



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan, Lansing MI 48913  
P.O. Box 30026, Lansing, MI 48909

## NOTICE OF CONTRACT

NOTICE OF CONTRACT NO.

**071B6600130** between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	DK Security
	5160 Falcon View Ave. SE
	Grand Rapids, MI 49512
	Brigid Klodzinski
	(800) 535-0646
	Brigidklodzinski@dksecurity.com
6234	

<b>STATE</b>	Program Manager	Loren Haughn	DHHS
		(517) 335-8935	
	HaughnL@michigan.gov		
	Contract Administrator	Dan Stevens	DTMB
(517) 284-7049			
StevensD6@michigan.gov			

### CONTRACT SUMMARY

**DESCRIPTION:** The purpose of this Contract is to obtain the services of a Contractor to perform WIC compliance buys and provide other investigative services at WIC approved stores, Project FRESH vendors, or other designated locations in Michigan, for the Michigan Department of Health and Human Services Woman Infants and Children Program (WIC). This is a Unit Price contract.

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 8, 2016	August 7, 2019	2 (1 year)	August 7, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$151,200.00</b>

**FOR THE CONTRACTOR:**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

\_\_\_\_\_  
**Date**

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name & Title**

\_\_\_\_\_  
**Agency**

\_\_\_\_\_  
**Date**



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and DK Security (“**Contractor**”), a Michigan Corporation. This Contract is effective on 8/8/2016 (“**Effective Date**”), and unless terminated, expires on 8/7/2019.

This Contract may be renewed for up to two one-year renewal period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Dan Stevens 525 West Allegan Lansing, MI 48933 @michigan.gov 517-284-7049	Sindia Narber 5160 Falcon View Ave. SE Grand Rapids, MI 49512 Sindianarber@dksecurity.com 800-535-0646

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

<b>If to State:</b> Dan Stevens 525 West Allegan Lansing, MI 48933 @michigan.gov 517-284-7049	<b>If to Contractor:</b> Brigid Klodzinski 5160 Falcon View Ave. SE Grand Rapids, MI 49512 Brigidklodzinski@dksecurity.com 800-535-0646
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

<b>If to State: day-to-day</b> Loren Haughn 320 N. Walnut St. Lansing, MI, 48913] HaughnL@michigan.gov 517-335-8935	<b>If to Contractor:</b> Brigid Klodzinski 5160 Falcon View Ave. SE Grand Rapids, MI 49512 Brigidklodzinski@dksecurity.com 800-535-0646
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<b>If to State: non day-do-day</b> Shirley Martin 235 So. Grand Ave. Grand Tower, Suite 1201 Lansing, MI, 48913 martins@michigan.gov 517-241-2305	<b>If to Contractor:</b> Sindia Narber 5160 Falcon View Ave. SE Grand Rapids, MI 49512 Sindianarber@dksecurity.com 800-535-0646
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

<b>Insurance Type</b>	<b>Additional Requirements</b>
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees,

	and agents” as additional insureds, and (2) include a waiver of subrogation.
<b>Motor Vehicle Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	
<u>Deductible Maximum:</u> \$50,000 Per Loss	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

- 7. MiDEAL Administrative Fee and Reporting** Contractor must pay an administrative fee of 1% on MiDEAL payments made to Contractor under the Contract including transactions with MiDEAL members and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget  
Financial Services – Cashier Unit  
Lewis Cass Building  
320 South Walnut St.  
P.O. Box 30681  
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

- 8. Extended Purchasing Program.** The Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
- 10. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 13. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
- 14. Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 17. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
- 18. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 19. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.

- 22. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

**27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

**28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

**29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**30. Reserved.**

**31. State Data.**

a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the

benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

- c. Extraction of State Data. Contractor must, within one (1) business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

**32. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

### **33. Data Privacy and Information Security.**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete,

within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

#### **34. Payment Card Industry Data Security Standard.**

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.

Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

- c. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- d. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

#### **35. RESERVED**

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. Reserved**
- 41. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 42. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 43. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 44. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 45. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 46. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing

while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

- 47. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 48. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 49. Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
- 50. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 51. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 52. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 53. Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

# STATE OF MICHIGAN

**Contract No.071B66007**

WIC Compliance Investigative Service

## **EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES**

### **Project Request**

The purpose of this Contract is to obtain the services of a Contractor to perform WIC compliance buys and provide other investigative services at WIC approved stores, Project FRESH vendors, or other designated locations in Michigan, for the Michigan Department of Health and Human Services Woman Infants and Children Program (WIC). This is a Unit Price contract.

### **Background**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides supplemental foods for pregnant, non-lactating and nursing women, infants up to one year, and children up to age five. Eligibility is also based on age, financial and medical need. Foods are prescribed for the clients from a list of eligible WIC supplemental foods. Food benefits are issued on a WIC Electronic Benefit Transfer (EBT) Bridge card, and are redeemable by the client at any of approximately 2,000 approved WIC vendors (grocers) in the State.

The Michigan WIC Program also includes the Farmers Market Nutrition Program, also called Project FRESH. In this Program, WIC clinics issue a booklet of 10 coupons (\$2.00 each) for a total benefit of \$20.00 per season. The WIC client must redeem these coupons at Michigan authorized Farmers markets and Roadside Stands for locally grown, fresh, unprepared fruits, vegetables and approved herbs.

