDOT provides verification of the data submitted by WEC.
3. At all times, comply with and observe all federal and state laws and regulations, and local ordinances and laws that are in effect during the term of this Agreement and which, in any manner, affect access to, use of, or distribution of the data. This Agreement shall be governed under the laws of the State of Wisconsin.
4. Notify WisDOT if WEC becomes aware of the following:
    a. Any known misuse of and/or breach of security or confidentiality involving data furnished to WEC, in writing within 48 hours.
    b. Any litigation or notice of claim involving the content or handling of data furnished to WEC. Such an occurrence shall be reported by WEC to WisDOT within three (3) business days.
5. Never use the trademarks of WisDOT in any fashion unless specifically authorized to do so in writing.
6. Acknowledge that records of its access to the verification system may be maintained by WisDOT.
7. Have an alternate process in place to register applicants to vote in the event that the WisDOT database or the online application are unavailable.

8. WEC takes sole responsibility for any use of data gleaned from verification system and WisDOT does not warrant any of WEC's information.
9. Consistent with the requirements of 18 USC 2721 (c) WEC shall keep, for a period of five (5) years from the date of accessing any data provided under this Agreement, records identifying each person or entity that receives information and the permitted purpose for which the information is used and must make such records available to WisDOT upon request.

IX. GENERAL PROVISIONS

1. Notwithstanding any provision or language in this Agreement to the contrary, WisDOT reserves the right to terminate WEC access to the verification system, without recourse against WisDOT by WEC, at any time WisDOT is restrained or enjoined by a court of competent jurisdiction from providing the data or upon the effective date of an act of the Wisconsin Legislature repealing WisDOT's authority to provide the data, or as provided in Section X "Term" of this Agreement. Prior to termination of WEC access under this subsection, WisDOT shall provide written notification and a copy of the court order or legislation which precludes WisDOT from continuing to provide WEC access to the verification system.

2. WEC acknowledges and agrees that WisDOT may appoint a third party to operate and maintain portions of the verification system. Access to any portion of the verification system provided by such third-party designee may require the execution of additional terms and conditions by and between WEC as approved by WisDOT. Any third party appointed by WisDOT to operate and maintain portions of the verification system shall be subject to the same confidentiality requirements that are applicable to WisDOT and WEC as provided in this Agreement, Section IV "Data Confidentiality and Use".

3. If performance of this Agreement is rendered impossible or is delayed, interrupted or prevented by reason of any strike or similar labor difficulty, accident, fire, explosion, flood, mobilization, war, hostilities, riot, rebellion, revolution, blockade, act of public enemies, act of God, act of the Federal or state government, or by any other cause, whether or not the nature specifically enumerated above, which is beyond the reasonable control of the parties, then the parties shall be excused from performance of any obligation under this Agreement, except that this paragraph does not relieve any duty created by law. In the event either party is excused from the performance of any obligation pursuant to this provision, the parties shall consult and make an equitable adjustment to the payment or other provisions of this Agreement.

4. WEC and WisDOT agree to the work in good faith to ensure to the greatest extent possible that the purpose of the system stated in Section IV "Statement of Intended Use" is fulfilled through necessary updates and upgrades to the verification system if needed.

5. No amendment to this Agreement shall be effective unless it is in writing and signed by the authorized representative of each party.

6. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent has been documented in writing and signed by the parties. The waiver, modification, or failure to insist by the parties on any of these terms or conditions, shall not void, waive, or modify any of the other terms or conditions nor be construed as a waiver or relinquishment of the parties' right to performance of any such term or condition.

7. WisDOT reserves the right to modify the database and access procedures at any time for the express purpose of serving WisDOT's needs in maintaining the verification system. WisDOT agrees to promptly notify WEC of a WisDOT decision to modify the database to allow WECs sufficient time to modify the WEC application and allow continuity of the verification system for all qualified applicants.

