

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DONALD AGEE, JR., an individual, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*,

Defendants.

Case No. 1:22-cv-00272

**Three-Judge Panel Appointed
Pursuant to 28 U.S.C. § 2284(a)**

PLAINTIFFS’ OBJECTION TO PROPOSED SPECIAL MASTER BERNARD GROFMAN

Plaintiffs submit the following objection to the Court’s proposed special master, Bernard Grofman, Ph.D. (“Dr. Grofman”), pursuant to the Scheduling Order Regarding Redistricting, which invited the parties to submit written objections if they believed that “Dr. Grofman has a conflict of interest that would disqualify him for serving as Reviewing Special Master, or that his appointment is otherwise objectionable[.]” (ECF No. 156). As set forth below, Dr. Grofman has numerous conflicts of interest that require his disqualification:

Summary of Objection

1. Dr. Grofman has extensive ties with both the Commission’s legal counsel at Baker Hostetler and with the Commission’s VRA expert, Dr. Lisa Handley. Indeed, Dr. Grofman has co-authored more than two-dozen works with Dr. Handley, including one article that the Commission recently credited as “pioneering” the same

racial-target methodology this Court roundly rejected in its opinion invalidating the Senate and House districts at issue in this case. Due to these deep professional and philosophical ties, Plaintiffs question Dr. Grofman's objectivity. More important, these ties and shared philosophy should disqualify Dr. Grofman as the proposed "Reviewing Special Master," tasked with evaluating the remedial maps for legal violations, since his VRA approach is identical to the one this Court has already criticized and rejected.

Specific Objections to Dr. Grofman

2. In the Scheduling Order Regarding Redistricting, the Court indicated it intends to appoint Dr. Grofman to serve as the "Reviewing Special Master" whose task will be to "evaluate the Commission's remedial plan and to advise the court as to whether, in his opinion, that plan lawfully remedies the constitutional violations identified in this court's December 21, 2023, opinion and order" (the "Opinion") and "also advise the court regarding Dr. Barber's plan in the event that the court asks him to do so." (ECF No. 156, PageID.5151).

3. Plaintiffs object to using Dr. Grofman in that role, as he has written and worked extensively with Dr. Handley, whom this Court largely discredited in its Opinion due to her flawed VRA approach, which included setting fixed BVAP targets for each district. ECF No. 131, PageID.4705 (noting that limiting the "black voting age population"—known as 'BVAP' in redistricting jargon—to approximately 35-45%" is a "proposition... without support in the Supreme Court's VRA caselaw"). The Court also criticized Dr. Handley's repeated advice to the Commission that Black voters

would be able to elect their candidates of choice based on general election data alone and concluded this advice was a “grave disservice to everyone involved with this case, above all the voters themselves.” *Id.* at PageID.4817.

4. Notably, Dr. Grofman’s name appears *27 times* on Dr. Handley’s Curriculum Vitae. (Exhibit A, EDS Contract w/ Dr. Handley’s Curriculum Vitae, pg. 109-111).¹ The two have written more than two dozen books and articles together, including numerous VRA-related publications on the very subject at issue in this case, including “Minority Success in Non-Majority Minority Districts: Finding the ‘Sweet Spot’” and “Minority Voting Equality: the 65 Percent Rule in Theory and Practice.” *Id.* They also wrote an amicus brief to the United States Supreme Court (along with the Commission’s other proposed special master candidate, Nathaniel Persily) in *Bartlett v. Strickland*, 556 U.S. 1 (2009). *Id.* It is not realistic to expect that Dr. Grofman will be able to provide an independent review of the Commission’s and Dr. Handley’s going-forward work because Dr. Grofman and Dr. Handley share the same philosophy when it comes to the VRA and Black voters.

5. Dr. Grofman also has professional ties with the Commission’s legal counsel at Baker Hostetler—in particular, Mark Braden, who previously served as litigation counsel and defended the Commission’s VRA-justified map-drawing approach at trial, but who is now transitioning to the Commission’s VRA counsel.

¹ Exhibit A is publicly available on the Commission’s website:

https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/ContractsAndBids/MICRC_Election_Data_Services_Contract.pdf?rev=e83bcac97a994be09523471f19c9a222&hash=7C0BEC8D8A47C8BBA2EDADD9312B5CB7

Mr. Braden wrote a chapter in a book co-authored by Dr. Grofman entitled *Election Reform in the United States after Bush v. Gore*, eds. Grofman & Alvarez, Chapter: “Entering the Political Thicket” (Cambridge University Press, 2013).² Again, it is not realistic to expect that Dr. Grofman will provide objective criticism of VRA work done by Mr. Braden and Dr. Handley.

6. Plaintiffs are gravely concerned about Dr. Grofman’s perceived bias due to these relationships. But that concern is dwarfed by the real problem, which is that Dr. Grofman will continue to espouse the same ill-fated VRA analysis that plagued the Commission to date. In fact, in the Commission’s Supreme Court Emergency Application for Stay, it defended the “racial target” approach it employed during the map-drawing process *by citing to an article authored by Dr. Handley and Dr. Grofman*, whom the Commission credits with “pioneering” the Commission’s approach:

Dr. Handley and Mr. Adelson advised the Commission not to pick “an arbitrary demographic target (e.g., 50% black voting age population) for all minority districts across the jurisdiction,” but instead to look to “[a] district-specific, functional analysis . . . to determine if a proposed district will provide minority voters with the ability to elect minority-preferred candidates to office.” App. 247a; see App. 008a–09a. *To that end, Dr. Handley utilized the method she developed in the pioneering article Grofman, Handley, & Lublin, Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C.L. Rev. 1383 (2000–2001). . . This method uses a mathematical formula that accounts for levels of black cohesion, white crossover voting, and turnout by race to calculate the percentage BVAP at which districts would afford black voters in the area a realistic opportunity to elect their candidates of choice... Dr. Handley determined that BVAP percentage to be 35% in Wayne County and 40% in Oakland County.

² <https://www.bakerlaw.com/professionals/e-mark-braden/>, last visited January 11, 2024.

(Exhibit B, 1/9/2024 Application for Stay, p. 11) (emphasis added).

7. In other words, the Commission credits Dr. Grofman with inventing the exact methodology this Court deemed invalid. ECF No. 131, PageID.4705 (noting that limiting the “black voting age population”—known as ‘BVAP’ in redistricting jargon—to approximately 35-45%” is a “proposition [that] is without support in the Supreme Court’s VRA caselaw”).

8. Despite knowing the Court had already emphatically rejected Dr. Grofman’s redistricting theory, and that Dr. Grofman and Dr. Handley were of the same ilk, the Commission listed Dr. Grofman on its initial list of special master candidates anyway. (Exhibit C, Email dated Jan. 4, 2024 at 2:16 pm). That approach is consistent with the Commission’s decision to continue relying on Dr. Handley as its VRA expert, to retain Mr. Braden as its VRA attorney, and to attack this Court’s VRA reasoning in the Supreme Court Application for Stay.³ In response to the Court’s ruling, the Commission and its advisors are unrepentant.

³ The Commission—including its new VRA counsel, Mr. Braden, who appears as counsel on the Commission’s Emergency Application for Stay filed last week in the U.S. Supreme Court—wrongly accuses this Court of (1) failing to “examine Dr. Handley’s polarization analysis or identify any error of methodology (or anything else) in it,” (2) ignoring “the evidence before the Commission that Detroit-area districts did not need BVAP majorities to enable black voters to elect candidates of their choosing, due to white crossover voting,” (3) “inexplicably claim[ing] in its stay ruling that ‘the Commission had no data indicating how African American candidates of choice performed in the Democratic primaries in Detroit,’” (4) “oddly announc[ing] that ‘everyone agrees’ the primary elections supply the relevant information, which was not true and clearly erroneous,” and (5) suggesting that the Commission should have used higher BVAP targets when such an approach “cuts against everything [the Supreme] Court has said in recent years about narrow tailoring.” (Exhibit B, 1/9/2024 Emergency App. for Stay, pp. 28–33) (citations omitted).

9. Importantly, the Court has admonished the Commission to ensure this same, discredited VRA approach is *not* employed going forward:

JUDGE KETHLEDGE: So, the Commission has retained your firm as VRA - replacement VRA counsel; is that correct? ... [M]y concern or at least something I want to get reassurance about is that, you know, we just adjudicated these lines unconstitutional. We made a determination, which is unchallenged apparently, that these lines were drawn predominately based on race, and we made a determination that racial line drawing was not supported by a compelling interest and that it wasn't narrowly tailored. We made that determination. That part it looks like is being challenged, and that's fine... *I'll be candid with you, I mean, a concern I have is whether the Commission is going to get the same legal advice that it got before which led it to adopt racial targets of 35 to -- racial caps, frankly, of 35 to 45 percent of African American voters in these districts, and I guess that's my concern. Are they going to -- the Supreme Court is being told [in the Commission's appeal papers] that's fine and the VRA somehow requires that, and are these commissioners again going to be told what they were told before, that you have to stay within this range or else it's going to violate the VRA? . . . I'm concerned about that... I -- I just -- I would be gravely concerned, having read the thousands of pages that I read for the commission's proceedings, if we start seeing anything like the same advice being given to the Commission that lead us here.*

(1/5/2024 Hrg. Trans., pg. 43-44, ECF No. 155, PageID.5117-18) (emphasis added).

The Commission's decision to continue using Dr. Handley and to retain Mr. Braden heightens the concern that the same VRA advice will be recycled to the Commission. And Dr. Grofman's appointment as the "Reviewing" Special Master, despite sharing the same views as Dr. Handley and Mr. Braden, ensures that the Court will receive no truly independent analysis of that discredited approach.

10. It is worth noting that in the Commission's Supreme Court Application for Stay, the Commission faults this Court for not providing guidance as to what is expected for VRA compliance purposes moving forward—seemingly looking to *the Court* to serve as the Commission's VRA expert and provide it with a legal memorandum in the form of an inappropriate advisory opinion by the judicial branch.

(Exhibit B, 1/9/2024 Application for Stay, pp. 5-6.) The Commission told the Supreme Court that the remedial phase here will be “uniquely difficult because the district court did not identify what federal law requires in this instance—whether it be 15 majority-minority districts; some smaller number of supermajority districts; or a race-blind draw,” going so far as accusing the Court of setting “the Commission out to sea in a rudderless boat” due to a lack of VRA guidance for its future remedial work. *Id.* Plaintiffs agree that the Commission is currently functioning like a rudderless boat. But Dr. Grofman is not the captain likely to right the course. He is a professional colleague and shares the same VRA philosophy as the two VRA experts who already guided the Commission boat into the rocks.

11. Lastly, in addition to their substantive objections, Plaintiffs have a logistical concern regarding Dr. Grofman. During the parties’ recent court-ordered meet and confer, the Commission proposed Dr. Grofman as a potential special master candidate, then voluntarily removed him from the Commission’s list because when the Commission’s counsel reached out to him to inquire as to his availability, Dr. Grofman responded that he did not have time for the engagement because he was recently appointed as the special master in the Wisconsin redistricting dispute. (“I put [Dr. Grofman] as an honorable mention. We were unable to confirm his availability.”) (1/5/2024 Hrg. Trans., pg. 64-65, ECF No. 155, PageID.5138-39). According to the appointment order from that case, this does appear to be the case, as Dr. Grofman is required to submit his written report to that court by February 1, 2024. (Exhibit D, Order Appointing Bernard Grofman and Jonathan Cervas dated

Dec. 23, 2023, pg. 4). As a result, it appears Dr. Grofman is unavailable to assist in this matter due to the urgent timeline required—wholly aside from this relational and philosophical conflicts.

Dated: January 16, 2024

Respectfully submitted,

/s/ Jennifer K. Green

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James J. Fleming (P84490)

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UNITED STATES DISTRICT COURT
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INDEX OF EXHIBITS – PLAINTIFFS’ OBJECTION TO PROPOSED SPECIAL MASTER BERNARD GROFMAN

<u>Exhibit</u>	<u>Description</u>
A	EDS Contract w/ Dr. Handley’s Curriculum Vitae
B	Emergency App. for Stay dated January 9, 2024
C	Email dated January 4, 2024 at 2:16 pm
D	Order Appointing Bernard Grofman and Jonathan Cervas dated December 23, 2023

EXHIBIT A



Michigan Independent Citizen Redistricting Commission

430 West Allegan
Lansing, MI 48918

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **920, 21000000625**

between

THE MICHIGAN INDEPENDENT CITIZEN
REDISTRICTING COMMISSION

and

CONTRACTOR	Election Data Services
	6171 Emerywood Court
	Manassas, VA
	Kimball Brace
	202.789.2004
	KBrace@electiondataservices.com
	VS0189703

COMMISSION	Program Manager	Suann Hammersmith	MICRC
		517.331.6386	
		hammersmiths@michigan.gov	
	Contract Administrator	Suann Hammersmith	MICRC
517.331.6386			
hammersmiths@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Line Drawing and Redistricting Technical Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 17, 2021	February 28, 2022	2, 1 year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 / 2% discount if paid within 15 days after receipt of invoice			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$989,000.00

CONTRACT NO. 920, 210000000625

FOR THE CONTRACTOR:

Election Data Services
Company Name

Kim Brace
Authorized Agent Signature

Kim Brace
Authorized Agent (Print or Type)

5/17/21
Date

FOR THE STATE:

Rebecca Szeftela
Signature

Rebecca Szeftela, Vice Chair Acting as
Name & Title Chair in Chair's Absence

Michigan Independent Citizen Redistricting Commission
Agency

5/25/21
Date



STATE OF MICHIGAN
INDEPENDENT CITIZENS REDISTRICTING COMMISSION

CONTRACT STANDARD TERMS

Contract # 920, 21000000625

This STANDARD CONTRACT (“**Contract**”) is agreed to between the Michigan Independent Redistricting Commission of Michigan (the “**Commission**”) and Election Data Services, Inc (“**Contractor**”), a Virginia corporation. This Contract is effective on May 17, 2021 (“**Effective Date**”), and unless terminated, expires on February 28, 2022.

This Contract may be renewed for up to two (2) additional (1) year period(s). Renewal is at the sole discretion of the ICRC and will automatically extend the Term of this Contract. The Commission will document its exercise of renewal options via Contract Change Notice.]

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule 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 Schedule 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 Commission’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the Commission, including the Commission’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the Commission any Commission-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 Commission; (i) assign to the Commission any claims resulting from Commission 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 Commission physical and IT security policies and standards which will be made available upon request; and (k) provide the Commission 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 of Michigan property by wearing identification issued by the State of Michigan, and clearly identify themselves whenever making contact with the State of Michigan or Commission.

- 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.



STATE OF MICHIGAN
 INDEPENDENT CITIZENS REDISTRICTING COMMISSION

CONTRACT STANDARD TERMS

If to Commission:	If to Contractor:
Suann Hammersmith c/o ICRC 430 West Allegan Lansing, MI 48918 hammersmiths@michigan.gov 517.331.6386	Kimball Brace 6171 Emerywood Court Manassas, VA 20112 kbrace@electiondataservices.com 703.580.7267

Contract Administrator. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

Commission:	Contractor:
Suann Hammersmith c/o ICRC 430 West Allegan Lansing, MI 48918 hammersmiths@michigan.gov 517.331.6386	Kimball Brace 6171 Emerywood Court Manassas, VA 20112 kbrace@electiondataservices.com 703.580.7267

3. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

Commission:	Contractor:
Suann Hammersmith c/o ICRC 430 West Allegan Lansing, MI 48918 hammersmiths@michigan.gov 517.331.6386	Kimball Brace 6171 Emerywood Court Manassas, VA 20112 kbrace@electiondataservices.com 703.580.7267

4. Performance Guarantee. Contractor must at all times have financial resources sufficient, in the opinion of the Commission, to ensure performance of the Contract and must provide proof upon request. The Commission may require a performance bond (as specified in Schedule A – Statement of Work) if, in the opinion of the Commission, it will ensure performance of the Contract.

5. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the Commission 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 Commission; 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.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan Independent Citizens Redistricting Commission, its 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.



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Required Limits	Additional Requirements
Deductible Maximum: \$50,000 Each Occurrence	
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan Independent Citizens Redistricting Commission, its officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (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 five (5) business days if any insurance is cancelled; and (d) waive all rights against the Commission for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the Commission).

6. Reserved

7. Reserved

8. 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 Commission. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the Commission, is responsible for the payment of wages, benefits and



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taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

Contractor hereby acknowledges that the Commission is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the Commission, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

- 9. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the Commission. Contractor must notify the Commission at least 90 calendar days before the proposed delegation and provide the Commission 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 Commission, in its sole discretion, may require the replacement of any subcontractor.
- 10. Staffing.** The Commission's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 11. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, 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 Commission and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The Commission, in its sole discretion, may also perform background checks.
- 12. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the Commission. Upon notice to Contractor, the Commission, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the Commission determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 13. Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the Commission 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



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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.

- 14. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 15. Acceptance.** Contract Activities are subject to inspection and testing by the Commission within 30 calendar days of the Commission's receipt of them ("**Commission Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the Commission, the Commission will notify Contractor by the end of the Commission 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 Commission 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 22, 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 Commission. 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 Commission may cancel the order in whole or in part. The Commission, or a third party identified by the Commission, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 16. Reserved**
- 17. Reserved**
- 18. Reserved**
- 19. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the Commission. All undisputed amounts are payable within 45 days of the Commission's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The Commission 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 Commission's exclusive use. All prices are exclusive 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 Commission under this Contract.

The Commission has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The Commission will notify Contractor of any dispute within a reasonable time. Payment by the Commission 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 Commission constitutes a waiver of all claims by



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Contractor against the Commission for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

Payment Schedule for each of the project deliverables is indicated in Schedule B

The Commission will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the Commission at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the Commission is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the Commission 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 Commission to Contractor under this Contract.

- 20. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 21. Stop Work Order.** The Commission may suspend any or all activities under the Contract at any time. The Commission will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 7 calendar days, or any longer period agreed to by Contractor, the Commission will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The Commission will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 22. Termination for Cause.** The Commission may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the Commission: (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 Commission 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 Commission terminates this Contract under this Section, the Commission 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 Commission will only pay for amounts due to Contractor for Contract Activities accepted by the Commission on or before the date of termination, subject to the Commission's right to set off any amounts owed by the Contractor for the Commission's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the Commission in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the Commission incurs to procure the Contract Activities from other sources.
- 23. Termination for Convenience.** The Commission 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 24, Transition Responsibilities. If the Commission terminates this Contract for convenience, the Commission will pay all reasonable costs, as determined by the Commission, for Commission approved Transition Responsibilities.



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24. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the Commission (not to exceed **30** calendar days), provide all reasonable transition assistance requested by the Commission, 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 Commission 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 Commission or the Commission's designee; (c) taking all necessary and appropriate steps, or such other action as the Commission may direct, to preserve, maintain, protect, or return to the Commission all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the Commission; (d) transferring title in and delivering to the Commission, at the Commission'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 Commission and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

25. General Indemnification. Contractor must defend, indemnify and hold the Commission, its agents, 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 Commission 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 Commission, demonstrate its financial ability to carry out these obligations.

The Commission 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 Commission deems necessary. Contractor will not, without the Commission'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 Commission employee, official, or law may be involved or challenged, the Commission may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the Commission, or any of its subdivisions under this Section, must be coordinated with the General Counsel of the Commission. An attorney designated to represent the Commission may not do so until approved by the Commission.

26. 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 Commission the right to continue using the equipment,



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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 Commission with appropriate credits to the Commission against Contractor's charges and reimburse the Commission for any losses or costs incurred as a consequence of the Commission ceasing its use and returning it.

- 27. Limitation of Liability and Disclaimer of Damages.** IN NO EVENT WILL THE COMMISSION'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The Commission is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 28. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the Commission and its General Counsel 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.
- 29. Commission Data.** All data and information provided to Contractor by or on behalf of the Commission, and all data and information derived therefrom, is the exclusive property of the Commission ("**Commission Data**"); this definition is to be construed as broadly as possible. The Contractor shall also keep a copy of the Commission Data. Use of the Contractor's copy of the Commission Data is restricted to use for backup purposes and to support requested additional data or work that may arise from any litigation and/or other requests. Upon request, Contractor must provide to the Commission, or a third party designated by the Commission, all Commission Data within 10 calendar days of the request and in the format requested by the Commission. Contractor will assume all costs incurred in compiling and supplying Commission Data. No Commission Data may be used for any marketing purposes.
- 30. Reserved**
- 31. 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



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behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, Commission 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 Commission's Confidential Information in confidence. At the Commission'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 Commission, at the sole election of the Commission, the immediate termination, without liability to the Commission, 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 Commission Data to the Commission following the timeframe and procedure described further in this Contract. Should Contractor or the Commission determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the Commission's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

- 32. Reserved**
- 33. Reserved**
- 34. Reserved**



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- 35. Records Maintenance, Inspection, Examination, and Audit.** The Commission or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the Commission 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 4 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 Commission 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.

- 36. 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 Commission 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 Commission of any material adverse changes; (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; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the Commission to terminate this Contract under Section 22, Termination for Cause.

- 37. 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 Commission 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 Commission 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.

- 38. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

- 39. Reserved**



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- 40. 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, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 41. Unfair Labor Practice.** Under MCL 423.324, the Commission may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 42. 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.
- 43. 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 Commission or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 44. 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 Commission may immediately contract with a third party.
- 45. 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 Commission's right to terminate the Contract.
- 46. 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 Commission approval, and then only in accordance with the explicit written instructions of the Commission.
- 47. Website Incorporation.** The Commission is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.



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- 48. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE COMMISSION FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE COMMISSION, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 49. 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.
- 50. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 51. 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.
- 52. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.



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1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

“**Acceptance**” has the meaning set forth in **Section 9**.

“**Acceptance Tests**” means such tests as may be conducted in accordance with **Section 9** and a Statement of Work to determine whether the Software meets the requirements of this Contract and the Documentation.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

“**Approved Third Party Components**” means all third party components, including Open-Source Components, that are included in or used in connection with the Software and are specifically identified by Contractor in the Contractor’s Bid Response or as part of the State’s Security Accreditation Process defined in Schedule E – Data Security Schedule.

“**Authorized Users**” means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which the State is authorized or required by law to be closed for business.

“**Business Requirements Specification**” means the initial specification setting forth the State’s business requirements regarding the features and functionality of the Software, as set forth in a Statement of Work.

“**Commission**” means the State of Michigan Independent Citizens Redistricting Commission.

“**Confidential Information**” has the meaning set forth in **Section 22.1**.

“**Configuration**” means State-specific changes made to the Software without Source Code or structural data model changes occurring.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in a Statement of Work.

“**Contractor**” has the meaning set forth in the preamble.

“**Contractor’s Bid Response**” means the Contractor’s proposal submitted in response to the RFP.

“**Contractor Hosted**” means the Hosted Services are provided by Contractor or one or more of its Permitted Subcontractors.

“**Contractor Personnel**” means all employees of Contractor or any subcontractors or Permitted Subcontractors involved in the performance of Services hereunder.

“**Contractor Project Manager**” means the individual appointed by Contractor and identified in a Statement of Work to serve as the primary contact with regard to services, to monitor and coordinate the day-to-day activities of this Contract, and to perform other duties as may be further defined in this Contract, including an applicable Statement of Work.



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“**Customization**” means State-specific changes to the Software's underlying Source Code or structural data model changes.

“**Deliverables**” means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in a Statement of Work and all Work Product.

“**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software.

“**DTMB**” means the Michigan Department of Technology, Management and Budget.

“**Effective Date**” has the meaning set forth in the preamble.

“**Fees**” means the fees set forth in the Pricing Schedule attached as **Schedule B**.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, encrypt, modify, copy, or otherwise harm or impede in any manner, any (i) computer, software, firmware, data, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**HIPAA**” has the meaning set forth in **Section 21.1**.

“**Hosted Services**” means the hosting, management and operation of the Operating Environment, Software, other services (including support and subcontracted services), and related resources for remote electronic access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

“**Implementation Plan**” means the schedule included in a Statement of Work setting forth the sequence of events for the performance of Services under a Statement of Work, including the Milestones and Milestone Dates.

“**Integration Testing**” has the meaning set forth in **Section 9.2**.

“**Intellectual Property Rights**” means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

“**Key Personnel**” means any Contractor Personnel identified as key personnel in the Contract.

“**Loss or Losses**” means all losses, including but not limited to, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Maintenance Release**” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or



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other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

"Milestone" means an event or task described in the Implementation Plan under a Statement of Work that must be completed by the corresponding Milestone Date.

"Milestone Date" means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under a Statement of Work.

"New Version" means any new version of the Software, including any updated Documentation, that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number.

"Nonconformity" or **"Nonconformities"** means any failure or failures of the Software to conform to the requirements of this Contract, including any applicable Documentation.

"Open-Source Components" means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

"Operating Environment" means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in a Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software, system architecture, configuration, computing hardware, ancillary equipment, networking, software, firmware, databases, data, and electronic systems (including database management systems).

"PAT" means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software and associated content, conform to WCAG 2.0 Level AA.

"Permitted Subcontractor" means any third party hired by Contractor to perform Services for the State under this Contract or have access to State Data.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"Pricing Schedule" means the schedule attached as **Schedule B**.

"Process" means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

"Representatives" means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

"RFP" means the State's request for proposal designed to solicit responses for Services under this Contract.

"Services" means any of the services, including but not limited to, Hosted Services, Contractor is required to or otherwise does provide under this Contract.



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“**Service Level Agreement**” means the schedule attached as **Schedule D**, setting forth the Support Services Contractor will provide to the State, and the parties’ additional rights and obligations with respect thereto.

“**Site**” means the physical location designated by the State in, or in accordance with, this Contract or a Statement of Work for delivery and installation of the Software.

“**Software**” means Contractor’s software as set forth in a Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Customizations or Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract.

“**Source Code**” means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

“**Specifications**” means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, RFP or Contractor’s Bid Response, if any, for such Software, or elsewhere in a Statement of Work.

“**State**” means the State of Michigan, including the Michigan Independent Citizen Redistricting Commission.

“**State Data**” has the meaning set forth in **Section 21.1**.

“**State Hosted**” means the Hosted Services are not provided by Contractor or one or more of its Permitted Subcontractors.

“**State Materials**” means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

“**State Program Managers**” are the individuals appointed by the State, or their designees, to (a) monitor and coordinate the day-to-day activities of this Contract; (b) co-sign off on Acceptance of the Software and other Deliverables; and (c) perform other duties as may be specified in a Statement of Work Program Managers will be identified in a Statement of Work.

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Statement of Work**” means any statement of work entered into by the parties and incorporated into this Contract. The initial Statement of Work is attached as **Schedule A**.

“**Support Services**” means the software maintenance and support services Contractor is required to or otherwise does provide to the State under the Service Level Agreement.

“**Support Services Commencement Date**” means, with respect to the Software, the date on which the Warranty Period for the Software expires, and fees for support become applicable, or such other date as may be set forth in a Statement of Work.



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“**Technical Specification**” means, with respect to any Software, the document setting forth the technical specifications for such Software and included in a Statement of Work.

“**Term**” has the meaning set forth in the preamble.

“**Testing Period**” has the meaning set forth in **Section 9.1(b)**.

“**User Data**” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, Processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input without the inclusion of user derived Information or additional user input.

“**Warranty Period**” means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software and for which Support Services are provided free of charge.

“**WCAG 2.0 Level AA**” means level AA of the World Wide Web Consortium Web Content Accessibility Guidelines version 2.0.

“**Work Product**” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to Customizations, application programming interfaces, computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. **Reserved**

3. **Reserved**

4. **Reserved**

5. **Software License.**

5.1 **Perpetual License.** If Contractor is providing the State with a license to use its Software indefinitely, then Contractor hereby grants to the State and its Authorized Users a non-exclusive, royalty-free, perpetual, irrevocable right and license to use the Software and Documentation in accordance with the terms and conditions of this Contract, provided that:

(a) The State is prohibited from reverse engineering or decompiling the Software, making derivative works, modifying, adapting or copying the Software except as is expressly permitted by this Contract or required to be permitted by law;

(b) The State is authorized to make copies of the Software for backup, disaster recovery, and archival purposes;

(c) The State is authorized to make copies of the Software to establish a test environment to conduct Acceptance Testing;

(d) Title to and ownership of the Software shall at all times remain with Contractor and/or its licensors, as applicable; and



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(e) Except as expressly agreed in writing, the State is not permitted to sub-license the use of the Software or any accompanying Documentation.

5.2 **Subscription License.** If the Software is Contractor Hosted and Contractor is providing the State access to use its Software during the Term of the Contract only, then:

(a) Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

- (i) access and use the Software, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;
- (ii) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Software;
- (iii) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Software under this Contract; and
- (iv) access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Software, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Software as described in **Section 5.2(c)** below.

(b) License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software available to any third party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Software or Documentation in any manner or for any purpose that is unlawful under applicable Law.

(c) Use. The State will pay Contractor the corresponding Fees set forth in a Statement of Work or Pricing Schedule for all Authorized Users access and use of the Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Software, including any excess use.

5.3 **Certification.** To the extent that a License granted to the State is not unlimited, Contractor may request written certification from the State regarding use of the Software for the sole purpose of verifying compliance with this **Section 5**. Such written certification may occur no more than once in any twenty four (24) month period during the Term of the Contract. The State will to respond to any such request within 45 calendar days of receipt. If the State's use is greater than contracted, Contractor may invoice the State for any unlicensed use (and related support) pursuant to the terms of this Contract at the rates set forth in **Schedule B**, and the unpaid license and support fees shall be payable in accordance with the terms of the Contract. Payment under this provision shall be Contractor's sole and exclusive remedy to cure these issues.

5.4 **State License Grant to Contractor.** The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos, solely in accordance with the State's specifications, and (ii) to display, reproduce, distribute



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and transmit in digital form the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work. Contractor is provided a limited license to State Materials for the sole and exclusive purpose of providing the Services.

6. Third Party Components. At least 30 days prior to adding new Third Party Components, Contractor will provide the State with notification information identifying and describing the addition. Throughout the Term, on an annual basis, Contractor will provide updated information identifying and describing any Approved Third Party Components included in the Software.

7. Intellectual Property Rights

7.1 Ownership Rights in Software

- (a) For purposes of this **Section 7** only, the term "Software" does not include Customizations.
- (b) Subject to the rights and licenses granted by Contractor in this Contract and the provisions of **Section 7.1(c)**
 - (i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and
 - (ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Documentation as a result of this Contract.

(c) As between the State, on the one hand, and Contractor, on the other hand, the State has, reserves and retains, sole and exclusive ownership of all right, title and interest in and to State Materials, User Data, including all Intellectual Property Rights arising therefrom or relating thereto.

7.2 The State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

- (a) Contractor will create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and
- (b) to the extent any Work Product, or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, Contractor hereby:
 - (i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and
 - (ii) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Work Product.

8. Software Implementation.

8.1 Implementation. Contractor will as applicable; deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in a Statement of Work and the Implementation Plan.