The Michigan Department of Health and Human Services (MDHHS) administers and coordinates the distribution of these contracted food vendors. The Vendor Relations Unit is responsible for vendor compliance activities, fraud and abuse detection and investigation. This investigation process includes clandestine compliance buys at WIC approved stores. When an investigation determines that a store is engaged in program abuse or fraudulent activities affecting the WIC Program, appropriate sanction action is taken in accordance with WIC Program Policy and Federal regulations. Sanction action may also impact the vendors' eligibility for participation in the Supplemental Nutrition Assistance Program, or SNAP (formerly Food Stamps).

WIC Program Policy and Federal Regulations require investigations be performed on a minimum percentage of these 2000 vendors. The day-to-day Program Manager will identify those vendors which will require compliance buy activity. Those vendors identified could be in any county. There is at least one WIC approved vendor contracted in each county of Michigan.

The day-to-day Program Manager will select the specific target locations to receive compliance buys. The contractor will be notified of these locations in the form of a compliance buy letter. On average, a compliance buy letter is generated every thirty to sixty days. The buy letter indicates which stores are to receive compliance buys. The WIC EBT cards will be provided in advance by the day-to-day Program Manager. The day-to-day Program Manager will attempt to cluster selected vendors by geographic area, however, occasionally, the contractor will have to travel to remote areas of the state and conduct a relatively small number of compliance buys.

WIC EBT benefits are good for only a specific thirty day period, for example, 9-15-15 to 10-14-15. The thirty day period of their validity can begin on any day of the month. Efforts may be made to work with the investigative contractor on the thirty day period of benefit validity in which the buys must be completed. However, the Program Manager, as special circumstances may dictate, will have the final say on the scheduling of compliance buys. Compliance buys can be done anytime within the thirty day period, unless directed otherwise by the day-to-day Program Manager.

## 1.1 Requirements

1) The contractor will manage the investigators in their efforts to conduct compliance buys. The contractor will assure the following:

**A)** The contractor will provide investigative staff that are:

- 1) Female unless otherwise indicated by the day to day Program Manager. 18 years of age or older
- 2) Able to blend into the target store's neighborhood (race, ethnicity, dress, etc.), including linguistic and cultural competencies to the degree necessary to emulate a typical member of the local community. The contractor capabilities must include the ability to determine the characteristics to be emulated by the investigator to effectively blend into the targeted local community.
- 3) Must have no physical characteristics or disabilities which might result in the vendor claiming empathy/sympathy for the investigator.
- 4) Willing and able to testify under oath in person or by phone/in camera (as deemed warranted by the day to day Program Manager) at a hearing, that will be held in Lansing, Michigan.
- 5) Prepared with a cover story.
- 6) Equipped with an inconspicuous vehicle.
- 7) Approved by the Michigan Department of Health and Human Services day-to-day Program Manager.

**B)** The contractor will provide investigative staff who will **not**:

- 1) Be recognized as an investigator by the vendor. The investigator must notify the day-to-day Program Manager if she becomes aware that the vendor knows she is conducting an undercover compliance buy. If the investigator is identified by the vendor, the contractor must be able to provide a different investigator to conduct compliance buys at that vendor's store
- 2) Be aggressive, threatening, or antagonistic in their manner.
- 3) Attempt to play on the sympathy of a store owner or employee.
- 4) Buy any other items for cash or other means while in the store unless instructed to do so by the day-to-day Program Manager.
- 5) Do another compliance buy or any other activity, before completing a buy, doing the photography and completing the report.
- 6) Have a record of criminal convictions.
- 7) Be active duty military personnel.
- 8) Have any conflicting interests in the outcome of the investigation. This eliminates as investigators employees of state or local agencies and their relatives, employees of grocery stores, pharmacies, and other store types or their relatives, unless advance written approval is obtained from the day-to-day Program Manager.
- 9) Write for publication.
- 10) Attempt entrapment or act in a manner that has the appearance of entrapment of a vendor.

**C)** Some compliance buys will be requested which may include but are not limited to the following:

- 1) An attempt to purchase WIC foods in excess of the quantity authorized.
- 2) An attempt to purchase non-WIC food with a WIC EBT card as applicable.
- 3) An attempt to purchase non-food items with a WIC EBT card.
- 4) An attempt to obtain cash from the vendor in exchange for WIC EBT card benefits.
- 5) An attempt to return WIC foods for cash
- 6) An attempt to redeem Project FRESH coupons or WIC EBT benefits or obtain cash for EBT benefits from an unauthorized store.
- 7) Seasonally perform Project Fresh buys, as instructed.
- 8) Investigations at locations where suppliers or other entities claim to be located and are providing or claiming to provide WIC approved products to WIC authorized vendors.