8. This Agreement shall be governed under the laws of the State of Wisconsin and the United States of America.

9. Official notices or communications arising out of performance of this Agreement to be given by WEC to WisDOT at:

> Administrator, Division of Motor Vehicles
> Wisconsin Department of Transportation
> 4822 Madison Yards Way
> Madison, WI 53705

Official notices or communications arising out of performance of this Agreement to be given by WisDOT to WEC at:

> Administrator, Wisconsin Elections Commission
> P.O. Box 7984
> Madison, WI 53707-7984

10. This Agreement may be signed electronically and in counterpart form and constitutes the entire Agreement between the parties. It may be amended only by a written Agreement executed by both parties. This Agreement revokes all prior Agreement, memoranda of understanding, or other contracts between the parties. Venue for any litigation regarding this Agreement shall be Dane County, Wisconsin.
11. Any obligations required under this Agreement are subject to and contingent upon continued legislative appropriation of the funds to the parties necessary in order for the parties to perform herein. The parties reserve the right to terminate this Agreement without fault due to a lapse in appropriations.

X.   **CHARGES INCURRED**

1. Except as specified in par. 2, below, WEC and WisDOT agree to be individually responsible for carrying out and paying for all system design changes and enhancements to their respective computer and electronic communication systems necessary to maintain access or to successfully carry out the functions set forth in Section IV, "Statement of Intended Use".

2. WEC agrees to pay:
   a. The annual maintenance fee, as charged by the AAMVA for the HAVV IT application. The government rate schedule for this service is published annually by AAMVA by October 1st of each calendar year. For reference, the annual HAVV maintenance fee for the period from October 1, 2022 to September 30, 2023 is estimated to be $1,230.90.
   b. The annual CPU costs incurred by WisDOT for processing ERIC batch procedure (P7015703). For reference, at present, this monthly batch process costs approximately $162 per month, or approximately $1,944 per year. Fees are subject to change by the Department of Administration.

XI. TERM AND CHANGES TO AGREEMENT

This Agreement shall be effective as of the last signature applied below. (Effective Date). The initial term of this Agreement shall be four (4) years from the Effective Date. Thereafter, this Agreement shall automatically renew for an additional four (4) year term unless terminated as provided below.

1. The Agreement may be terminated by either party at any time, without advanced notice, if the event of breach by the other party. WisDOT and WEC agree to work in good faith to resolve any issues prior to termination.
2. Unless prohibited by law, the Agreement may be terminated for convenience by providing sixty (60) days advance written notice, signed by a duly authorized representative of the party wishing to terminate, and provided to the other party.
3. The Agreement may be terminated in whole, or in part, if future privacy or data use legislation prohibits the distribution of any data provided under the terms of this Agreement. If the Agreement is terminated in part, the parties agree to amend the remainder of the Agreement to preserve the non-terminated parts in order to fulfill the purpose of the Agreement.

The confidentiality and disclosure requirements with regard to personally identifiable information the parties become aware of under this Agreement survive the termination of this Agreement.

XII. AUTHORIZATION

The following parties, by their signatures and date hereto, acknowledge that they are authorized to enter into this Agreement on behalf of THEIR RESPECTIVE PARTY.

Each signatory having read this Agreement between The WISCONSIN DEPARTMENT OF TRANSPORTATION and The WISCONSIN ELECTIONS COMMISSION, by their signature below,

acknowledge this Agreement on behalf of the agency or commission represented and commit that agency or commission and its employees to abide by the terms of the Agreement and all confidentiality restrictions and guidelines set forth in this Agreement.

XIII.   SIGNATURES

WISCONSIN DEPARTMENT OF TRANSPORATION

Kristina Boardman
_____

Kristina Boardman, Administrator, Division of Motor Vehicles

June 29, 2023
_____
Date

THE WISCONSIN ELECTIONS COMMISSION

Meagan Wolfe
_____
Meagan Wolfe, Administrator

June 29, 2023
_____
Date