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8.2 Site Preparation. Unless otherwise set forth in a Statement of Work, Contractor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to deliver and install the Software on or prior to the applicable Milestone Date. Contractor will provide the State with such notice as is specified in a Statement of Work, prior to delivery of the Software to give the State sufficient time to prepare for Contractor's delivery and installation of the Software. If the State is responsible for Site preparation, Contractor will provide such assistance as the State requests to complete such preparation on a timely basis.

9. Software Acceptance Testing.

9.1 Acceptance Testing.

(a) Unless otherwise specified in a Statement of Work, upon installation of the Software, or in the case of Contractor Hosted Software, when Contractor notifies the State in writing that the Hosted Services are ready for use in a production environment, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in a Statement of Work, commence on the Business Day following installation of the Software, or the receipt by the State of the notification in **Section 9.1(a)**, and be conducted diligently for up to thirty (30) Business Days, or such other period as may be set forth in a Statement of Work (the "**Testing Period**"). Acceptance Tests will be conducted by the party responsible as set forth in a Statement of Work or, if a Statement of Work does not specify, the State, provided that:

- (i) for Acceptance Tests conducted by the State, if requested by the State, Contractor will make suitable Contractor Personnel available to observe or participate in such Acceptance Tests; and
- (ii) for Acceptance Tests conducted by Contractor, the State has the right to observe or participate in all or any part of such Acceptance Tests.

9.2 Contractor is solely responsible for all costs and expenses related to Contractor's performance of, participation in, and observation of Acceptance Testing.

(a) Upon delivery and installation of any application programming interfaces, Configuration or Customizations, or any other applicable Work Product, to the Software under a Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 9.1**, **Section 9.4** and **Section 9.5**.

(b) The State may suspend Acceptance Tests and the corresponding Testing Period by written notice to Contractor if the State discovers a material Non-Conformity in the tested Software or part or feature of the Software. In such event, Contractor will immediately, and in any case within ten (10) Business Days, correct such Non-Conformity, whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

9.3 Notices of Completion, Non-Conformities, and Acceptance. Within fifteen (15) Business Days following the completion of any Acceptance Tests, including any Integration Testing, the party responsible for conducting the tests will prepare and provide to the other party written notice of the completion of the tests. Such notice must include a report describing in reasonable detail the tests conducted and the results of such tests, including any uncorrected Non-Conformity in the tested Software.



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(a) If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 9.4** and **Section 9.5**.

(b) If such notice is provided by the State, is signed by the State Program Managers or their designees, and identifies no Non-Conformities, such notice constitutes the State's Acceptance of such Software.

(c) If such notice is provided by Contractor and identifies no Non-Conformities, the State will have thirty (30) Business Days to use the Software in the Operating Environment and determine, in the exercise of its sole discretion, whether it is satisfied that the Software contains no Non-Conformities, on the completion of which the State will, as appropriate:

- (i) notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 9.4** and **Section 9.5**; or
- (ii) provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State Program Managers or their designees.

9.4 **Failure of Acceptance Tests.** If Acceptance Tests identify any Non-Conformities, Contractor, at Contractor's sole cost and expense, will remedy all such Non-Conformities and re-deliver the Software, in accordance with the requirements set forth in a Statement of Work. Redelivery will occur as promptly as commercially possible and, in any case, within thirty (30) Business Days following, as applicable, Contractor's:

- (a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or
- (b) receipt of the State's notice under **Section 9.1(a)** or **Section 9.3(c)(i)**, identifying any Non-Conformities.

9.5 **Repeated Failure of Acceptance Tests.** If Acceptance Tests identify any Non-Conformity in the Software after a second or subsequent delivery of the Software, or Contractor fails to re-deliver the Software on a timely basis, the State may, in its sole discretion, by written notice to Contractor:

- (a) continue the process set forth in this **Section 9**;
- (b) accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or
- (c) deem the failure to be a non-curable material breach of this Contract and a Statement of Work and terminate this Contract for cause in accordance with **Section 16.1**.

9.6 **Acceptance.** Acceptance ("**Acceptance**") of the Software (subject, where applicable, to the State's right to Integration Testing) and any Deliverables will occur on the date that is the earliest of the State's delivery of a notice accepting the Software or Deliverables under **Section 9.1(a)**, or **Section 9.3(c)(i)**.

10. Reserved

11. Reserved

12. Reserved

13. Reserved



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14. Reserved

15. Reserved

16. Reserved

17. Reserved

18. Infringement Remedies.

18.1 The remedies set forth in this Section are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

18.2 If any Software or any component thereof, other than State Materials, is found to be infringing or if any use of any Software or any component thereof is enjoined, threatened to be enjoined or otherwise the subject of an infringement claim, Contractor must, at Contractor's sole cost and expense:

(a) procure for the State the right to continue to use such Software or component thereof to the full extent contemplated by this Contract; or

(b) modify or replace the materials that infringe or are alleged to infringe ("**Allegedly Infringing Materials**") to make the Software and all of its components non-infringing while providing fully equivalent features and functionality.

18.3 If neither of the foregoing is possible notwithstanding Contractor's best efforts, then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

(a) refund to the State all amounts paid by the State in respect of such Allegedly Infringing Materials and any other aspects of the Software provided under a Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract; and

(b) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Materials for a transition period of up to six (6) months to allow the State to replace the affected features of the Software without disruption.

18.4 If Contractor directs the State to cease using any Software under **Section 18.3**, the State may terminate this Contract for cause under **Section 22 of the Standard Terms**. Unless the claim arose against the Software independently of any of the actions specified below, Contractor will have no liability for any claim of infringement arising solely from:

(a) Contractor's compliance with any designs, specifications, or instructions of the State; or

(b) modification of the Software by the State without the prior knowledge and approval of Contractor.

19. Reserved

20. Reserved

21. State Data.



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21.1 Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes:

- (a) User Data; and
- (b) any other data collected, used, Processed, stored, or generated in connection with the Services, including but not limited to:
 - (i) personally identifiable information ("**PII**") collected, used, Processed, stored, or generated as the result of the Services, 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
 - (ii) protected health information ("**PHI**") collected, used, Processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations.

21.2 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.

21.3 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. 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 Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law;
- (c) keep and maintain State Data in the continental United States and
- (d) 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.

21.4 Discovery. Contractor will immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Software and Hosted Services, if applicable. Contractor will notify the State Program Managers or their designees by the fastest means available and also in writing. In no event will Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor will not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

21.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability of State Data or the physical, technical, administrative, or organizational safeguards put in



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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) with approval and assistance from the State, 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 five (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) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- (g) 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 incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence;
- (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and
- (i) provide to the State a detailed plan within ten (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, not be tangentially used for any solicitation purposes, 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. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination.



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21.6 The parties agree that any damages relating to a breach of **Section 21.5** are to be considered direct damages and not consequential damages. **Section 21** survives termination or expiration of this Contract.

22. 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. This **Section 22** survives termination or expiration of this Contract.

22.1 Meaning of Confidential Information. 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; or,
- (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 or is:

- (d) in the possession of the State and subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- (e) already in the possession of the receiving party without an obligation of confidentiality;
- (f) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights;
- (g) obtained from a source other than the disclosing party without an obligation of confidentiality; or,
- (h) 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.

22.2 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 the Contractor’s subcontractor is permissible where:

- (a) the subcontractor is a Permitted Subcontractor;
- (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor’s responsibilities; and
- (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any of the Contractor’s and Permitted Subcontractor’s Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 22.2**.



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22.3 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. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

22.4 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.

22.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) Business 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. Upon confirmation from the State, of receipt of all data, Contractor must permanently sanitize or destroy the State's Confidential Information, including State Data, from all media including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitation methods or as otherwise instructed by the State. If the State determines that the return of any Confidential Information is not feasible or necessary, Contractor must destroy the Confidential Information as specified above. The Contractor must certify the destruction of Confidential Information (including State Data) in writing within five (5) Business Days from the date of confirmation from the State.

23. Reserved

24. Support Services. Contractor will provide the State with the Support Services described in the Service Level Agreement attached as **Schedule D** to this Contract. Such Support Services will be provided:

(a) Free of charge during the Warranty Period.

(b) Thereafter, for so long as the State elects to receive Support Services for the Software, in consideration of the State's payment of Fees for such services in accordance with the rates set forth in the Pricing Schedule.

25. Data Security Requirements. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule E** to this Contract.

26. Training. Contractor will provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in a Statement of Work. Upon the State's request, Contractor will timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

27. Maintenance Releases; New Versions



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27.1 Maintenance Releases. Provided that the State is current on its Fees, during the Term, Contractor will provide the State, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.

27.2 New Versions. Provided that the State is current on its Fees, during the Term, Contractor will provide the State, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.

27.3 Installation. The State has no obligation to install or use any Maintenance Release or New Versions. If the State wishes to install any Maintenance Release or New Version, the State will have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in a Statement of Work. Contractor will provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Contractor and Acceptance Tested by the State. The State's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

28. Reserved

29. Contractor Representations and Warranties.

29.1 Authority. Contractor represents and warrants to the State that:

(a) It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;

(c) The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and

(d) When executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

(e) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

29.2 Bid Response. Contractor represents and warrants to the State that:

(a) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder to the RFP and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;

(b) All written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's Bid Response, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading;

(c) Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by



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the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract; and

(d) If any of the certifications, representations, or disclosures made in Contractor's Bid Response change after contract award, the Contractor is required to report those changes immediately to the Contract Administrator.

29.3 Software Representations and Warranties. Contractor further represents and warrants to the State that:

(a) it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto;

(b) it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;

(c) it has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(d) the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;

(e) neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:

(i) conflict with or violate any applicable law;

(ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or

(iii) require the provision of any payment or other consideration to any third party;

(f) when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Software, the Hosted Services, if applicable, or Documentation as delivered or installed by Contractor does not or will not:

(i) infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party; or

(ii) fail to comply with any applicable law;

(g) as provided by Contractor, the Software and Services do not and will not at any time during the Term contain any:

(i) Harmful Code; or

(ii) Third party or Open-Source Components that operate in such a way that it is developed or compiled with or linked to any third party or Open-Source Components, other than Approved Third Party Components specifically described in a Statement of Work.

(h) all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and



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(i) it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract and will devote adequate resources to meet Contractor's obligations under this Contract;

(j) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation;

(k) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever;

(l) no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

(m) all Configurations or Customizations made during the Term will be forward-compatible with future Maintenance Releases or New Versions and be fully supported without additional costs.

(n) If Contractor Hosted:

- (i) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;
- (ii) the Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in the Service Level Agreement;
- (iii) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

(o) During the Term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Software or with the Hosted Services, if applicable, will apply solely to Contractor or its Permitted Subcontractors. Regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State Systems or networks.

30. Reserved

31. Reserved

32. Reserved

33. Reserved

34. Reserved



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35. Reserved

36. Reserved

37. Reserved

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45. Reserved

46. HIPAA Compliance. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

47. Reserved

48. Accessibility Requirements.

48.1 All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA as follows:

(a) Text based and numeric content and documentation shall meet the State's requirements.

(b) Graphic based content and documentation shall be provided in both standard and high contrast formats. Contractor, in good faith, shall utilize its best efforts to comply with the State's requirements and maximize accessibility. The Contractor, upon notification by an individual of an identified accessibility issue with maps or other graphic based content, shall collectively work with the Program Manager to resolve such issues through an iterative process with the goal of modifying the format to increase its accessibility.

48.2 In accordance with the identified format the information is presented in Section 48.1, Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each category or format of a product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State as set forth in Section 48.1, including the level of conformance provided in any PAT with corresponding remarks and explanations for those products where the format does not support or only partially supports the applicable criteria. Subject to the provisions in 48.1 and 48.2, throughout the Term of the Contract, Contractor must:

(a) maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;

(b) comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;



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(c) ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to WCAG 2.0 Level AA;

(d) promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;

(e) upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and

(f) participate in the State of Michigan Digital Standards Review described below.

48.3 State of Michigan Digital Standards Review. Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA pursuant to Section 2.1. Prior to the solution going-live, through the end of the contract term and any extensions thereof or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.

48.4 Warranty. Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 22 of Contract Standard Terms**.

48.5 Failure to comply with the requirements in this **Section 48** shall constitute a material breach of this Contract.

49. Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

50. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for nor bind the other party in any manner whatsoever.

51. Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

52. No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

53. Reserved



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54. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and will be deemed to be rights and licenses to “intellectual property,” and all Software and Deliverables are and will be deemed to be “embodiments” of “intellectual property,” for purposes of, and as such terms are used in and interpreted under, Section 365(n) of the United States Bankruptcy Code (the “**Code**”). If Contractor or its estate becomes subject to any bankruptcy or similar proceeding, the State retains and has the right to fully exercise all rights, licenses, elections, and protections under this Contract, the Code and all other applicable bankruptcy, insolvency, and similar laws with respect to all Software and other Deliverables. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that, if Contractor or its estate will become subject to any bankruptcy or similar proceeding:

(a) all rights and licenses granted to the State under this Contract will continue subject to the terms and conditions of this Contract, and will not be affected, even by Contractor’s rejection of this Contract; and

(b) the State will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to any Software or other Deliverables, and the same, if not already in the State’s possession, will be promptly delivered to the State, unless Contractor elects to and does in fact continue to perform all of its obligations under this Contract.



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SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Line Drawing and Redistricting Technical Services

This schedule identifies the contract requirements:

BACKGROUND

Every 10 years following the U.S. Census, district lines for political offices must be redrawn in states across the country to accurately reflect their population. In Michigan, a randomly-selected Commission of voters is responsible for drawing U.S. Congressional and Michigan State House and Senate district lines. Voters amended the state constitution in the November 2018 general election to make citizens — not legislators or special interests — responsible for drawing district lines. The Michigan Independent Citizens Redistricting Commission (“MICRC”) is composed of 13 randomly-selected Michigan registered voters: four who affiliate with the Democratic Party, four who affiliate with the Republican Party, and five who do not affiliate with either major political party.

Pursuant to the Michigan Constitution of 1963, Article IV, Section 6, the organization/individual responsible for providing line drawing and mapping services for the MICRC will assist Commissioners in fulfilling their constitutional obligations as they embark on a new redistricting process involving new redistricting criteria and requiring robust transparency and public input throughout the line drawing process.

The MICRC is required to hold public meetings and hearings before and after initial redistricting plans are published. When both initial and final redistricting plans are completed, the MICRC and Secretary of State’s office must publish reports featuring the data and supporting materials used to develop each plan.

According to the Constitution final maps must be voted on by the MICRC, and they must be completed by September 17, 2021 and formally approved by November 1, 2021. The Commission is requesting relief from the Michigan Supreme Court regarding the Constitutional deadlines, and shall engage with the contractor to modify deadlines if granted relief.

For additional information please visit: RedistrictingMichigan.org.



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

SCOPE

The Michigan Independent Citizens Redistricting Commission (MICRC) is seeking a qualified, experienced Contractor to provide mapping and line drawing services for the purposes of redistricting U.S. House and Michigan state house and senate districts.

Pursuant to Michigan Constitution of 1963, Article IV, Section 6, the MICRC has the sole authority to determine federal house and state legislative districts in Michigan. The MICRC and its staff are seeking the professional, technical assistance and expertise of a Contractor who can create mapping plans and draw lines at the direction of the MICRC. In this process, the MICRC is required to follow criteria as outlined in Article IV, Section 6 (13), and utilize data including the U.S. census and public input and submissions from the public in order to create redistricting plans. The Contractor will be expected to provide professional and technical services to the MICRC during public meetings at the direction of the MICRC, including utilizing software to make changes and create maps in real time using census, geographic, and other data. It is anticipated that work will begin as soon as practicable following the CONTRACT selection process and continue through approximately December 31, 2021, and potentially into 2022 depending on litigation developments.

1. Requirements

1.1 Key Deliverable One

Key technical requirements in order to fulfill the scope of work above:

(a) Software.