**D)** The investigator will perform the following procedures during an undercover buy:

- A) Equipped with a cover story, the investigator will enter a WIC authorized store selected by the day-to-day Program Manager with a WIC EBT card and a list of items to be purchased (or other activities to attempt).
- B) The investigator will go through the store and select the appropriate WIC food items as instructed by the day-to-day Program Manager. During this time the investigator will attempt to make note of or observe any activities or circumstances in or around the store in an attempt to expand the scope of the investigation in a manner that will not compromise the underlying investigation, but continue to follow established investigation protocols in an attempt to:
  - Purchase non-WIC items with their WIC Bridge card.
  - Trade infant formula or other benefits for cash or unauthorized items.
  - Sell WIC Bridge card or the benefits on the card
- C) When done shopping, the investigator will take the selected items to a check-out lane and tell the cashier that they are using the Michigan WIC Bridge Card.
- D) During the transaction itself the investigator makes observations of the transaction as indicated in Section D of the compliance buy report (Exhibit E) as to how the cashier handled the transaction, including mannerisms, comments, etc.
- E) The investigator or the cashier will swipe the card through the point of sale (POS) machine and the investigator will enter a 4-digit PIN.
- F) The cashier will scan the UPC of each item selected by the investigator. The cashier is required by Program policy to scan the UPC bar code of each item (except fresh fruits and vegetables) to confirm the item is a WIC approved food item and eligible for purchase at that time. If the UPC of the item selected by the investigator is not scanned by the cashier, the investigator will make detailed notation of the process and/or actions taken by the cashier as to how the item charged to the WIC Program is identified.
- G) For the purchase of fresh fruits and vegetables, the vendor is required to determine the total dollar amount of fresh fruits and vegetables being purchased by the investigator and enter that amount on the POS device along with the numeric code 4469.
- H) Upon completion of the transaction, the investigator will attempt to obtain a receipt unless such action might compromise the investigation.

**E)** After the transaction is completed, the investigator will perform the following duties:

- 1) Immediately return to his/her car with the food items, drive to a nearby safe location to complete the report (Exhibit E). The report will include:
  - A description of the physical characteristics of the cashier (sex, glasses, mustache, beard, scars, moles, tattoo, other)
  - The food items purchased, including the UPC, brand names and types, container size and the prices that were marked on the food items purchased or, if not marked on the items, any prices marked on the shelf, wall, sign, etc. All prices for items purchased must always be reported. If there is a different price than the price marked on the item, on a like item or on a shelf or sign anywhere in the store, that also must be reported and fully described.
  - If the cashier did not scan the food item UPC.
  - If the cashier provided the investigator with a receipt, and
  - If the investigator had or overheard any conversations or observed any actions that may be relevant to the investigation
- 2) The investigator will take a photograph in their vehicle (i.e. Photograph or digital image) that clearly shows the front of the food items purchased, including the product labels.

WITHOUT EXCEPTION ITEMS IN ABOVE SECTIONS 1.1.1(E)(1) AND (2) MUST BE COMPLETED IMMEDIATELY UPON COMPLETION OF THE BUY AND BEFORE ANOTHER COMPLIANCE BUY IS STARTED.
- 3) The investigator will take the purchased items to a nearby non-profit organization, complete the appropriate donation form, and donate the items. See below Section 1.1.G.
- 4) The investigator will submit the compliance buy report and donation form, along with any other relevant documents or notations to the day to day Program Manager.

Actual time in the store should be about 10 minutes with approximately another 10 to 15 minutes to record and photograph the food items and complete the report form. An additional 10 to 15 minutes may be required to complete other paperwork.

**F)** Stores found to be engaged in Program abuse or fraudulent activities are sanctioned in accordance with WIC Program policies, including but not limited to termination and disqualification from the Program. If such adverse action is taken, the store has the right of appeal. A request for a hearing must be submitted within 21 days of the action. The State expects that notifications of termination and disqualification appeal requests will result in approximately 25-30 hearings scheduled per year of this contract. It will be necessary for the contractor and the investigators to testify at any hearings which result from the action taken by the Department of Health and Human Services from the investigative compliance buy activity.

The WIC Program will notify the contractor of scheduled hearing dates. The contractor will be responsible for ensuring the appearance of the investigator(s) at such hearings. Some of the hearings may take place after the contract period. The contractor and investigators must agree to testify at any necessary hearings that take place after the contract period has expired. Whenever possible, the investigator's schedule will be taken into consideration; however, the WIC Program has limited ability for input into hearing schedules.

**G)** Federal Regulations require that the WIC Program document disposition of food items obtained through compliance buys. It will be necessary for the items to be donated (delivered) to non- or not-for-profit organizations such as churches, food banks, the Salvation Army, etc. The receiving organizations will be identified by the contractor and approved by the day-to-day Program Manager. The donation report (Exhibit F) must be submitted to the day-to-day Program Manager. Donation report forms will be provided by the day-to-day Program Manager.

Non-food items must be sent to the State WIC office.

**H)** Prospective contractors must establish that they are currently licensed in the State of Michigan by the Michigan Department of State Police and are in good standing, bonded, and that any employees or subcontractors are licensed and bonded when required. The prospective contractor must indicate the approximate number of staff currently employed by the company who meet the previously outlined

qualifications and their experience and work locations. The contractor must be currently licensed at all times during the course of the contract.

- I) After the initial orientation session, the contractor will be responsible for training any new employees and for exercising appropriate supervision of the employees in carrying out the activities properly. However, the day-to-day Program Manager or his designated representative must first accompany any investigator on a compliance buy(s) to evaluate that the buy activities conducted are satisfactory before the investigator can do a compliance buy independently.

