

MEMORANDUM OF UNDERSTANDING NUMBER:
Between
THE STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
And

PARTNER / ENTITY NAME	PRIMARY CONTACT
EMAIL	TELEPHONE - -

MDHHS CONTACT	NAME Bethany Cabanaw	TELEPHONE 517-896-9950	EMAIL cabanawb2@michigan.gov
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MEMORANDUM OF UNDERSTANDING SUMMARY	
BRIEF DESCRIPTION OF PURPOSE	The purpose of this MOU is to establish the terms and conditions under which the Contractor will provide low-cost prepared meals and healthy options to eligible program participants in the Michigan Department of Health and Human Services (MDHHS) Food Assistance Program (FAP). Approved FAP recipients, who are authorized by MDHHS, will use their FAP benefits loaded onto their Bridge Card to purchase meals from the Contractor.
BEGIN DATE	END DATE (To be completed by MDHHS)

The individual or officer signing this agreement certifies by his or her signature that he or she is authorized to sign this agreement on behalf of the responsible governing board, official or agency.

Signature of Authorized Designee

Print Name / Title

Date

Michigan Department of Health and Human Services

Signature of Director or Authorized Designee

Jeanette Hensler
Director-Grants Division, Bureau of Grants and Purchasing
Print Name / Title

Date

Memorandum of Understanding Number:

This Memorandum of Understanding (MOU) establishes the responsibilities and procedures for the Michigan Department of Health and Human Services (MDHHS) and the for the purpose described below.

1. Background

The Restaurant Meal Program (RMP) is a nutrition assistance program that allows certain participants to use their Electronic Benefit Transfer (EBT) Bridge card to purchase prepared meals from participating restaurants, who enter into a MOU with MDHHS and meets all the United States Department of Agriculture Food Nutrition Services (USDA FNS) program criteria. The RMP allows certain vulnerable populations to utilize their Food Assistance Program (FAP) benefits for prepared meals.

2. Purpose

The Purpose of this MOU is to establish the terms and conditions under which the Contractor will provide low-cost prepared meals and offer healthy options to eligible program participants in the MDHHS Food Assistance Program (FAP) for the following types of recipients, who have been authorized by the MDHHS to use Food Assistance benefits using their Michigan Bridge Card to purchase meals from the Contractor:

- a. Eligible individuals 60 years of age or over and/or,
- b. Eligible disabled individuals and/or,
- c. Eligible homeless individuals.

Eligible participants will have an indicator coded into the Bridge card, which will allow for payment for the low-cost meal.

3. Period of Agreement

This MOU becomes effective on the date signed by both parties through 60 calendar months from the signature date. A renewal of this MOU will be required each 60-month period.

4. Work Statement of Each Party

MDHHS shall:

- a. Certify homeless, elderly, and disabled participants of the FAP as eligible to purchase low-cost discount meals with FAP benefits in restaurants that have been certified by the USDA FNS and have entered into an MOU with MDHHS for this purpose.
- b. Provide information on the availability of the RMP and maintain the names and addresses of participating restaurants on the michigan.gov/mdhhs website.
- c. Issue to each eligible FAP recipient a Bridge EBT card.
- d. MDHHS shall note on this MOU the date that USDA FNS authorizes the Contractor to participate in the SNAP Program for Communal Dining Facilities.
- e. Meet with the Contractor to resolve any non-compliance issues, as needed.

The Contractor, whose principal place of business is at

to provide dining services at

shall:

- a. Provide low-cost or discount meals for breakfast, lunch and/or dinner during regular hours to eligible homeless, elderly, and disabled FAP participants.
 - Low-cost meals are defined as meals that cost less than what would be charged to customers not using FAP; or
 - Discount meals are defined as meals already offered to certain consumers or advertised special (i.e.: breakfast, lunch and/or dinner combination meals) or sale priced meals, offered to all customers.
 - At the time of signature of this agreement, the price of such meals will not exceed approximately for breakfast or for lunch or dinner.
 - Have sit-down seating available. (Unless prohibited by a public health order that would only allow delivery or takeout.)
- b. Provide meals to all eligible patrons under this MOU without regard to race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual preference, gender identity.
- c. Collect payment from patrons eligible under this MOU through the EBT System.
- d. Post a sign, in a manner and place described by MDHHS, informing the general public of the Contractor's participation on the RMP and include references to nondiscrimination statutes and regulations.
- e. Not include a service gratuity in the cost of the low-cost meals. The Contractor is further prohibited from charging sales or meals tax to any eligible household who used FAP benefits to purchase a low-cost meal.
- f. Not accept FAP benefits for the purchase of alcoholic beverages.
- g. Must abide by the rules and regulations of the USDA FNS regarding the SNAP program benefit acceptance and redemption. In addition to this MOU, the Contractor must complete and submit an application for authorization to participate in the SNAP Program for Communal Dining Facilities (Form FNS-252-2) with the USDA FNS. Contractor must notify MDHHS once such authorization is received and provide MDHHS with a copy of the certification document.
This MOU is contingent upon the Contractor certification by the USDA FNS to participate in the RMP.
- h. Comply with all local, state, and federal health and safety regulations pertaining to retail food operations. The Contractor must maintain a public health operating permit and must provide a copy of such current permit.
- i. Install EBT equipment and/or software from an EBT certified processor and be available to service RMP participants within 60 days of notification from MDHHS acknowledging USDA FNS certification.
- j. Save and hold harmless MDHHS from any and all claims or suits arising out of injury to or death of a patron caused by any action or service of food preparation by the contractors, officers, employees, or agents.