The Contractor must utilize software which allows real-time and automatic analysis and results of a proposed change in a district, both visually and with detailed data breakdowns. In addition to providing and utilizing a specific line-drawing software, the Contractor must be able to integrate and utilize other files and data provided by the public, including CSV, SHP, RDP, DRF, JSON, CDF, and other common data files, to develop shape file equivalents and incorporate into line drawing. The Contractor should have the capability to integrate data files generated by other mapping software into the MICRC's software and visualization. The Contractor must provide software to meet these requirements. Please describe the software you intend to utilize, list the software's functional features, and other details on how you will meet these requirements. Please also describe how the software will be licensed (i.e. per user, per blocks of user, or one fee for unlimited users) and provide a copy of any applicable licensing agreements that will be required for the use of Software by the MICRC and any stakeholders, listed in the contract. Also describe how the mapping data including the final maps and all versioning will be continually accessible and usable from when this commission expires until when the next MICRC convenes in 2030.



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

Contractor must describe in detail how they will accomplish this requirement(s) :

- Commissioners: Both the Mydistricting.com web based redistricting and EDGE desktop redistricting tools will be available for installation on the commissioner's desktop computers. Hosted and Online Training will also be provided for both.
- Public Comment Tool. The Mydistricting.com web based redistricting software includes the iOpenEngage public comment tool that allow members of the commissioners and/or members of the public to view plans and place comment point on the plan.

(b) IT ENVIRONMENT RESPOSIBILITIES

For a Contractor Hosted Software Solution:

Definitions:

Facilities – Physical buildings containing Infrastructure and supporting services, including physical access security, power connectivity and generators, HVAC systems, communications connectivity access and safety systems such as fire suppression.

Infrastructure – Hardware, firmware, software, and networks, provided to develop, test, deliver, monitor, manage, and support IT services which are not included under Platform and Application.

Platform – Computing server software components including operating system (OS), middleware (e.g., Java runtime, .NET runtime, integration, etc.), database and other services to host applications.

Application – Software programs which provide functionality for end user and Contractor services.

Storage – Physical data storage devices, usually implemented using virtual partitioning, which store software and data for IT system operations.

Backup – Storage and services that provide online and offline redundant copies of software and data.

Development - Process of creating, testing and maintaining software components.



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

Component Matrix	Identify contract components with Contractor or subcontractor name(s), if applicable
Facilities	None
Infrastructure	Amazon EC2 Infrastructure
Platform	Windows 10 for Desktop and Windows Server for Web solutions.
Application	Autobound EDGE on the Desktop and Mydistricting.com for the web
Storage	500GB for desktop and 500GB for the Web
Backup	3TB backup drives required
Development	Customized reports and maps as required.

(c) ADA COMPLIANCE

Vendor must maintain Accessibility Requirements per Section 48 of the Supplemental Software Terms and Conditions

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

(d) DATA RETENTION AND REMOVAL

The State will need to retain all data for the entire length of the Contract unless otherwise directed by the State.

The State will need the ability to delete data, even data that may be stored off-line or in backups.

The State will need to retrieve data, even data that may be stored off-line or in backups.

Contractor must review and explain how the data retention, deletion and retrieval requirements will be met and describe its data management capabilities (storage limitations, duration, etc.).
 All plans and data developed on the desktop will be subject to the project’s data retention requirements and will be kept on the project’s data warehouse for the duration of the project. At the conclusion of the project all data related to the project will be transferred to permanent



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

media such as DVD drives or other media and submitted to the state. Online data which is not been transferred to the desktop, will be backed up and transferred to permanent media such DVD drives or other media and submitted to the state. The contractor will also work with the state to configure one computer for long-term storage of the redistricting software and project databases. So, in case there is litigation during the decade, the state will have access to the working software with all project created plans and data.

(e) END USER AND IT OPERATING ENVIRONMENT

The SOM IT environment includes X86 VMware, IBM Power VM, MS Azure/Hyper-V and Oracle VM, with supporting platforms, enterprise storage, monitoring, and management.

Contractor must accommodate the latest browser versions (including mobile browsers) as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, applications must, at a minimum, display and function correctly in standards-compliant browsers and the state standard browser without the use of special plugins or extensions. The rules used to base the minimum browser requirements include:

- Over 2% of site traffic, measured using Sessions or Visitors (or)
- The current browser identified and approved as the State of Michigan standard

This information can be found at <https://www.michigan.gov/browserstats>. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

Contractor must support the current and future State standard environment at no additional cost to the State.

Contractor must describe the optimal IT environment based on the environment choices set forth above.

This project will not use any state computers or IT infrastructure.

Contractor must describe any State system access requirements that are necessary for the Contractor to perform its obligations on a timely basis, including but not limited to, physical or remote access to State networks, servers, or individual workstations.

This project will not use any state computers or IT infrastructure.



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Contractor must describe if it can comply with the current environment and how it intends to comply with any future changes to the IT environment. And if not, describe what IT and end user operating environment its Solution supports.

This project will not use any state computers or IT infrastructure.

Contractor must describe if it can support the original environment throughout the term of the contract.

The contractor will support the original environment on the desktop and server throughout the length of the contract.

Contractor must describe how it communicates changes to its software and architecture.

Changes to the software are communicated to the user through the software's internal upgrade tool. It will notify the user of the availability of a new version and allow the user to choose to implement the changes. Updates to the web version will be communicated through a notification email.

Contractor must describe how customers collaborate with your organization in the decision-making process for upgrades, maintenance, and change control.

Upgrades to the software are generally the result of requests by users for enhancements. The timeline for implementation of the requested changed depends on how critical the request is, how widely it is requested and the amount of work needed to implement the enhancement.

Contractor must identify any plug-ins necessary for the proposed Solution to meet the system requirements of this request.

The system is self-contained. No plugins are required.

(f) Look and Feel Standards

All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at <https://www.michigan.gov/standards>.

(g) Mobile Responsiveness

If the software will be used on a mobile device the Software must utilize responsive design practices to ensure the application is accessible via a mobile device.



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(h) SOM IT Environment Access

Contractor access to State environments must be through State through the following methods:

- State provided VDI infrastructure.
- State provided and managed workstation device.
- Contractor owned and managed workstation maintained to all State standards.
- Contractor interface required for contracted systems which are required to maintain to State standards per the **Schedule E – Data Security Requirements**.

Contractor must identify any unique software requirements to full fill the terms of the Contract.

Contractor must describe any custom software required to support internal SOM systems.

This project will not use any state computers or IT infrastructure.

Contractor must describe the licensing structure (Perpetual vs Subscription) for each software title purchased.

All software proposed for this project uses perpetual licensing.

Contractor must identify any third party components, including open source components included with or used in connection with the proposed Solution.

ESRI ArcGIS Runtime. Telerik WPF components. Google Maps. Amazon AWS Components.

Contractor must provide a list of all mobile devices that are compatible with the Solution.

Mobile devices supporting web browsers are compatible with the web portion of the application.

Contractor must provide list of features that can be performed via a mobile device.

Plan commenting, Plan viewing.

Contractor must provide a detailed description of the Solution to be provided under the resulting Contract including, but not limited to, a detailed description of the proposed Software (name, type, version, release number, etc.), its functionality, optional add-on



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modules and plugins, Contractor’s services and the Solution ability to be rapidly configured or scaled as the State’s business or technical demands change.

Autobound EDGE Desktop Redistricting. MyDistricting.com web-based redistricting, plan commenting, viewing and communities of interest.

(i) TRANSITION RESPONSIBILITIES

Contractor must provide a detailed transition-in and transition-out plan in Schedule G – Transition In and Out Plan, including any roles or responsibilities expected of the State. The plan must demonstrate the steps to migrate between Contractor’s Solution and third-party Solutions.

This is a new application. A transition plan is not applicable to this project.

(j) Geographic Database.

The Contractor will use population data from the 2020 US Census for the State of Michigan, including population subgroups enumerated in the certified US Census data. Along with the 2020 UC Census data, the Contractor will also use other data available from the Department of Technology, Management and Budget’s Center for Shared Solutions (CSS) and the Michigan Election Redistricting Data Access Program. CSS maintains the authoritative data for the State of Michigan’s county, city, township, and village boundaries. CSS, through the Redistricting Data Access Program has published other GIS layers for election data, voter precinct boundaries and other GIS base mapping layers and can provide those data sets.

Other data requirements:

- Population data will consist of the certified 2020 US Census data for the State of Michigan and enumerated subgroups.
- The geographic data will include digitized maps showing the boundaries of all census geographic units (i.e. census block, tract, and county level), as well as the existing physical geography of the environment (i.e. city boundaries, streets and highways, other physical landmarks, and other elements as requested by the MICRC).
- Voting and elections data associated with proposed districts will be included in the data so that it is available to the Commission to demonstrate compliance with the Voting Rights Act of 1965 or partisan fairness as indicated in Michigan Constitution of 1963, Article IV, Section 6 (13).
- Data concerning the Communities of Interest criteria (see Michigan Constitution of 1963, Article IV, Subsection 13(c)) and other GIS compatible files, as



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

submitted by the public and provided to the Contractor, must be integrated and capable for use in creating maps and explanatory reports during and after the line drawing process.

Please describe how you will meet these requirements. This is also an opportunity to highlight other data-related capabilities or innovations you are able to offer to the Commission.

Contractor must describe in detail how they will accomplish this requirement(s):

Contractor will compile a statewide database composed of Census Bureau 2020 TIGER geographic files, 2020 PL files when released by the Bureau, supplemented by Census Bureau ACS data and ESRI dataset for 2020 population estimates, 2010 population migrated to 2020 geography, precinct geography compiled by the state for 2012-2020 and election results to match. Assuming Communities of Interest areas are drawn on 2020 Census geography, these areas will also be shown in the system.

(k) Training and education.

The MICRC and the public are learning alongside one another to encourage full participation in the line drawing process. At the direction of the MICRC, the Contractor may be asked to provide technical services to the MICRC staff, legal counsel, and other Contractors, both during public meetings and outside of scheduled Commission meetings as permitted by the Michigan constitution. These technical services shall include:

- Technical education and/or consultation
- Public educational tutorials and explanations
- Providing census and district information upon request
- Producing maps or visualizations

Contractor must describe in detail how they will accomplish this requirement(s):

The contractor will provide on-going training of both the Commission members and the public through both webinars and public hearings during the life of the project. The multitude of staff and subcontractors will allow us to meet the extensive calendar of meetings and hearings, most of which will now be done virtually. This will also help cut down on any extensive travel requirements.



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

The contractor will be prepared to provide: 1) technical education and consultation; 2) public education tutorials and explanations; 3) census and district information upon request; and 4) produce maps or visualizations.

(m) **Support for litigation.** Additional services may be required in the event of legal action related to redistricting plans in state or federal court. The Contractor would be expected to provide consultation, line-drawing services, and testimony support for any litigation resulting from the determined maps during the contract term. In the event of such action, at the request of the MICRC, the Contractor and the MICRC will determine a statement of work for the additional services and amend the contract via a change notice.

Contractor must describe in detail how they will accomplish this requirement(s):

A separate statement of work and contract for services with a change notice to our existing agreement as indicated in Schedule B

1.2 Key Deliverable Two

Key requirements for public meetings and published redistricting plans:

(a) Public meeting participation.

The Contractor will provide line drawing services during public meetings, which are subject to the Open Meetings Act. This will include, but not be limited to, the following:

- a. Document the MICRC’s instructions and public testimony throughout map development. This should allow the MICRC (and ultimately, the public) to track changes and reference the reasons or rationale for a given map or given change, and the public testimony or other submissions related to a given map.
- b. Digitally store, produce, and project redistricting plans, maps, and line-drawing on-screen (both in-person and remotely) during meetings in real-time. The Contractor should be able to transmit a clear image in a live public setting, both remotely and in-person.
- c. Between public meetings, provide the map file(s), corresponding PDFs of maps, and corresponding instructions from Commissioners or public testimony that led to a given map’s creation.

Contractor must describe in detail how they will accomplish this requirement(s):



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As the contractor has in other redistricting consulting arrangements, they envision bringing members of the Election Data Systems team together to brief the members of the Michigan Independent Citizens Redistricting Commission within the first month of selection as the redistricting consultant team. Contractor would describe the various steps of the Census process, including their anticipated timetable. Members of the contractor team would brief the Commission on the legal requirements of the process, from the federal, state, and local level. Overall redistricting principles, as well as practices around the nation would be discussed. Community outreach options would also be discussed and an anticipated timetable for the project would be discussed and agreed upon.

Putting together a multi-member team of map drawers allow some of the consultants to attend all the public meets of the Commission. Contractor assumes this will mainly be virtual, but the contractor has also budgeting for some in-person meetings. In the software description above there is a large section on how the system can keep track of various plans for different areas of the state, along with public input that can be specifically geocoded to a set location on the map.

(b) Communication skills and strategies.

A key role for the line drawer is being able to provide expertise and technical assistance at the direction of the MICRC, and to be able to explain and educate on both high-level and granular considerations in that process. Please use this space to provide insight into the communications strategies and approaches you will utilize to ensure both that expectations are met and the MICRC and the public broadly understand the rationale and complexities behind any given plan.

Contractor must describe in detail how they will accomplish this requirement(s):

Each member of the contractor's map drawing team has been selected because of their already existing skill of meeting with and speaking before commission and legislative bodies, as well as members of the public. Clearly education efforts will be important to teach and advise all Commissioners and the public on all aspects of the Census and redistricting. Election Data Services staff will handle much of the initial training and speaking roles for education purposes, supplemented by the expertise of other team members.

(c) Public meeting schedule and setting.



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Due to the COVID-19 pandemic, certain details about the meeting schedule and format for all MICRC meetings are yet to be determined. The Contractor must be prepared to participate either remotely or in person to provide all services outlined in this CONTRACT.

- The MICRC expects the Contractor to be present at approximately 40 meetings between the spring and fall of 2021. The expected schedule will be set in advance, but may occasionally change at short notice given the high-priority deadlines of this Commission.

Contractor must describe in detail how they will accomplish this requirement(s):

Contractor is cognizant that the Commission has establish their initial schedule of public meetings and hearings. Because of Election Data Services’ multi-member team of map drawers, we stand ready to provide the appropriate team member, usually remotely, to provide the services required of the Commission.

1.3 Key Deliverable Three

The following expectations related to professional conduct and organization:

(a) Professionalism and support.

The Contractor, staff, and any sub-Contractors are expected to conduct themselves at all times in a professional, non-partisan and respectful manner when working with the MICRC and interacting with any member of the public in their capacity as a Contractor to the Commission. Collaboration and respect are expected.

It is the responsibility of the Contractor to ensure sufficient staffing for this contract and support of the MICRC in meeting their objectives and deadlines.

Contractor must describe in detail how they will accomplish this requirement(s):

Throughout Election Data Services’ 43-year history we have always conducted ourselves with professionalism in mind and providing accurate and reliable information. Our voting equipment studies and apportionment yearly studies have been relied upon by the press over the decades for information and have been a constant source for their stories. For this Michigan proposal, we have consciously brought together expert map drawers from both political parties and non-partisan former state employees to provide a bi-partisan/non-partisan team to assist the State of Michigan.

Technical Support Options for AutoBoundEDGE.

Citygate is the only redistricting software company that also provides redistricting services. This means when technical support issues arises, your team is not communicating with a GIS analyst or a software specialist. They are talking to an experienced redistricting



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professional that understands the underlying Census data, merging of political data and fully understands the nature of the redistricting process and can answer questions across the entire project.

Citygate will provide 24-7 technical support as described below.

1. No Cost Option. Email support is available at no cost. Many users switch to this option after the redistricting process has been completed and plans have been adopted. This option allows the redistricting staff to maintain the redistricting systems in case of future court challenges.