## 1.2 Training

Security investigators working under this contract will undergo formal compliance buy training program. The program consists of classroom training, designed to appropriately prepare via education and role-playing, each investigator in carrying out the requirements of this contract. At the completion of the classroom training, each investigator is required to successfully conduct a compliance buy in the presence of the project manager and in full compliance of this contract. After this portion has been successfully completed and documented, the investigator may be scheduled independently.

## 2. Acceptance

### 2.1 Acceptance, Inspection, and Testing

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

- 1) The Program Manager will verify the following related to the Contractor and their staff:
  - 1) Experience, qualifications and ability to provide appropriate investigative staff as needed during the entire contract period. Such experience should include dealing with cultural and language issues, as described in Sections 1.1.1.A and B.
  - 2) A record of performing and fully documenting services similar to compliance buys, follow up cash buys and donations in a timely, accurate manner.
  - 3) Demonstrated ability to safely and properly store food items until they are donated.
  - 4) Knowledge and experience with donating food items on the same day or, at the latest, the next day of the compliance buy.
  - 5) Demonstrated ability to conduct buys on short notice, in any area of the state, and at any time day or night, using staff that meet the criteria listed in Sections 1.1.1.A and B. At all times, the contractor must have qualified, trained investigators willing and able to travel anywhere in the state to conduct compliance buys in accordance with the policies and procedures set forth in Sections 1.1.1.C, D and E.
  - 6) Ability to ensure that investigators will attend all required hearings.
  - 7) Provide proof that the contractor is currently licensed in the State of Michigan by the Michigan Department of State Police and is in good standing, bonded, and that any employees are licensed and bonded when required. The contractor must indicate the approximate number of staff currently employed by the company who meet the previously outlined qualifications and their experience and work locations. The contractor must be licensed at all times during the course of the contract.
  - 8) Capability, after the initial orientation session, to train any new employees and supervise all employees in carrying out their assignments properly.
  - 9) Ability to submit accurate and timely invoices.
  - 10) Work was performed according to the Contract specifications

### **3.0 Staffing**

#### **3.1 Contractor Representative**

The Contractor must appoint one individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Program Manager and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

#### **3.2 Customer Service Toll Free Number**

The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

All applicable key personnel and staff may be reached via the Command Center 8AM to 5PM and 24 hours per day in the event of an emergency: (800) 535-0646.

#### **3.3 Work Hours**

Compliance buy activities should be performed during the hours designated by the day to day Program Manager. This will typically but not always be normal business hours. The day to day Program Manager will specify when a specific undercover buy must occur at an abnormal time period (i.e. 10:00 pm) as warranted

#### **3.4 Key Personnel**

The Contractor must appoint at least one individual who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account and be knowledgeable on the contractual requirements.

Project Manager/Investigations Manager Brigid Klodzinski will be the contact for any day-to-day issues that may arise

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

### 3.5 Organizational Chart



### 3.6 Reserved

### 3.7 Security

The Contractor will be subject the following security procedures:

- 1) On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.
- 2) All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources at [http://www.michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html). Furthermore, Contractor personnel must agree to the State's

security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

- 3) If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.
- 4) Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements (see Standard Contract Terms, Section 34). Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.
  - The Contractor must contact the Michigan Department of Health and Human Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Payment Card Industry representative, or a Payment Card Industry approved third party, must be provided with full cooperation and access to conduct a thorough security review. The review must validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.
  - Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.
  - The Contractor must provide the Michigan Department of Health and Human Services documentation showing PCI Data Security certification has been achieved. The Contractor must advise the Michigan Department of Health and Human Services of all failures to comply with the PCI Data Security Requirements.  
Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor must provide a time line for corrective action.
- 5) Contractor agrees to provide business continuity in the event of a major disruption, disaster, or failure.

#### **4.1 Project Management**

#### **4.2 Project Plan**

Within five business days of Contract Effective Date, the Contractor must submit to the Program Manager for final approval a detailed project plan. This final project plan must be in agreement with the Contractor's proposal and accepted for Contract.

Contractor's implementation team will meet with the State to discuss expectations for the timing of the steps within Contractor's implementation process. The Contractor's implementation team will regularly be in contact to share progress information and make sure all are on track to meet goals. Contractor will work directly with State staff to identify any areas of concern and immediately address any questions. After implementation, Contractor's Project Manager will be the State's dedicated account manager for all day-to-day concerns, and will ensure that any questions or issues raised are resolved.

### **4.3 Meetings**

The Contractor must attend the following meetings:

Kick-Off meeting within 30 days of the effective date.

The State may request other meetings, as it deems appropriate.

### **4.4 Reporting**

As needed, the contractor will submit brief written reports of any problems, real or anticipated, which should be brought to the attention of the Program Manager; and notification of any significant deviation from previously agreed-upon work plans.

The MDHHS Vendor Compliance Analyst in Woman, Infant & Child Health Section (WIC), will supply the contractor with blank compliance buy reports and donation reports (Exhibits E and F) to be used by the investigators in conducting compliance buys and in donating food items. Every two weeks, the contractor will return the completed reports along with the original photographs or digital images of the food items to the MDCH Vendor Compliance Analyst in WIC.