Memorandum of Understanding Number:

Each party shall furnish all labor, equipment, materials, and supplies necessary for the performance of the MOU activities, and meet operational standards, unless otherwise specified above.

5. Termination & Amendments

Either party may terminate this MOU at any time by giving 30 days prior written notice to the other party. This MOU may be amended upon written approval of both parties at any time. The failure of either party to comply with the terms of the MOU shall be grounds for an immediate termination of the MOU. Notice of immediate termination by either party shall be by certified letter addressed to the parties named below.

In the event that USDA FNS revokes authorization this MOU shall terminate effective the date of USDA FNS’s revocation.

This MOU contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this MOU will be deemed to exist or to bind either of the parties.

6. Notices

All notices and other communications required or permitted under this MOU 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 MDHHS:	If to :
<i>Bethany Cabanaw</i>	<i>[Name]</i>
<i>State SNAP Manager</i>	<i>[Title]</i>
<i>Cabanawb2@michigan.gov</i>	<i>[Email]</i>
<i>(517) 896-9950</i>	<i>[Phone]</i>

7. Reserved

8. MDHHS Data

All data and information provided to _____ by or on behalf of MDHHS, and all data and information derived therefrom, is the exclusive property of MDHHS (“MDHHS Data”); this definition is to be construed as broadly as possible. Upon request, _____ must provide to MDHHS, or a third party designated by MDHHS, all MDHHS Data within 10 calendar days of the _____

Memorandum of Understanding Number:

request and in the format requested by MDHHS. will assume all costs incurred in compiling and supplying MDHHS Data. No MDHHS Data may be used for any marketing purposes.

shall comply with all MDHHS physical and IT security policies and standards which will be made available upon request.

9. 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 MOU.

a. Meaning of Confidential Information. For the purposes of this MOU, the term “Confidential Information” means all information and documentation of either party that:

- 1) Has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party;
- 2) 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;
- 3) Should reasonably be recognized as confidential information of the disclosing party;
- 4) Is unpublished or not available to the general public; or
- 5) Is designated by law as confidential.

The term “Confidential Information” does not include any information or documentation that was:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights;
- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality;
- 5) 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 MOU, in all cases and for all matters, MDHHS Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree that they will use Confidential Information solely for the purposes of this MOU. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or

Memorandum of Understanding Number:

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 MOU or to use such Confidential Information for any purposes whatsoever other than the performance of this MOU. 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 when all of the following are met:

- 1) Use of a subcontractor is authorized under this MOU;
- 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
- 3) _____ obligates the subcontractor in a written contract to maintain MDHHS's Confidential Information in confidence.

At MDHHS's request, any employee of _____ 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. Each party must notify the other party within one business day after discovering any unauthorized use or disclosure of Confidential Information. Each party will cooperate with the other party to regain possession of Confidential Information, to prevent further unauthorized use or disclosure of Confidential information, and to notify any appropriate person of the unauthorized use or disclosure of Confidential Information. In addition, 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 MOU 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 MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, of this MOU or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this MOU or a Statement of Work, in whole or in part, each party must, within five calendar days from the date of termination, return to the other party any and all Confidential Information received

Memorandum of Understanding Number:

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 _____ must return MDHHS Data to MDHHS following the timeframe and procedure described further in this MOU. Should _____ or MDHHS determine that the return of any non-MDHHS Data Confidential Information is not feasible, such party must destroy the non-MDHHS Data Confidential Information and must certify the same in writing within five calendar days from the date of termination to the other party.

10. Compliance with Laws

_____ must comply with all applicable federal, state, and local laws, administrative rules and regulations.

11. 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., _____ 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 MOU.

12. Unfair Labor Practice

Under MCL 423.324, MDHHS may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

13. Governing Law

This MOU is exclusively governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this MOU are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this MOU must be resolved in Michigan Court of Claims. _____ consents to venue in the Michigan Court of Claims, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. _____ must appoint agents in Michigan to receive service of process.

14. Force Majeure

Neither party will be in breach of this MOU 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. _____ will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, MDHHS may immediately contract with a third party.

15. Dispute Resolution

The parties will endeavor to resolve any MOU dispute in accordance with this provision. The dispute will be referred to the parties' respective 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.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' respective senior executive, and either senior executive 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 MDHHS's right to terminate the MOU.

16. Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the MOU or project to which it relates must not be made without prior written MDHHS approval, and then only in accordance with the explicit written instructions of MDHHS.

17. Website Incorporation

MDHHS is not bound by any content on _____'s website unless expressly incorporated directly into this MOU. MDHHS is not bound by any end user license agreement or terms of use unless specifically incorporated into this MOU or any other agreement signed by MDHHS.

18. Severability

If any part of this MOU is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this MOU and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining MOU will continue in full force and effect.

19. Waiver

Failure to enforce any provision of this MOU will not constitute a waiver.

20. Survival

The provisions of this MOU that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this MOU.

21. Entire MOU

This MOU is the entire agreement and replaces all previous agreements between the parties for the MOU Activities.