2. Standard Support. Standard support includes access to Citygate's redistricting support phone line between 7AM and 6PM EDT/EST. Standard support includes online support where a Citygate technician can connect to the end user's system and correct the issue.

Standard support can be purchased annually and is based on the number of individual points of contact at the agency rather than the number of installed systems. Typically, Citygate requires a maximum of 5 installations per point of contact. So, for example, if an agency installs 4 EDGE licenses with a single administrator that provides internal support and contacts Citygate in case of questions. Then the agency would only need one support contract.

3. 24-7 Support. This option is the same as Standard support except that support is available 24 hours a day, 7 days a week. This type of support can be purchased on a monthly basis. Typically agencies will purchase this type of support for the peak months of redistricting.

Support escalation process. Technical support for redistricting software is unique. Citygate has been providing redistricting support services for over 25 years. The entire redistricting process is done under a time crunch and as such Citygate treats every technical support call as critical. Citygate's escalation process is as follows:

1. Initial Call. All calls placed to Citygate's technical support line are answered by an experienced redistricting professional. If support staff are on other calls, the call is returned within 20 minutes where the support staff attempts to address the issue.

2. First Escalation. If the support staff is not able to address the issue, it will be escalated to the software development team. Here the issue maybe a problem with the system or an enhancement which is needed by the end user. In either case the urgency of the request is determined and the end use is provided with an estimate on when the issue will be resolved.

3. Status Updates. If the development team is not able to meet the timeline, updates are provided to the end user explaining the issues encountered with new delivery timelines.

4. Second Escalation. If the proposed timeline is not satisfactory, the end user may request the issue to be escalated to a manager where additional resources maybe allocated to resolving the issue.



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(b) Reporting.

Work plans and progress reports will be required throughout the term of this contract, developed in collaboration between MICRC staff and the Contractor. Please provide any detail below on how you plan to communicate progress and track deliverables.

Contractor must describe in detail how they will accomplish this requirement(s):

Contractor will work with the MICRC staff to develop appropriate work plans and progress reports to keep track of work done in the project with bi-weekly reports being filed and monthly invoices being submitted to the commission.

(c) Final redistricting plan reports.

At the request of the MICRC, the Contractor will assist the MICRC, staff, and the secretary of state's office in providing detailed reports and relevant data for each final redistricting plan. Further detail on these requirements can be found in Michigan Constitution of 1963 Article IV Section 6(15)-(17).

Contractor must describe in detail how they will accomplish this requirement(s):

Contractor will work with Commission staff to determine the best way of documenting, showing, and being able to share the Commission's final plan reports for the public. In the past, final plans have been documented by a block equivalency file (a record for every block in the state, with their appropriate district assignment for the plan), as well as a shape file (less preferred method because of generalization). Metes and bounds reports are available within AutoboundEDGE, but some editing may be necessary. We have found that maps are most useful to show the plans and they can be designed from full statewide depictions of the districts, down to individual county insets and even individual township maps when a township has been split in the plan. These type of maps are most useful to communicate the plan with local election administrators who need to modify their street files in the statewide voter registration system.

1.4 Training

The Contractor must explain its training capabilities and any training that is included in its proposal.

The Contractor must provide documentation and training materials.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.



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List all exception(s):

Contractor must explain its training capabilities and any training that is included in its proposal:

One of the key advantages of the Citygate redistricting solution is that it is designed specifically to support redistricting functions. Autobound EDGE is a standalone application focused on the task of redistricting. Unlike other products, it is not an add-on to a GIS software. As a result, the software is much easier to learn without unnecessary capabilities that can clutter the application and make the learning curve more steep. The following are the training options offered by Citygate.

1. **No Cost Option.** All Citygate products, including EDGE come with online video based training at no cost. These training videos which are voice narrated, walk the user through the use of the software and provide examples of how the software can be used to create different types of redistricting plans.
2. **Online training.** Citygate can provide customized online training using Gotomeeting or similar. Classes are designed around each client's specific needs. For example, if the agency's database includes past election results and voter files, the training would cover how to use this data, create democratic and republican indices and generate maps and reports. Citygate would work with the designated project manager to create an online course which would be appropriate for each client. Online training sessions are recorded and made available online for future review.
3. **Onsite training.** Onsite training is provided by an experienced redistricting professional. The process is similar to the online training option where Citygate works with the agency project manager to create the content of the training session. Citygate provided onsite training in Michigan during the 2010 redistricting cycle.

The video training for AutoBound EDGE and all online tools is approximately 2 Hours in long.

2.0 Service Requirements

2.1 Timeframes

All Contract Activities must be delivered pursuant to work plans and internal deadlines set by the Commission. The receipt of order date is pursuant to the **Notices** section of the *Standard Contract Terms*. According to the Constitution final maps must be voted on by the MICRC, and



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they must be completed by September 17, 2021 and formally approved by November 1, 2021. The Commission is requesting relief from the Michigan Supreme Court regarding the Constitutional deadlines, and shall engage with the contractor to modify deadlines if granted relief.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Contractor must describe how they comply with the above requirement(s):	

3 Acceptance
3.1 Final Acceptance

Final Acceptance is determined once the project data is successfully submitted and accepted on December 31, 2021. Any intermediate acceptance of sub-deliverables does not complete the requirement of Final Acceptance.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): While every effort will be made to meet the State’s deadlines, it will be totally dependent upon when the Census Bureau releases the final, official census results	

4 Staffing
4.10 Contractor Representative

The Contractor must appoint one (1) contract administrator specifically assigned to the Commission account(s), who will respond to Commission inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



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Contractor must identify its Contract Administrator :

Kimball Brace, President of Election Data Services will serve as the contract administrator for this project, and will be available to answer questions related to ordering and deliver, etc.

4.11 Work Hours

The Contractor must provide Contract Activities during the Commission’s normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST and possible night and weekend hours depending on the requirements of the project.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

4.12 Key Personnel

The Contractor must identify all Key Personnel who will be directly responsible for the day-to-day operations of carrying out the key deliverables of the Contract (“Key Personnel”). Key Personnel must be specifically assigned to the Commission account, be knowledgeable on the contractual requirements, and respond to Commission inquiries within 24 hours.

Contractor’s Key Personnel are expected to be available to participate in all MICRC meetings virtual or in person.

The Commission 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 Commission of the proposed assignment, introduce the individual to the Commission’s Project Manager, and provide the Commission with a resume and any other information about the individual reasonably requested by the Commission. The Commission reserves the right to interview the individual before granting written approval. In the event the Commission finds a proposed individual unacceptable, the Commission will provide a written explanation including reasonable detail outlining the reasons for the rejection. The Commission 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 Commission. The Contractor’s removal of Key Personnel without the prior written consent of the Commission 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 Commission to be a material breach of this Contract, in respect of which the Commission may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract Terms. It



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is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the Commission, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the Commission as a result of any Unauthorized Removal. Therefore, Contractor and the Commission agree that in the case of any Unauthorized Removal in respect of which the Commission does not elect to exercise its rights under Termination for Cause, Contractor will issue to the Commission the corresponding credits set forth below (each, an “Unauthorized Removal Credit”):

- i. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the Commission and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel’s removal.
- ii. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the Commission \$833.33 per calendar day for each day of the 30-calendar day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30-calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the Commission that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the Commission’s option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

1. The Contractor must identify all Key Personnel that will be assigned to this contract in the table below which includes the following: Name and title of staff that will be designated as Key Personnel.
2. Key Personnel years of experience in the current classification.
3. Identify which of the required key personnel positions they are fulfilling.
4. Key Personnel’s roles and responsibilities, as they relate to this CONTRACT, if the Contractor is successful in being awarded the Contract. Descriptions of roles should be functional and not just by title.



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5. Identify if each Key Personnel is a direct, subcontract, or contract employee.
6. Identify if each Key Personnel staff member is employed full-time (FT), part-time (PT) or temporary (T), including consultants used for the purpose of providing information for the proposal.
7. List each Key Personnel staff member’s length of employment or affiliation with the Contractor’s organization.
8. Identify each Key Personnel’s percentage of work time devoted to this Contract.
9. Identify where each Key Personnel staff member will be physically located (city and Commission) during the Contract performance.

1. Name	2. Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract/ Contract	5. % of Work Time	6. Physical Location
Kimball Brace	43 Years	Overall Contract administration and coordination. Some Map drawing & analysis	Direct	40%, as needed	Manassas, VA
Ryan Taylor	11 Years	Database creation, Map drawer	Direct	35%, as needed	Outside Nashville, TN
John Morgan	33 Years	Database creation, Map drawer	Sub-Contractor	30%, as needed	Springfield, VA
Kent Stigall	37 Years	Database creation, Map drawer	Sub-Contractor	60%, as needed	Richmond, VA
Fred Hejazi	17 Years	System Support, Training, Database coordination, Map Drawer	Sub-Contractor	35%, as needed	Annapolis, MD
Lisa Handley (See Appendix B)	30 years	Racially Polarize/Racial Bloc Voting analyst	Sub-Contractor	20%, as needed	Washington DC



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A. The Contractor must provide **detailed, chronological resumes** of all proposed Key Personnel, including a description of their work experience relevant to their purposed role as it relates to the CONTRACT utilizing the required resume template labeled as Appendix A

Qualifications will be measured by education and experience with particular reference to experience on projects similar to that described in the CONTRACT.

Contractor must provide the resumes and information as required above –as an attachment to this CONTRACT labelled as Contractor-Resume.

See Appendix A and B

4.13 Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

Contractor must provide detailed information as required above – as an attachment to this CONTRACT labelled as Contractor- Org. chart

Kimball Brace is the lead for this project, and as such all staff and subcontractors will report to him in most cases. Contacts with Commissioners and Commission staff are freely accepted by all members of the consulting team, just cc Mr. Brace on any e-mail or correspondence.

4.14 Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor’s organization and the services it will provide; and information concerning subcontractor’s ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

JOHN MORGAN: Contractor must provide detailed information as requested in the above requirement(s).

The legal business name, address, telephone number of the subcontractor(s).	Applied Research Coordinates, Ltd. (ARC) 7323 Inzer Street Springfield, VA 22151 202-557-8016
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<p>A description of subcontractor’s organization and the services it will provide and information concerning subcontractor’s ability to provide the Contract Activities.</p>	<p>Applied Research Coordinates is consulting firm specializing in political and demographic analysis and its application to elections and redistricting. President and principal John B. Morgan has over 25 years of experience in map- drawing for redistricting. He is going into his fourth redistricting cycle and has done redistricting work in 19 states over the 1991, 2001 and 2011 cycles. He has worked with hundreds of public officials in his career, including legislators, congresspersons, elected and appointed statewide officials, attorneys, state government professionals and staff. He has worked for redistricting commissions in Connecticut, New Jersey, Pennsylvania and Ohio. He has also worked for commissions and boards in Atlantic and Essex counties in New Jersey, Wake, Sampson and Craven counties in North Carolina; Fayette and Gwinnett counties in Georgia and Delaware county in Indiana.</p>
<p>The relationship of the subcontractor to the Contractor.</p>	<p>Professional acquaintance / colleague in redistricting field</p>
<p>Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.</p>	<p>Panel discussions and interactions at National Conference of State Legislature (NSCL) redistricting meetings.</p>
<p>A complete description of the Contract Activities that will be performed or provided by the subcontractor.</p>	<p>Applied Research Coordinates and John Morgan will provide map-drawing services, redistricting advice, direct interaction with commission members, public officials and the public; review and analysis of commission plans as well as other plan submissions (as directed).</p>
<p>Of the total bid, the price of the subcontractor’s work.</p>	<p>\$45,000 to \$95,000</p>

<p>KENT STIGALL: Contractor must provide detailed information as requested in the above requirement(s).</p>	
<p>The legal business name, address, telephone number of the subcontractor(s).</p>	<p>W. Kent Stigall 2698 Huguenot Springs Rd Midlothian, VA 23113 804-356-3386</p>



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A description of subcontractor’s organization and the services it will provide and information concerning subcontractor’s ability to provide the Contract Activities.	Independent Contractor
The relationship of the subcontractor to the Contractor.	None
Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	In the late 1990’s EDS had a contract with the Division of Legislative Services to provide Phase I support at the time that Kent Stigall first began working for the Division of Legislative Services.
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	Primarily drawing district maps and assisting the commission in drawing maps. Provide technical expertise to EDS as needed. Other specific functions to be determined by EDS.
Of the total bid, the price of the subcontractor’s work.	\$55,000 +/-

FRED HEJAZI: Contractor must provide detailed information as requested in the above requirement(s).

The legal business name; address; telephone number of the subcontractor(s).	Citygate GIS LLC. 857 Childs Point Road, Annapolis, Maryland 21401. (410) 295-3333 ext 111
A description of subcontractor’s organization and the services it will provide; and information concerning subcontractor’s ability to provide the Contract Activities.	Citygate GIS is a nonpartisan redistricting and mapping software development company. Citygate has been providing redistricting software for more than 25 years and supporte more than 35 state legislatures. State of Michigan used Citygate redistricting software i 2000 and 2010 for drawing State House, Senate and Congressional districts.
The relationship of the subcontractor to the Contractor.	Citygate has no financial or ownership ties with EDS. Citygate is an independent subcontractor to EDS



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Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	EDS has worked with Citygate on redistricting projects for nearly 20 years. Work has included redistricting software for the Illinois and Rhode Island Legislatures.
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	Citygate will provide the online redistricting software technology, web hosting and professional desktop redistricting tools proposed for use in this project.
Of the total bid, the price of the subcontractor’s work	\$105,000

4.15 Security

The Contractor may be subject to the following security procedures:

- Background Checks

The Commission may require the Contractor’s personnel to wear Commission issued identification badges for in person meetings.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

5 Project Management

5.10 Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 14 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Contractor must submit its project plan as described above:	



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5.11

5.12 Meetings

The Contractor must be available to attend all MICRC meetings through December 31, 2021 either virtually or in person. The MICRC will give the Contractor as much notice as practical however in no circumstances less than 18 hours of when they will be required to participate.

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

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

5.13 Reporting

In addition to submitting weekly status reports to the Executive Director of the Commission the Contractor should also identify other reports that would be helpful in accomplishing the Key Deliverables.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception. (see Key Deliverable 1.3 (c))
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

6 Pricing

6.10 Price Term

Pricing is firm for the entire length of the Contract.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

6.11 Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The Commission may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the Commission deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.