- 1) The contractor must insure that the investigator will complete reports within 30 minutes of each buy. Confidentiality must be maintained. The report form will be provided by the day-to-day Program Manager. The report will be handwritten.
- 2) Any corrections made to the report by the investigator while the report is being written and before it is dated and signed must be initialed and dated.
- 3) THE REPORT FORM CANNOT BE REWRITTEN AFTER COMPLETION. ANY CORRECTIONS OR ADDITIONS AFTER THE REPORT HAS BEEN SIGNED AND DATED MUST BE MADE IN A SEPARATE LETTER OF EXPLANATION ATTACHED TO THE REPORT FORM.
- 4) THE STATE WILL NOT PAY THE CONTRACTOR FOR ANY COMPLIANCE BUY REPORT OR FOLLOW-UP COMPLIANCE BUY REPORT WHICH, DUE TO THE CONTRACT INVESTIGATOR'S NEGLIGENCE OR ERROR, CANNOT BE USED TO MAKE A DETERMINATION WHETHER VIOLATIONS DID OR DID NOT OCCUR.
- 5) Completed reports must be submitted to the day-to-day Program Manager or designated representative within the time frame determined by the day-to-day Program Manager but usually not more than thirty days after the compliance buy.

### **5.1 Ordering**

### **5.2 Authorizing Payment**

The appropriate authorizing document for the Contract will be a signed Blanket Purchase Order as well as an Agency Issued Purchase Order.

### **6.0 Invoice and Payment**

#### **6.1 Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities (list of all hearings and compliance buys); (e) unit price;; and (f) total price. Overtime, holiday pay, and travel expenses will not be paid.

- 1) This is a per unit contract based on the number of compliance buys conducted and the location of each compliance buy.
- 2) Each invoice should be divided by compliance buys conducted in Wayne County, Lower Peninsula other than Wayne County, and the Upper Peninsula. Within each Section, the invoice should include the date of the compliance buy, the name and address of the vendor at which the compliance buy was performed and the dollar amount charged to the State by the contractor for said buy.

- 3) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq.,
- 4) The State and the Contractor(s) must mutually agree upon the specific payment schedule for any Contractor(s) entered into, the schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.
- 5) The State (WIC Program) receives completed Buy Reports and invoices from the Contractor on a monthly basis for approval and submission to MDCH Accounting. WIC only pays contractor after submission of reports and billing invoices.

For compliance buys – include the date the buy was done, the name and address of the vendor, the vendor number, the WIC Project FRESH coupon number or the WIC EBT card number used for the buy, the time the buy was done, the initials of the investigator who did the buy, the set and approved amount charged for each buy and a grand total.

For hearings – include the date of the hearing, the docket number, the name of the vendor, the vendor number, the time of the hearing, the name of the investigator, the travel time (in hours), the hearing time (in hours), the total time, the hourly rate (set and approved) and a grand total in dollars.

## **6.2 Payment Methods**

The State will make payment for Contract activities through Electronic Funds Transfer (EFT) as stated in 1984 PA 431, all contracts that the state enters into for the purchase of goods and service must provide that payment will be EFT.

# STATE OF MICHIGAN

**Contract # 071B0006807**  
WIC Compliance Investigative Services

**EXHIBIT B**

**RESERVED.**

# STATE OF MICHIGAN

**Contract # 071B0006807**  
WIC Compliance Investigative Services

## EXHIBIT C PRICING

1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing).
  
2. The contract is a Firm Fixed Price contract. Prices are variable based on per “buy” unit price basis for the compliance buys themselves. Pricing must include all of their administrative, managerial, material, supply and travel costs, state administrative fee in determining their bid per compliance buy. No reimbursement over and above the unit price per compliance buy will be made.

	Deliverable	Estimated Quantity Per Year		Unit Price		One Year Price	Times Three Years	Three Year Total
1	Lower Peninsula Compliance Buys	370	X	\$75.00	=	\$27,750.00	X 3 =	\$83,250.00
2	Upper Peninsula Compliance Buys	30	X	\$185.00	=	\$5,550	X 3 =	\$16,650.00
3	Hearings (Unit Price should be per hour)	180	X	\$95.00	=	\$17,100	X 3 =	\$51,300.00
<b>Grand Total</b>								<b>\$151,200.00</b>

# STATE OF MICHIGAN

**Contract # 071B0006807**  
WIC Compliance Investigative Services

## **EXHIBIT D** **HIPAA Addendum**

## HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum ("Addendum") is made a part of the contract ("Contract") between the Michigan Department of Community Health ("Covered Entity"), and DK Security, ("Business Associate").

The Business Associate performs certain services for the Covered Entity under the Contract that requires the exchange of information including protected health information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub.L. No. 111-5). The Michigan Department of Community Health is a hybrid covered entity under HIPAA and the parties to the Contract are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and have the underlying Contract comply with HIPAA.

### RECITALS

- A. Under the terms of the Contract, the Covered Entity wishes to disclose certain information to the Business Associate, some of which may constitute Protected Health Information ("PHI"). In consideration of the receipt of PHI, the Business Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. The Covered Entity and the Business Associate intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate under the Contract in compliance with HIPAA and the HIPAA Rules.
- C. The HIPAA Rules require the Covered Entity to enter into a contract containing specific requirements with the Business Associate before the Covered Entity may disclose PHI to the Business Associate.

#### 1. Definitions.

a. The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach; Data Aggregation; Designated Record Set; Disclosure; Health Care Obligations; Individual; Minimum Necessary; Notice of Privacy Practices; Protected Health Information; Required by Law; Secretary; Security Incident; Security Measures, Subcontractor; Unsecured Protected Health Information, and Use.

b. "Business Associate" has the same meaning as the term "business associate" at 45 CFR 160.103 and regarding this Addendum means [Insert Name of Business Associate]

c. "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR 160.103 and regarding this Addendum means the Michigan Department of Community Health.

d. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

e. "Agreement" means both the Contract and this Addendum.

f. "Contract" means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added.

## 2. Obligations of Business Associate.

The Business Associate agrees to

a. use and disclose PHI only as permitted or required by this Addendum or as required by law.

b. implement and use appropriate safeguards, and comply with Subpart C of 45 CFR 164 regarding electronic protected health information, to prevent use or disclosure of PHI other than as provided in this Addendum. Business Associate must maintain, and provide a copy to the Covered Entity within 10 days of a request from the Covered Entity, a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI relative to the size and complexity of the Business Associate's operations and the nature and the scope of its activities.

c. report to the Covered Entity within 24 hours of any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. If the Business Associate is responsible for any unauthorized use or disclosure of PHI, it must promptly act as required by applicable federal and State laws and regulations. Covered Entity and the Business Associate will cooperate in investigating whether a breach has occurred, to decide how to provide breach notifications to individuals, the federal Health and Human Services' Office for Civil Rights, and potentially the media.

d. ensure, according to 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate regarding such information. Each subcontractor must sign an agreement with the Business Associate containing substantially the same provisions as this Addendum and further identifying the Covered Entity as a third party beneficiary of the agreement with the subcontractor. Business Associate must implement and maintain sanctions against subcontractors that violate such restrictions and conditions and must mitigate the effects of any such violation.

e. make available PHI in a Designated Record Set to the Covered Entity within 10 days of a request from the Covered Entity to satisfy the Covered Entity's obligations under 45 CFR 164.524.

f. within ten days of a request from the Covered Entity, amend PHI in a Designated Record Set under 45 CFR § 164.526. If any individual requests an amendment of PHI directly from the Business Associate or its agents or subcontractors, the Business Associate must notify the Covered Entity in writing within ten days of the request, and then, in that case, only the Covered Entity may either grant or deny the request.

g. maintain, and within ten days of a request from the Covered Entity make available the information required to enable the Covered Entity to fulfill its obligations under 45 CFR § 164.528. Business Associate is not required to provide an accounting to the Covered Entity of disclosures : (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of PHI about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); (vii) as part of a limited data set according to 45 CFR 164.514(e); or (viii) that occurred before the compliance date for the Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by the Business Associate and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to the Business Associate or its agents or subcontractors, the Business Associate must forward it within ten days of the receipt of the request to the Covered Entity in writing.

h. to the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity when performing those obligations.

i. make its internal practices, books, and records relating to the Business Associate's use and disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate must concurrently provide to the Covered Entity a copy of any PHI that the Business Associate provides to the Secretary.

j. retain all PHI throughout the term of the Agreement and for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Agreement.

k. implement policies and procedures for the final disposition of electronic PHI and the hardware and equipment on which it is stored, including but not limited to, the removal of PHI before re-use.

l. within ten days after a written request by the Covered Entity, the Business Associate and its agents or subcontractors must allow the Covered Entity to conduct a reasonable

inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI under this Addendum for the purpose of determining whether the Business Associate has complied with this Addendum; provided, however, that: (i) the Business Associate and the Covered Entity must mutually agree in advance upon the scope, timing and location of such an inspection; (ii) the Covered Entity must protect the confidentiality of all confidential and proprietary information of the Business Associate to which the Covered Entity has access during the course of such inspection; and (iii) the Covered Entity or the Business Associate must execute a nondisclosure agreement, if requested by the other party. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, the Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve the Business Associate of its responsibility to comply with this Addendum. The Covered Entity's (i) failure to detect or (ii) detection, but failure to notify the Business Associate or require the Business Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this Addendum.

3. Permitted Uses and Disclosures by the Business Associate.

a. Business Associate may use or disclose PHI:

(i) for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; provided, however, either (A) the disclosures are required by law, or (B) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) as required by law;

(iii) for Data Aggregation services relating to the health care operations of the Covered Entity;

(iv) to de-identify, consistent with 45 CFR 164.514(a) – (c), PHI it receives from the Covered Entity. If the Business Associates de-identifies the PHI it receives from the Covered Entity, the Business Associate may use the de-identified information for any purpose not prohibited by the HIPAA Rules; and

(v) for any other purpose listed here: carrying out the Business Associate's duties under the Contract.

b. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

c. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity except for the specific uses and disclosures described above in 3(a)(i) and (iii).