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The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

7 Ordering

7.10 Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8 Invoice and Payment

8.10 Invoice Requirements

All invoices submitted to the Commission must include: (a) date; (b) delivery order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8.11 Payment Methods

The Commission will make payment for Contract Activities via EFT to the banking information established in your Contractor account within SIGMA-Contractor Self-Service.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8.12 Procedure

Invoices must be submitted to: [Suann Hammersmith, the Executive Director of the MICRC](#)

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



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SCHEDULE A: STATEMENT OF WORK – CONTRACT ACTIVITIES

9 Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the Commission and it would be impracticable and extremely difficult to fix the actual damage sustained by the Commission. Therefore, if there is late or improper completion of the Contract Activities the Commission is entitled to collect liquidated damages in the amount of \$50,000 and an additional \$1,000 per day for each day Contractor fails to remedy the late or improper completion of the Work.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



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SCHEDULE B – CONTRACT PRICING

Months	Events	Deliverable Phase	Item	Contract Total	Deliverable One					Deliverable Two		Deliverable Three			Travel Costs	Technical Support (Standard & 24/7)	
					Software	Percent Payment	Database Compilation	Percent Payment	Analysis & Support	Percent Payment	Plan Development	Support for Public Hearings	Administrative Support	Reporting			Generation of final Plan, reports & Maps
		Budget		\$989,000.00	\$140,000.00		\$246,800.00		\$165,200.00		\$190,000.00	\$130,750.00	\$40,000.00	\$15,000.00	\$18,000.00	\$40,000.00	\$3,250.00
June, 2021	Public Hearings, Analysis of populaton trends continues, impact on plan drafting shown, test plan development continues, initial racial bloc voting analysis begins			\$110,696.00	\$35,000.00	25%	\$17,276.00	7%	\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
July, 2021	Public Hearings, preliminary planning drawing continues, preliminary racial bloc voting analysis			\$58,420.00					\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
August, 2021	Legacy Data Release, Public Hearings, incorporating of Legacy Data Release into AutoBoundEDGE, Analysis of population trends, creation of tables &			\$115,184.00			\$56,764.00	23%	\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
Sept, 2021	PL Data Release, public hearings			\$83,100.00			\$24,680.00	10%	\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
October, 2021	potentials			\$58,420.00					\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
Nov, 2021	Plan be completed			\$58,420.00					\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
Dec, 2021	Documentation			\$74,620.00					\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00	\$16,200.00	\$4,000.00	\$325.00
January, 2022				\$58,420.00					\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00		\$4,000.00	\$325.00
Holdback		10%		\$98,900.00	\$14,000.00	10%	\$24,680.00	10%	\$16,520.00	10.00%	\$19,000.00	\$13,075.00	\$4,000.00	\$1,500.00	\$1,800.00	\$4,000.00	\$325.00
						100%		100%		100.00%							
	Total on percentages																
	Total on Dollars			\$989,000.00	\$140,000.00		\$246,800.00		\$165,200.00		\$190,000.00	\$130,750.00	\$40,000.00	\$15,000.00	\$18,000.00	\$40,000.00	\$3,250.00

Quick payment terms: 2% discount off invoice if paid within 15 days after receipt of invoice.



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SCHEDULE B – CONTRACT PRICING

Hourly Rates

Position	Rate/hour
Project Coordinator - Kim Brace	\$275
Deputy Coordinator - Patricia Cummings Fetter	\$175
Voting Rights / Voting Bloc Analyst - Lisa Handley	\$350
Political Scientist/Expert Witness	\$225
Statistician	\$195
GIS Programmer	\$185
Senior Programmer	\$175
Programmer	\$150
Research Associate	\$120
Database Specialist	\$120
Computer Support Staff	\$95
Support Staff	\$75

Depositions, court testimony and employee hours in excess of eight (8) hours per day or forty (40) hours per week, including, but not limited to holidays and weekends, shall be billed at 150 percent of the above rates when such hours are the result of deadlines imposed by or authorized by the client.



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SCHEDULE D – SERVICE LEVEL AGREEMENT

IF THE SOFTWARE IS CONTRACTOR HOSTED, then the following applies:

1. **Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Schedule** shall have the respective meanings given to them in the Contract Terms and Conditions.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Availability**” has the meaning set forth in **Section 1**

“**Availability Requirement**” has the meaning set forth in **Section 1.1**

“**Available**” has the meaning set forth in **Section 1**

“**Critical Service Error**” has the meaning set forth in **Section 2.5**

“**Exceptions**” has the meaning set forth in **Section 1.2.**

“**High Service Error**” has the meaning set forth in **Section 2.5**

“**Low Service Error**” has the meaning set forth in **Section 2.5**

“**Medium Service Error**” has the meaning set forth in **Section 2.5**

“**Resolve**” has the meaning set forth in **Section 2.6**

“**RPO**” or “**Recovery Point Objective**” means the maximum amount of potential data loss in the event of a disaster.

“**RTO**” or “**Recovery Time Objective**” means the maximum period of time to fully restore the Hosted Services in the case of a disaster.

“**Scheduled Downtime**” has the meaning set forth in **Section 1.3**

“**Scheduled Uptime**” means the total minutes in the Service Period.

“**Service Availability Credits**” has the meaning set forth in **Section** Error! Reference source not found..

“**Service Error**” means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

“**Service Level Credits**” has the meaning set forth in **Section 2.8** .

“**Service Level Failure**” means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.



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SCHEDULE D – SERVICE LEVEL AGREEMENT

“**Software Support Services**” has the meaning set forth in **Section 2**.

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

“**Support Hours**” means Support Hours 24 hours / 7 days a week.

“**Support Request**” has the meaning set forth in **Section 2.5**

“**Support Service Level Requirements**” has the meaning set forth in **Section 2.6**

1. Service Availability and Service Available Credits.

1.1 Availability Requirement. Contractor will make the Hosted Services and Software Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a “**Service Period**”), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the “**Availability Requirement**”). “**Available**” means the Hosted Services and Software are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. “**Availability**” has a correlative meaning. The Hosted Services and Software are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services and Software, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \times 100 = \text{Availability}$.

1.2 Exceptions. No period of Hosted Services degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- (a) Failures of the State’s or its Authorized Users’ internet connectivity;
- (b) Scheduled Downtime as set forth in **Section 1.3**.

1.3 Scheduled Downtime. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services or Software in whole or in part (“**Scheduled Downtime**”). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.

1.4 Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.

1.5 Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services and Software during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services and Software relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

1.6 Remedies for Service Availability Failures.

- (a) If the actual Availability of the Hosted Services and Software is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will



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SCHEDULE D – SERVICE LEVEL AGREEMENT

issue to the State the following credits on the fees payable for Hosted Services and Software provided during the Service Period (“**Service Availability Credits**”):

Availability	Credit of Fees
≥99.98%	None
<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 2.6** will be applied in accordance with payment terms of the Contract.

(c) If the actual Availability of the Hosted Services and Software is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

2. Support and Maintenance Services. Contractor will provide IT Environment Service and Software maintenance and support services (collectively, “**Software Support Services**”) in accordance with the provisions of this **Section 2**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.

2.1 Support Service Responsibilities. Contractor will:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
- (b) provide unlimited telephone support 24 hours / seven days a week,
- (c) provide unlimited online support 24 hours a day, seven days a week;
- (d) provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
- (e) respond to and Resolve Support Requests as specified in this **Section** Error! Reference source not found.

2.2 Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services and Software to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;
- (b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and
- (c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):
 - (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;



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- (ii) If Contractor’s facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 2.5**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
- (iii) Notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the troubleticket.

2.3 Service Maintenance. Contractor will continuously maintain the Hosted Services and Software to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the State and its Authorized Users:

- (a) all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services and Software, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; provided that Contractor shall consult with the State and is required to receive State approval prior to modifying or upgrading Hosted Services and Software, including Maintenance Releases and New Versions of Software; and
- (b) all such services and repairs as are required to maintain the Hosted Services and Software or are ancillary, necessary or otherwise related to the State’s or its Authorized Users’ access to or use of the Hosted Services and Software, so that the Hosted Services and Software operate properly in accordance with the Contract and this Schedule.

2.4 Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 3.4 (“Support Service Level Requirements”)**, and the Contract.

2.5 Support Requests. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a **“Support Request”**). The State will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects
Critical Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Declared a Critical Support Request by the State; or • Widespread access interruptions.
High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or



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Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects
	<ul style="list-style-type: none"> Data entry or access is materially impaired on a limited basis.
Medium Service Error	<ul style="list-style-type: none"> IT Environment Services and Software is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.
Low Service Error	<ul style="list-style-type: none"> Request for assistance, information, or services that are routine in nature.

2.6 Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. **“Resolve”** (including **“Resolved”**, **“Resolution”** and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional



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Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
			portion thereof that the corresponding Service Error is not responded to within the required response time.	hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.



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Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

2.7 Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Project Manager and Contractor’s management or engineering personnel, as appropriate.

2.8 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 4.4(b)** (“**Service Level Credits**”) in accordance with payment terms set forth in the Contract.

2.9 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State’s review, comment and approval, which, subject to and upon the State’s written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties’ corrective action plan (the “**Corrective Action Plan**”). The Corrective Action Plan must include, at a minimum: (a) Contractor’s commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor’s preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

3. Data Storage, Backup, Restoration and Disaster Recovery. Contractor must maintain or cause to be maintained backup redundancy and disaster avoidance and recovery procedures designed to safeguard State Data and the State’s other Confidential Information, Contractor’s Processing capability and the availability of the IT Environment Services and Software, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. All backed up State Data shall be located in the continental United States. The force majeure provisions of this Contract do not limit Contractor’s obligations under this section.

3.1 Data Storage. Contractor will provide sufficient storage capacity to meet the needs of the State at no additional cost.



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SCHEDULE D – SERVICE LEVEL AGREEMENT

3.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic offline back-ups of State Data on at least a weekly basis and store and retain such back-ups as specified in **Schedule A**. Contractor must, within five (5) Business Days 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 State Data in the format specified by the State.

3.3 Data Restoration. If the data restoration is required due to the actions or inactions of the Contractor or its subcontractors, Contractor will promptly notify the State and complete actions required to restore service to normal production operation. If requested, Contractor will restore data from a backup upon written notice from the State. Contractor will restore the data within one (1) Business Day of the State's request. Contractor will provide data restorations at its sole cost and expense.

3.4 Disaster Recovery. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of eight (8) hours, and a Recovery Time Objective (RTO) of four (4) hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule F**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 3**; and provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services and Software within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.



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SCHEDULE E – DATA SECURITY REQUIREMENTS

1. Definitions. For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Schedule** shall have the respective meanings given to them in the Contract.

“**Contractor Security Officer**” has the meaning set forth in **Section 2** of this Schedule.

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

“**FISMA**” means The Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014)).

“**Hosting Provider**” means any Permitted Subcontractor that is providing any or all of the Hosted Services under this Contract.

“**NIST**” means the National Institute of Standards and Technology.

“**PCI**” means the Payment Card Industry.

“**PSP**” or “**PSPs**” means the State’s IT Policies, Standards and Procedures.

“**SSAE**” means Statement on Standards for Attestation Engagements.

“**Security Accreditation Process**” has the meaning set forth in **Section 6** of this Schedule

2. Security Officer. Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”).

3. Contractor Responsibilities. 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 any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. 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 public and non-public State IT policies and standards, of which the publicly available ones are at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

This responsibility also extends to all service providers and subcontractors with access to State Data or an ability to impact the contracted solution. Contractor responsibilities are determined from the PSPs based on the services being provided to the State, the type of IT solution, and the applicable laws and regulations.



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SCHEDULE E – DATA SECURITY REQUIREMENTS

4. Acceptable Use Policy. To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458_958_7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.

5. Protection of State's Information. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

5.1 ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;

5.2 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;

5.3 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);

5.4 take all reasonable measures to:

(a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

(b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;

5.5 ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 128 bits or higher;

5.6 ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.

6. Unauthorized Access. Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State



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SCHEDULE E – DATA SECURITY REQUIREMENTS

systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

7. Security Audits.

7.1 During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.

7.2 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 Services and from time to time during the term of this Contract. 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. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.4 With respect to State Data, Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

8.5 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 8**.

8. Application Scanning. During the Term, Contractor must, at its sole cost and expense, scan all Contractor provided applications, and must analyze, remediate and validate all vulnerabilities identified by the scans as required by the State Secure Web Application and other applicable PSPs.

Contractor's application scanning and remediation must include each of the following types of scans and activities:

8.1 Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).

(a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

8.2 Static Application Security Testing (SAST) - Scanning source code for vulnerabilities, analysis, remediation, and validation.



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MICHIGAN INDEPENDENT CITIZEN REDISTRICTING COMMISSION

SCHEDULE E – DATA SECURITY REQUIREMENTS

9. Nonexclusive Remedy for Security Breach.

9.1 Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.



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SCHEDULE F – DISASTER RECOVERY PLAN

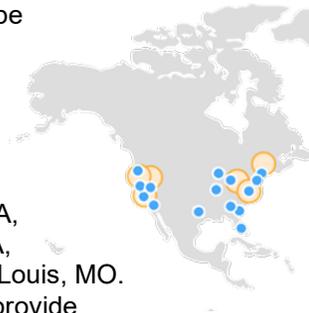
Citygate's MyDistricting.com web based redistricting solution is hosted on Amazon's EC2. The use of Amazon cloud enables faster disaster recovery without incurring the infrastructure expense of a second physical site. The Amazon cloud supports several disaster recovery (DR) architectures from "pilot light" to a "hot standby" environment that enable rapid failover at scale. With data centers in regions all around the world, Amazon provides a set of cloud-based disaster recovery services that enable rapid recovery.

Citygate's disaster recovery plan focuses on the two key requirements. Rapid recovery and minimal loss of data. Citygate's standard disaster recovery plan includes daily onsite backups, with offsite backups performed every 5 days.

However, for the Michigan installations, Citygate would recommend creating a distinct instance of myDistricting with its own disaster recovery plan.

Once the instance is created on Amazon and the MyDistricting software and redistricting data are loaded, an Amazon AMI (Amazon Machine Image) will be created. AMIs can be stored separately from the instance and can be used to rapidly spin up a new machine in the event of a failure. The AMI will also contain the static data content (or Census Layers) installed on the server which constitutes the majority of the data stored on the server. The dynamic data can potentially include Citizen created plans (if that option is enabled), public comments (if that option is enabled) and publicly provided communities of interest (if the option is enabled). The tables containing these data will be backed up daily on the system and weekly to an off-line system.

The system will also be monitored, so if failure occurs, Citygate would be notified and can begin to recover the system beginning with spin up of a new server using the stored AMI. After the system has been restored, Citygate will load the latest available backup on to the system.



Amazon server locations are in Ashburn, VA, Atlanta GA, Chicago, IL, Dallas/Fort Worth, TX, Hayward, CA, Jacksonville, FL, Los Angeles, CA, Miami, FL, Minneapolis, MN, New York, NY, Newark, NJ, Palo Alto, CA, Philadelphia, PA, San Jose, CA, Seattle, WA, South Bend, IN, and St. Louis, MO.

These locations are grouped in "Availability Zones". Availability zones provide connectivity between servers through private fiber networks and allow redundant servers such as proposed above to be created.

For Michigan, Citygate proposes to use Availability Zone 5 US East (Northern Virginia) Region. This zone includes servers in Ashburn, Virginia and Atlanta, Georgia.



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APPENDIX A – RESUME(S)

VITA

KIMBALL WILLIAM BRACE

Election Data Services, Inc.
6171 Emerywood Court
Manassas, VA 20112-3078

703 580-7267 or 202 789-2004 phone
703 580-6258 fax

kbrace@electiondataservices.com or kbrace@aol.com

Kimball Brace is the president of Election Data Services Inc., a consulting firm that specializes in redistricting, election administration, and the analysis and presentation of census and political data. Mr. Brace graduated from the American University in Washington, D.C., (B.A., Political Science) in 1974 and founded Election Data Services in 1977.

Redistricting Consulting

Activities include software development; construction of geographic, demographic, or election databases; development and analysis of alternative redistricting plans; general consulting, and onsite technical assistance with redistricting operations.