4. Covered Entity's Obligations

Covered entity agrees to

a. use its Security Measures to reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of PHI transmitted to the Business Associate under the Agreement until the PHI is received by the Business Associate.

b. provide the Business Associate with a copy of its Notice of Privacy Practices and must notify the Business Associate of any limitations in the Notice of Privacy Practices of the Covered Entity under 45 CFR 164.520 to the extent that such limitation may affect the Business Associate's use or disclosure of PHI.

c. notify the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose the individual's PHI to the extent that such changes may affect the Business Associate's use or disclosure of PHI.

d. notify the Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

5. Term. This Addendum must continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Rules, whichever first occurs.

6. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by the Business Associate of any provision of this Addendum, as determined by the Covered Entity, constitutes a material breach of the Addendum and is grounds for termination of the Contract by the Covered Entity under the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following apply to termination for breach of this Addendum, subject to 6.b.:

(i) Default. If the Business Associate refuses or fails to timely perform any of the provisions of this Addendum, the Covered Entity may notify the Business Associate in writing of the non-performance, and if not corrected within thirty days, the Covered Entity may immediately terminate the Contract. Business Associate must continue performance of the Contract to the extent it is not terminated.

(ii) Associate's Duties. Notwithstanding termination of the Contract, and subject to any directions from the Covered Entity, the Business Associate must timely, reasonably and necessarily act to protect and preserve property in the possession of the Business Associate in which the Covered Entity has an interest.

(iii) Compensation. Payment for completed performance delivered and accepted by the Covered Entity must be at the Contract price.

(iv) Erroneous Termination for Default. If the Covered Entity terminates the Contract under Section 6(a) and after such termination it is determined, for any reason, that the Business Associate was not in default, or that the Business Associate's action/inaction was excusable, such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the Contract had been terminated for convenience.

b. Reasonable Steps to Cure Breach. If the Covered Entity knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract under Section 6(a), then the Covered Entity must notify the Business Associate of the pattern of activity or practice. The Business Associate must then take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate's efforts to cure such breach or end such violation are unsuccessful, the Covered Entity must either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, the Covered Entity must report the Business Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination. After termination of this Agreement for any reason, the Business Associate, with respect to PHI it received from the Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, must:

(i) retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the remaining PHI that the Business Associate still maintains in any form;

(iii) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as the Business Associate retains the PHI;

(iv) not use or disclose the PHI retained by the Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3(a)(1) which applied before termination; and

(v) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the PHI retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.

7. No Waiver of Immunity. The parties do not intend to waive any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law.

8. Data Ownership. The Business Associate has no ownership rights in the PHI. The covered entity retains all ownership rights of the PHI.

9. Disclaimer. The Covered Entity makes no warranty or representation that compliance by the Business Associate with this Addendum, HIPAA or the HIPAA Rules will be adequate or satisfactory for the Business Associate's own purposes. Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

10. Certification. If the Covered Entity determines an examination is necessary to comply with the Covered Entity's legal obligations under HIPAA relating to certification of its security practices, the Covered Entity or its authorized agents or contractors, may, at the Covered Entity's expense, examine the Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which the

Business Associate's security safeguards comply with HIPAA, the HIPAA Rules or this Addendum.

11. Amendment.

a. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and the HIPAA Rules. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA and the HIPAA Rules. Either party may terminate the Agreement upon thirty days written notice if (i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Covered Entity under this Section or (ii) the Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Rules.

12. Assistance in Litigation or Administrative Proceedings. Business Associate must make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, if someone commences litigation or administrative proceedings against the Covered Entity, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA or the HIPAA Rules relating to the Business Associate's or its subcontractors use or disclosure of PHI under this Agreement, except where the Business Associate or its subcontractor, employee or agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer any rights, remedies, obligations or liabilities upon any person other than the Covered Entity, the Business Associate and their respective successors or assigns.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract must remain in force and effect. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Business Associate and the Covered Entity expressly waive any claim or defense that this Addendum is not part of the Contract.

15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of the Contract. Together, this Addendum and each separate Contract constitute the "Agreement" of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Rules. The provisions of this Addendum must prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract must be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Rules. The parties agree that any ambiguity

in this Addendum must be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Rules. This Addendum supersedes and replaces any previous separately executed HIPAA addendum between the parties. If this Addendum conflicts with the mandatory provisions of the HIPAA Rules, then the HIPAA Rules control. Where the provisions of this Addendum differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Addendum control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything in this Addendum to the contrary, the Business Associate's obligations under Section 6(d) and record retention laws ("Effect of Termination") and Section 13 ("No Third Party Beneficiaries") survive termination of this Addendum and are enforceable by the Covered Entity if the Business Associate fails to perform or comply with this Addendum.

18. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals identified in the Contract must be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are designated as the parties' respective representatives for purposes of this Addendum. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department and Division: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business Associate Representative:

Name: Kathryn A. Kendall  
Title: Executive VP  
Department and Division: Corporate  
Address: 5160 Falcon View Ave. SE  
Grand Rapids, MI 49512  
\_\_\_\_\_

Any notice given to a party under this Addendum must be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3<sup>rd</sup>) Business Day after being sent by certified or registered mail.