Congressional and Legislative Redistricting

Arizona Independent Redistricting Commission: Election database, 2001

Arizona Legislature, Legislative Council: Election database, 2001

Colorado General Assembly, Legislative Council: Geographic, demographic, and election databases, 1990–91

Connecticut General Assembly

- Joint Committee on Legislative Management: Election database, 2001; and software, databases, general consulting, and onsite technical assistance, 1990–91
- Senate and House Democratic Caucuses: Demographic database and consulting, 2001

Florida Legislature, House of Rep.: Geographic, demographic, and election databases, 1989–92

Illinois General Assembly

- Speaker of House and Senate Minority Leader: Software, databases, general consulting, and onsite technical assistance, 2000–02,
- Speaker of House and President of Senate: Software, databases, general consulting, and onsite technical assistance, 2018-current, 2009-2012, 1990–92, and 1981-82

Iowa General Assembly, Legislative Service Bureau and Legislative Council: Software, databases, general consulting, and onsite technical assistance, 2000–01 and 1990–91

Kansas Legislature: Databases and plan development (state senate and house districts), 1989



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Massachusetts General Court

- Senate Democratic caucus: Election database and general consulting, 2001–02
- Joint Reapportionment Committees: Databases and plan development (cong., state senate, and state house districts), 1991–93, 2010-2012

Michigan Legislature: Geographic, demographic, and election databases, 1990–92; databases and plan development (cong., state senate, and state house districts), 1981-82

Missouri Redistricting Commission: General consulting, 1991–92

Commonwealth of Pennsylvania: General consulting, 1992

Rhode Island General Assembly and Reapportionment Commissions

- Software, databases, plan development, and onsite assistance (cong., state senate, and state house districts), 2016- current, 2010-2012, 2001–02 and 1991–92
- Databases and plan development (state senate districts), 1982-83

State of South Carolina: Plan development and analysis (senate), U.S. Dept. of Justice, 1983–84

Local Government Redistricting

Orange County, Calif.: Plan development (county board), 1991–92

City of Bridgeport, Conn.: Databases and plan development (city council), 2011-2012 and 2002–03

Cook County, Ill.: Software, databases, and general consulting (county board), 2010-2012, 2001–02, 1992–1993, and 1989

Lake County, Ill.: Databases and plan development (county board), 2011 and 1981

City of Chicago, Ill.: Software, databases, general consulting, and onsite technical assistance (city wards), 2010-2012, 2001–02 and 1991–92

City of North Chicago, Ill.: Databases and plan development (city council), 1991 and 1983

City of Annapolis, Md.: Databases and plan development (city council), 1984

City of Boston, Mass.: Databases and plan development (city council), 2011-2012, 2001-2002, and 1993

City of New Rochelle, N.Y.: Databases and plan development (city council), 1991–92

City of New York, N.Y.: Databases and plan development (city council), 1990–91

Cities of Pawtucket, Providence, East Providence, and Warwick, and town of North Providence, R.I.: Databases and plan development (city wards and voting districts), 2011-2012, 2002

City of Woonsocket and towns of Charlestown, Johnston, Lincoln, Scituate and Westerly, R.I.: Databases and plan development (voting districts), 2011-2012, 2002; also Westerly 1993

City of Houston, Tex.: Databases and plan development (city council), 1979 — recommended by U.S. Department of Justice

City of Norfolk, Va.: Databases and plan development (city council), 1983–84 — for Lawyers' Committee for Civil Rights



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Virginia Beach, Va.: Databases and plan development (city council), 2011-2012, 2001–02, 1995, and 1993

Other Activities

International Foundation for Electoral Systems (IFES) and U.S. Department of State: redistricting seminar, Almaty, Kazakhstan, 1995

Library of Congress, Congressional Research Service: Consulting on reapportionment, redistricting, voting behavior and election administration

National Conference of State Legislatures (NCSL): Numerous presentations on variety of redistricting and election administration topics, 1980 - current

Election Administration Consulting

Activities include seminars on election administration topics and studies on voting behavior, voting equipment, and voter registration systems.

Prince William County, VA:

2013 – Appointed by Board of County Supervisors to 15 member Task Force on Long Lines following 2012 election. Asked and appointed by County’s Electoral Board to be Acting General Registrar for 5-month period between full-time Registrars.

2008 - current – poll worker and now chief judge for various precincts in county

U.S. Election Assistance Commission (EAC): Served as subcontractor to prime contractors who compiled survey results from 2008 and 2010 Election Administration and Voting Survey.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of a survey distributed to state election directors during FY–2007. Survey results were presented in the following reports of the EAC: *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005–2006, A Report to the 110th Congress*, June 30, 2007; *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Survey Report Findings*, September, 2007; and *The 2006 Election Administration and Voting Survey, A Summary of Key Findings*, December, 2007.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of three surveys distributed to state election directors during FY–2005: Election Day, Military and

Overseas Absentee Ballot (UOCAVA), and Voter Registration (NVRA) Surveys. Survey results were presented in the following reports: *Final Report of the 2004 Election Day Survey*, by Kimball W. Brace and Dr. Michael P. McDonald, September 27, 2005; and *Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003–2004, A Report to the 109th Congress*, June 30, 2005.

Rhode Island Secretary of State: Verification of precinct and district assignment codes in municipal registered voter files and production of street files for a statewide voter registration database, on-going maintenance of street file, 2004-2006, 2008-2014, 2016-2017.

Rhode Island Secretary of State, State Board of Elections & all cities & towns: production of



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District of Columbia, Board of Elections and Ethics (DCBOEE): Verification of election ward, Advisory Neighborhood Commission (ANC), and Single-Member District (SMD) boundaries and production of a new street locator, 2003. Similar project, 1993.

Harris County, Tex.: Analysis of census demographics to identify precincts with language minority populations requiring bilingual assistance, 2002–03

Cook County, Ill., Election Department and Chicago Board of Election Commissioners:

- Analysis of census demographics to identify precincts with language minority populations requiring bilingual assistance, 2019, 2010–2013, 2002–03
- Study on voting equipment usage and evaluation of punch card voting system, 1997

Chicago Board of Election Commissioners: Worked with Executive Director & staff in Mapping Dept. to redraw citywide precincts, eliminate over 600 to save costs, 2011–12

Library of Congress, Congressional Research Service: Nationwide, biannual studies on voter registration and turnout rates, 1978–2002

U.S. General Accounting Office (GAO), U.S. Dept. of Justice, and numerous voting equipment vendors and media: Data on voting equipment usage throughout the United States, 1980–present

Needs assessments and systems requirement analyses for the development of statewide voter registration systems:

- Illinois State Board of Elections: 1997
- North Carolina State Board of Elections, 1995
- Secretary of Commonwealth of Pennsylvania, 1996

Federal Election Commission, Office of Election Administration:

- Study on integrating local voter registration databases into statewide systems, 1995
- Nationwide workshops on election administration topics, 1979–80
- Study on use of statistics by local election offices, 1978–79

Cuyahoga County, Ohio, Board of Elections: Feasibility study on voting equipment, 1979

Winograd Commission, Democratic National Committee: Analysis of voting patterns, voter registration and turnout rates, and campaign expenditures from 1976 primary elections

Mapping and GIS

Activities include mapping and GIS software development (geographic information systems) for election administration and updating TIGER/Line files for the decennial census.

2000 Census Transportation Planning Package (CTPP), 1998–99: GIS software for the U.S. Department of Transportation to distribute to 400 metropolitan planning organizations (MPOs) and state transportation departments for mapping traffic analysis zones (TAZs) for the 2000 census; provided technical software support to MPOs

Census 2000, 2010 and 2020 Redistricting Data Program, Block Boundary Suggestion Project (Phase 1) and Voting District Project (Phase 2), 1995–99: GIS software and provided software, databases, and technical software support to the following program participants:

- Alaska Department of Labor



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- Illinois State Board of Elections
- Indiana Legislative Services Agency
- Iowa Legislative Service Bureau
- New Mexico Legislative Council Service
- Rhode Island General Assembly
- Virginia Division of Legislative Services

Developed PRECIS[®] Precinct Information System—GIS software to delineate voting precinct boundaries—and delivered software, databases, and technical software support to the following state and local election organizations (with date of installation):

- Cook County, Ill., Department of Elections (1993)
- Marion County, Fla., Supervisor of Elections (1995)
- Berks County Clerk, Penn. (1995)
- Hamilton County, Ohio, Board of Elections (1997)
- Brevard County, Fla., Supervisor of Elections (1999)
- Osceola County, Fla., Supervisor of Elections (1999)
- Multnomah County, Ore, Elections Division (1999)
- Chatham County, Ga., Board of Elections (2000)
- City of Chicago, Ill., Board of Election Commissioners (2000)
- Mahoning County, Ohio, Board of Elections (2000)
- Iowa Secretary of State, Election and Voter Registrations Divisions (2001)
- Woodbury County, Iowa, Elections Department (2001)
- Franklin County, Ohio, Board of Elections (2001)
- Cobb County, Ga., Board of Elections and Voter Registration (2002)

Illinois State Board of Elections, Chicago Board of Election Commissioners, and Cook County Election Department: Detailed maps of congressional, legislative, judicial districts, 1992

Associated Press: Development of election night mapping system, 1994

Litigation Support

Activities include data analysis, preparation of court documents and expert witness testimony. Areas of expertise include the census, demographic databases, district compactness and contiguity, racial bloc voting, communities of interest, and voting systems. Redistricting litigation activities also include database construction and the preparation of substitute plans.

State of Alabama vs. US Department of Commerce, et al (2019-2020) apportionment & citizenship data

NAACP vs. Denise Merrill, CT Secretary of State, et al (2019-2020) state legislative redistricting and prisoner populations

Latasha Holloway, et al. v. City of Virginia Beach, VA (2019) city council redistricting

Joseph V. Aguirre vs. City of Placentia, CA (2018-2019), city council redistricting

Davidson, et al & ACLU of Rhode Island vs. City of Cranston, RI (2014-16), city council & school committee redistricting with prisoner populations.

Navaho Nation v. San Juan County, UT (2014-17) county commissioner & school board districts.



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Michael Puyana vs. State of Rhode Island (2012) state legislature redistricting

United States of America v. Osceola County, Florida, (2006), county commissioner districts.

Deeds vs McDonnell (2005), Va. Attorney General Recount

Indiana Democratic Party, et al., v. Todd Rokita, et al. (2005), voter identification.

Linda Shade v. Maryland State Board of Elections (2004), electronic voting systems

Gongaley v. City of Aurora, Ill. (2003), city council districts

State of Indiana v. Sadler (2003), ballot design (city of Indianapolis-Marion County, Ind.)

Peterson v. Borst (2002–03), city-council districts (city of Indianapolis-Marion County, Ind.)

New Rochelle Voter Defense Fund v. City of New Rochelle, City Council of New Rochelle, and Westchester County Board Of Elections (2003), city council districts (New York)

Charles Daniels and Eric Torres v. City of Milwaukee Common Council (2003), council districts (Wisconsin)

The Louisiana House of Representatives v. Ashcroft (2002–03), state house districts

Camacho v. Galvin and Black Political Caucus v. Galvin (2002–03), state house districts (Massachusetts)

Latino Voting Rights Committee of Rhode Island, et al., v. Edward S. Inman, III, et al. (2002–03), state senate districts

Metts, v. Harmon, Almond, and Harwood, et al. (2002–03), state senate districts (Rhode Island)

Joseph F. Parella, et al. v. William Irons, et al. (2002–03), state senate districts (Rhode Island)

Jackson v. County of Kankakee (2001–02), county commissioner districts (Illinois)

Corbett, et al., v. Sullivan, et al. (2002), commissioner districts (St Louis County, Missouri)

Harold Frank, et al., v. Forest County, et al. (2001–02), county commissioner districts (Wisc.)

Albert Gore, Jr., et al., v. Katherine Harris as Secretary of State, State of Florida, et al., and The Miami Dade County Canvassing Board, et al., and The Nassau County Canvassing Board, et al., and The Palm Beach County Canvassing Board, et al., and George W. Bush, et al (2000), voting equipment design — Leon County, Fla., Circuit Court hearing, December 2, 2000, on disputed ballots in Broward, Volusia, Miami-Dade, and Palm Beach counties from the November 7, 2000, presidential election.

Barnett v. Daley/PACI v. Daley/Bonilla v. Chicago City Council (1992–98), city wards

Donald Moon, et al. v. M. Bruce Meadows, etc and Curtis W. Harris, et al. (1996–98), congressional districts (Virginia)

Melvin R. Simpson, et al. v. City of Hampton, et al. (1996–97), city council districts (Va.)

Vera vs. Bush (1996), Texas redistricting

In the Matter of the Redistricting of Shawnee County Kansas and Kingman, et al. v. Board of County Commissioners of Shawnee County, Kansas (1996), commissioner districts



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Torres v. Cuomo (1992–95), congressional districts (New York)

DeGrandy v. Wetherell (1992–94), congressional, senate, and house districts (Florida)

Johnson v. Miller (1994), congressional districts (Georgia)

Jackson, et al v Nassau County Board of Supervisors (1993), form of government (N.Y.)

Gonzalez v. Monterey County, California (1992), county board districts

LaPaille v. Illinois Legislative Redistricting Commission (1992), senate and house districts

Black Political Task Force v. Connolly (1992), senate and house districts (Massachusetts)

Nash v. Blunt (1992), house districts (Missouri)

Fund for Accurate and Informed Representation v. Weprin (1992), assembly districts (N.Y.)

Mellow v. Mitchell (1992), congressional districts (Pennsylvania)

Phillip Langsdon v. Milsaps (1992), house districts (Tennessee)

Smith v. Board of Supervisors of Brunswick County (1992), supervisor districts (Virginia)

People of the State of Illinois ex. rel. Burris v. Ryan (1991–92), senate and house districts

Good v. Austin (1991–92), congressional districts (Michigan)

Neff v. Austin (1991–92), senate and house districts (Michigan)

Hastert v. Illinois State Board of Elections (1991), congressional districts

Republican Party of Virginia et al. v. Wilder (1991), senate and house districts

Jamerson et al. v. Anderson (1991), senate districts (Virginia)

Ralph Brown v. Iowa Legislative Services Bureau (1991), redistricting database access

Williams, et al. v. State Board of Election (1989), judicial districts (Cook County, Ill.)

Fifth Ward Precinct 1A Coalition and Progressive Association v. Jefferson Parish School Board (1988–89), school board districts (Louisiana)

Michael V. Roberts v. Jerry Wamser (1987–89), St. Louis, Mo., voting equipment

Brown v. Board of Commissioners of the City of Chattanooga, Tenn. (1988), county commissioner districts

Business Records Corporation v. Ransom F. Shoup & Co., Inc. (1988), voting equip. patent

East Jefferson Coalition for Leadership v. The Parish of Jefferson (1987–88), parish council districts (Louisiana)

Buckanaga v. Sisseton School District (1987–88), school board districts (South Dakota)

Griffin v. City of Providence (1986–87), city council districts (Rhode Island)

United States of America v. City of Los Angeles (1986), city council districts

Latino Political Action Committee v. City of Boston (1984–85), city council districts

Ketchum v. Byrne (1982–85), city council districts (Chicago, Ill.)

State of South Carolina v. United States (1983–84), senate districts — U.S. Dept. of Justice



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Collins v. City of Norfolk (1983–84), city council districts (Virginia) — for Lawyers' Committee for Civil Rights

Rybicki v. State Board of Elections (1981–83), senate and house districts (Illinois)

Licht v. State of Rhode Island (1982–83), senate districts (Rhode Island)

Agerstrand v. Austin (1982), congressional districts (Michigan)

Farnum v. State of Rhode Island (1982), senate districts (Rhode Island)

In Re Illinois Congressional District Reapportionment Cases (1981), congressional districts

Publications

"EAC Survey Sheds Light on Election Administration", *Roll Call*, October 27, 2005 (with Michael McDonald)

Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models, by Kimball W. Brace and M. Glenn Newkirk, edited by William Kimberling, (Washington, D.C.: Federal Election Commission, Office of Election Administration, Autumn 1997).