**Business Associate**

[INSERT NAME] DK SECURITY

By: Kathryn Kendall

Date: 1/26/16

Print Name: Kathryn A. Kendall, Ph.D.

Title: Executive VP

**Covered Entity**

[INSERT NAME]

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit E**  
 Michigan Department of Health and Human Services  
 WIC Division  
 REPORT OF WIC EBT COMPLIANCE BUY

A. I, \_\_\_\_\_ make the following report knowing that my report may be used as  
 Full Name  
 evidence in an administrative, civil, or criminal court proceeding. On \_\_\_\_\_ at \_\_\_\_\_  
 Date Approx. Time

I entered \_\_\_\_\_  
 Vendor Name Vendor Number  
 located at \_\_\_\_\_  
 Street Address City State

B. I had a Michigan WIC Bridge Card # \_\_\_\_\_ issued by the Michigan Department of  
 Health and Human Services. I had no food items in my possession when I entered the store.

C. I purchased the following items at the prices identified below utilizing the WIC Bridge Card.

Brand Name Package Type, UPC, Package Size and/or Description	Qty.	Price Marke d on	Price Indicated on Shelf or Sign	Price* Determined in Other	Total Actua l	WIC Auth	WIC Unauth
UPC			Shelf				
			Sign				
UPC			Shelf				
			Sign				
UPC			Shelf				
			Sign				
UPC			Shelf				
			Sign				
UPC			Shelf				
			Sign				
UPC			Shelf				
			Sign				

\*If a price was not marked on an item, the shelf, or on a sign, explain at the top of the next page how the actual price was determined.

\*Continued from the chart on the previous page. If a price was not marked on an item, the shelf, or on a sign, please explain below how the actual price was determined.

D. Description of Cashier

\_\_\_\_\_ Male  
\_\_\_\_\_ Female  
\_\_\_\_\_ Hair Color

\_\_\_\_\_ Mustache  
\_\_\_\_\_ Scars  
\_\_\_\_\_ Glasses  
\_\_\_\_\_ Beard  
\_\_\_\_\_ Tattoo  
\_\_\_\_\_ Other (describe)

Cashier's Name (if known): \_\_\_\_\_ Means of Determining Name: \_\_\_\_\_

1. The cashier used a cash register or calculator in this transaction. Yes No (Circle One)  
If the answer is no, please explain further in Part E.
2. The cashier gave me a receipt. Yes No (Circle One)  
If "yes", then please enter the total amount shown on the receipt. \$ \_\_\_\_\_

E. Additional Comments or Observations

Per the request of MDHHS, I attempted to purchase unauthorized items, I was successful/unsuccessful in purchasing

\_\_\_\_\_.

- F. Photograph: I took a photograph of the food items purchased. Yes No (Circle One)  
If "no", then please explain below.

G. Certification

I, the undersigned, certify that the statements contained in this report are true and correct to the best of my knowledge and belief, and I would be willing to testify to them in an administrative hearing or in a court of law.

\_\_\_\_\_

Signature Date Time

Full Name (please print) \_\_\_\_\_

Employer Name (please print)

H. Special Buys

If during the course of this investigation, the investigator observes the following activities or circumstances in or around the store they are investigating, they are instructed to attempt to expand the scope of the investigation, as indicated below, in a manner that will not compromise the underlying investigation, and following established investigation protocols.

- I observed other WIC clients taking non WIC items to the register and paying for them with their WIC card. Based on the activity I observed, I attempted a similar transaction.
  
- I observed store personnel acting in a manner that caused me to believe the store would be willing to allow the purchase of unauthorized items with WIC benefits. Based on the activity observed, I attempted to purchase unauthorized items in a similar manner.
  
- I observed WIC clients and/or store personnel acting in a manner that caused me to believe the store would be willing to trade with infant formula, whether for cash or unauthorized items. Based on my observations, I attempted to use my infant formula benefits to make a trade.
  
- I observed multiple WIC/SNAP cards sitting on a register or a nearby counter, so I asked the cashier if they would buy my WIC benefits. Based on the response that they were willing, I sold my WIC benefits for cash.
  
- I did not witness anything that I believed would justify a special buy.

**Additional Requests**

- Per the request of MDCH, I attempted to sell formula. I was successful/unsuccessful.
  
- Per the request of MDCH, I attempted to sell/exchange my fruit and vegetables benefits for an unauthorized item. I was successful/unsuccessful.

**Additional Comments or Observations**

Please provide a detailed description of the Special Buy and attach all supporting documentation obtained in the transaction. Include a detailed summary of your observations, the action you took, and the results of the Special Buy. (Add additional pages if necessary)

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Items received in the above transaction: \_\_\_\_\_

Compliance Investigator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit F

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

WIC PROGRAM

Compliance Buy Donation Report

I certify that I donated the below-listed food items purchased on \_\_\_\_\_ Date of Buy  
from \_\_\_\_\_ to \_\_\_\_\_  
Vendor Name Vendor Number  
\_\_\_\_\_  
Name of Non-Profit Organization

Items from Section C of Compliance Buy Report	Number of Items

\_\_\_\_\_  
Signature of Donator

\_\_\_\_\_  
Date of Donation