The Election Data Book: A Statistical Portrait of Voting in America, 1992, Kimball W. Brace, ed., (Bernan Press, 1993)

"Geographic Compactness and Redistricting: Have We Gone Too Far?", presented to Midwestern Political Science Association, April 1993 (with D. Chapin and R. Niemi)

"Whose Data is it Anyway: Conflicts between Freedom of Information and Trade Secret Protection in Redistricting", *Stetson University Law Review*, Spring 1992 (with D. Chapin and W. Arden)

"Numbers, Colors, and Shapes in Redistricting," *State Government News*, December 1991 (with D. Chapin)

"Redistricting Roulette," *Campaigns and Elections*, March 1991 (with D. Chapin)

"Redistricting Guidelines: A Summary", presented to the Reapportionment Task Force, National Conference on State Legislatures, November 9, 1990 (with D. Chapin and J. Waliszewski)

"The 65 Percent Rule in Legislative Districting for Racial Minorities: The Mathematics of Minority Voting Equality," *Law and Policy*, January 1988 (with B. Grofman, L. Handley, and R. Niemi)

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" *Journal of Politics*, February 1987 (with B. Grofman and L. Handley)

"New Census Tools," *American Demographics*, July/August 1980



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Professional Activities

Member, Task Force on Long Lines in 2012 Election, Prince William County, VA

Member, 2010 Census Advisory Committee, a 20-member panel advising the Director of the Census on the planning and administration of the 2010 census.

Delegate, Second Trilateral Conference on Electoral Systems (Canada, Mexico, and United States), Ontario, Canada, 1995; and Third Trilateral Conference on Electoral Systems, Washington, D.C., 1996

Member, American Association of Political Consultants

Member, American Association for Public Opinion Research

Member, American Political Science Association

Member, Association of American Geographers, Census Advisory Committee

Member Board of Directors, Association of Public Data Users

Member, National Center for Policy Alternatives, Voter Participation Advisory Committee

Member, Urban and Regional Information Systems Association

Historical Activities

Member, Manassas Battlefield Trust Board Member, 2018 -- current

Member, Historical Commission, Prince William County, VA., 2015 – current. Elected Chairman in 2017, re-elected 2018

Member of Executive Committee & head of GIS Committee, Bull Run Civil War Round Table, Centerville, VA. 2015 – current

Member, Washington Capitals Fan Club, Executive Board 2017 – current



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APPENDIX A – RESUME(S)

Proposed Resource Name:	Ryan Taylor
Proposed Classification:	Data and GIS Analyst
Key Personnel:	Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/>
If resource is associated with a subcontractor provide name of company:	N/A
Percentage of time resource will be allocated to project:	30%

Agency: List the required skill sets, education, certifications, and training requirements for each key personnel role. Below are examples of required skills, education and certifications and examples of vendor responses.

Bidder: List the skills and experience that qualify the individual for the duties and responsibilities on this project for the proposed role. Provide the name of the project(s) and the year(s) the experience was obtained.

The experience requirements detailed in the RFP are restated as follows:

Required Skills	Bidder's Response
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<p>Describe your experience and knowledge with Geographic Information Systems redistricting solutions and the associated boundary, demographic and other data sources used for redistricting mapping.</p>	<p>Does resource have this required skill: Yes X or No Y</p> <p>Description of skills and experience: <i>12 years' experience with ESRI and QGIS products preparing boundary files for Census Bureau implementation, Citygate GIS products for creating and analyzing district plans, and proprietary PRECIS software for the creation, analysis, and implementation of precinct plans and street file updates needed post-redistricting.</i></p> <p>Name of project(s) and year(s) experience was obtained: University of Oregon RARE program– 2009 to 2010 Illinois General Assembly redistricting – 2010 to 2011 Rhode Island state and local redistricting – 2011 to 2012 City of Chicago redistricting – 2012 Rhode Island Voter-Precinct Verification – 2016 Rhode Island Census Boundaries Phase 1&2 – 2015 to 2020 Illinois Census Boundaries Phase 2 – 2017 to 2020</p> <p>Redistricting legal assistance: County of San Juan, Utah – 2015 to 2018 City of Cranston, RI – 2015 City of Virginia Beach, VA – 2019 to 2020 State of Connecticut - 2020</p>
<p>Describe your experience working with commissions, public officials, and the general public in similar projects.</p>	<p>Does resource have this required skill: Yes X or No Y</p> <p>Description of skills and experience: Conducted hearings for redistricting commissions and members of the public, gathering and implementing recommendations and responses to redistricting drafts.</p> <p>Name of project(s) and year(s) experience was obtained: Rhode Island state and local redistricting – 2011 to 2012</p>
<p>Describe your knowledge and experience with the necessary validation checks that need to be part of a redistricting plan (for example, checking population totals, continuity, compactness, etc).</p>	<p>Does resource have this required skill: Yes X or No Y</p> <p>Description of skills and experience: Validation checks are a standard feature of Citygate GIS redistricting software, and all statistics are analyzed and reported to stakeholders.</p> <p>Name of project(s) and year(s) experience was obtained: Illinois General Assembly redistricting – 2010 to 2011 Rhode Island state and local redistricting – 2011 to 2012 City of Chicago redistricting – 2012 Rhode Island Voter-Precinct verification - 2016</p>



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List client references for work performed to meet the requirements stated above, and all projects the proposed resource has worked on in the last three (3) years. A minimum of three (3) references are required. By submission of this information, the bidder and identified key person authorize the State of Michigan to contact references and previous employers provided to verify the accuracy of the information. Provide the identified information for each:

Start Date: August 2011	End Date: ongoing
Client/Project: Rhode Island State and Local Redistricting - State of Rhode Island - 148 West River St., Providence, RI 02904 - (401) 222-2340, elections@sos.ri.gov – Director of Elections: Rob Rock - (401) 222-2357 – rrock@sos.ri.gov	
Employer: Election Data Services	
Title/Percentage of time: <i>Redistricting Consultant - 80%</i>	
Description: Consultant for all aspects of redistricting management and process for the drawing of US Congressional, State Legislative, and City Ward Districts, as well as City/Town voting precincts; public outreach and information; operating the redistricting office open to all interested parties; and developing all the necessary street file updates for the Secretary of State Precinct Management system - <i>ESRI ArcGIS 10.0 and Citygate GIS Autobound 10</i>	

Start Date: December 2010	End Date: July 2011
Client/Project: Illinois State House Redistricting – 401-S Stratton Building, Springfield, IL 62706 - <i>Redistricting Team Lead: Jon Maxson - jmaxson@hds.ilga.gov</i>	
Employer: State of Illinois House	
Title/Percentage of time: <i>GIS Specialist – 100%</i>	
Description: Technical specialist to aid in redistricting management and process for the drawing of Illinois's House districts for the General Assembly. Instructed Redistricting Staff how to query, analyze, symbolize, and produce maps/data files necessary for them to achieve their goals and ensure the work was proper and legal through validation checks. <i>ESRI ArcGIS 10.0 and Citygate GIS Autobound 10</i>	

Start Date: November 2012	End Date: ongoing
Client/Project: Election Data Services – US Election Result Poster – 6171 Emerywood Court, Manassas VA 20112 – <i>Kim Brace – (703) 580-7267 – kbrace@aol.com</i>	
Employer: Election Data Services	
Title/Percentage of time: <i>GIS Designer / Data Manager – 70%</i>	
Description: I use GIS to format and design a two-sided poster template that will symbolize the results of the US General Election every two years. After the November election I collect all the AP official election results data and import into a database that symbolizes the poster. The Election Data Services election poster is a commercial product that is sold to many news and political organizations. <i>ESRI ArcGIS 10.8</i>	

EDUCATION

Education		
Degree (i.e. PhD, Master's, Bachelors)	Masters in Urban Planning	Year Completed: 2009
Program	GIS	
University	University of California, Los Angeles	

Additional Education



STATE OF MICHIGAN

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APPENDIX A – RESUME(S)

Degree (i.e. PhD, Master's, Bachelors)	Bachelors' in Urban Studies and Planning	Year Completed: 2003
Program	Major(s) area of study: Regional Planning	Minor area of study: History
University	University of California, San Diego	

TRAINING – Provide any relevant technical or professional training related to the role resource will be providing on this project.

Technical or Professional Training	
Course Name	Computer Information Systems @ Portland City College
Topic	Database Management and Python
Date taken	2013 - 2015

Certifications/Affiliations	
Name	
Topic/Description	
Date completed	

The Bidder must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the bidder/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to another project the bidder must provide a letter signed by the that Project Manager releasing the individual from the project.

Proposed Resource Name:	John B. Morgan President - Applied Research Coordinates
Proposed Classification:	<i>Redistricting expert and map drawer</i>
Key Personnel:	Yes x or No Y
If resource is associated with a subcontractor provide name of company:	Applied Research Coordinates, Ltd. (ARC) 7323 Inzer Street Springfield, VA 22151 202-557-8016
Percentage of time resource will be allocated to project:	15-25%



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Agency: List the required skill sets, education, certifications, and training requirements for each key personnel role. Below are examples of required skills, education and certifications and examples of vendor responses.

Bidder: List the skills and experience that qualify the individual for the duties and responsibilities on this project for the proposed role. Provide the name of the project(s) and the year(s) the experience was obtained.

The experience requirements detailed in the RFP are restated as follows:

Required Skills	Bidder's Response
<p>Describe your experience and knowledge with Geographic Information Systems redistricting solutions and the associated boundary, demographic and other data sources used for redistricting mapping.</p>	<p>Does resource have this required skill: Yes x or No Y</p> <p>Description of skills and experience: over 25 years of experience with GIS systems. Maptitude for Redistricting AutoBound. ArcGIS, AtlasGIS, and custom legislative redistricting GIS systems in Pennsylvania and North Carolina.</p> <p><i>I identified a significant error in the initial 2010 census data release for Virginia – I worked with legislative staff and the Census Bureau to correct the error and continue with the redistricting process.</i></p> <p><i>I helped broker a compromise between the Indiana Senate and House leaders for the 2012 congressional district plan. In 2012, I worked with attorneys and election officials in Craven County, North Carolina to adjudicate the boundary and data between two districts which had split a census block.</i></p> <p><i>I have worked on redistricting projects in 19 states over three redistricting cycles – 1991, 2001 and 2011.</i></p> <p>Name of project(s) and year(s) experience was obtained:</p> <p>Redistricting 1991-1992: Indiana House legislators; New Jersey legislators and commission members; Wisconsin Senate and Assembly legislators; Michigan GOP; New York Assembly legislators; Illinois Senate legislators; Pennsylvania Senate legislators; Florida House legislators</p> <p>Redistricting 2001-2002: Virginia House and Senate legislators; North Carolina House and Senate legislators; Georgia Senate and House legislators; Rhode Island Senate legislators; Pennsylvania Senate legislators; Indiana House legislators;</p>

APPENDIX A – RESUME(S)

	<p>Redistricting 2011-2012: Virginia House legislators; North Carolina Senate legislators; South Carolina Senate and House legislators; Pennsylvania Senate legislators; Kansas congressperson; New Mexico Senate and House legislators; Missouri GOP; Tennessee redistricting attorneys; Indiana Senate and House legislators</p>
<p>Describe your experience working with commissions, public officials, and the general public in similar projects.</p>	<p>Does resource have this required skill: Yes x or No Y</p> <p>Description of skills and experience: More than 25 years of experience working with public officials. Worked directly with commission members, public officials and commission attorneys on redistricting, map drawing and litigation support. Direct participation and support in public redistricting meetings in North Carolina, Missouri, Virginia, Indiana and New Jersey. Provided expert testimony in redistricting court cases. Instructor for campaign training seminars Consultant to campaigns Name of project(s) and year(s) experience was obtained: 2011-2018: Expert testimony in redistricting court cases 2011-2012: Ohio reapportionment board, Connecticut redistricting commission, New Jersey legislative redistricting commission, New Jersey congressional redistricting commission, Pennsylvania legislative reapportionment commission 2011-2012: Public redistricting meetings 2004-2007: National political organization executive director 1995-1999: Instructor and public speaker to candidates 1991 to present: Consultant to campaigns and businesses</p>
<p>Describe your knowledge and experience with the necessary validation checks that need to be part of a redistricting plan (for example, checking population totals, continuity, compactness, etc).</p>	<p>Does resource have this required skill: Yes x or No Y</p> <p>Description of skills and experience: Prepared the final congressional plan submission for the New Jersey congressional redistricting commission. Provided the map-drawing to facilitate a bi-partisan compromise settlement in the 2012 litigation for the New Mexico Senate. Provided the final map-drawing to comply with the judge's orders in the New Mexico House litigation. Testified in 2017 Virginia House litigation regarding district compactness, which was found to be sufficient by the court. Provided support for DOJ submissions Prepared maps and exhibits for redistricting litigation. Provided numerous validation reports, analyses and exhibits to state legislators, staff and attorneys in many states. Name of project(s) and year(s) experience was obtained: 2011-2012: New Jersey congressional redistricting commission; redistricting litigation for New Mexico House and Senate districts 2002 to present: Maps and exhibits for litigation 1991 to present: Work with validation reports, etc.</p>

APPENDIX A – RESUME(S)

List client references for work performed to meet the requirements stated above, and all projects the proposed resource has worked on in the last three (3) years. A minimum of three (3) references are required. By submission of this information, the bidder and identified key person authorize the State of Michigan to contact references and previous employers provided to verify the accuracy of the information. Provide the identified information for each:

Start Date: September 2019	End Date: <i>December 2019</i>
Client/Project: <i>Center for Austin’s Future Demographic and election analysis</i> Reference contact: <i>West McKee</i> <i>4004 Shoal Creek Blvd Austin, TX 78756</i> <i>(314) 397-1855</i> <i>west@westmckee.com</i>	
Employer: <i>Applied Research Coordinates</i>	
Title/Percentage of time: <i>consultant / 15% of time</i>	
Description: <i>conduct demographic and election analysis for city council districts. Presentation to stakeholders</i> Software utilized: <i>Maptitude for Redistricting v6.0, AtlasGIS, PowerPoint, Excel, GoTo Meeting</i>	

Start Date: August 2017	End Date: <i>December 2018</i>
Client/Project: <i>Baker Hostetler, Consulting expert for redistricting</i> Reference contact: <i>E. Mark Braden</i> <i>1050 Connecticut Ave, N.W., Suite 1100</i> <i>Washington, DC 20036-5403</i> <i>(202) 861-1504</i> <i>MBraden@bakerlaw.com</i>	
Employer: <i>Applied Research Coordinates</i>	
Title/Percentage of time: <i>non-testifying consulting expert / 15-25% of time</i>	
Description: <i>Provide non-testifying expert analysis for litigation in Virginia, Ohio</i> Software utilized: <i>Maptitude for Redistricting v6.0, AtlasGIS, Excel</i>	

Start Date: January 2018	End Date: <i>March 2018</i>
Client/Project: <i>Blank Rome LLP Consulting expert for redistricting</i> Reference contact: <i>Brian Paszamant</i> <i>One Logan Square 130 North 18-th Street</i> <i>Philadelphia, PA 19103-6998</i> <i>(215) 569-5791</i> <i>Paszamant@BlankRome.com</i>	
Employer: <i>Applied Research Coordinates</i>	
Title/Percentage of time: <i>non-testifying consulting expert / 15-35% of time</i>	
Description: <i>Provide map-drawing for Pennsylvania to PA Senate President Scarnati and staff</i> Software utilized: <i>Maptitude for Redistricting v6.0, AutoBound, Excel, MS Access database</i>	

Start Date: January 2011	End Date: <i>March 2020</i>
Client/Project: <i>Friends of Chris Jones (Delegate) Consulting expert for redistricting</i> Reference contact: <i>Hon. S. Chris Jones</i> <i>9380 Dixon Rd</i> <i>Suffolk, VA 23433</i> <i>(757) 676-4961 / schrisjones29@gmail.com</i>	
Employer: <i>Applied Research Coordinates</i>	

APPENDIX A – RESUME(S)

Title/Percentage of time: <i>Redistricting consultant, election analyst / 15-20% of time</i>
Description: <i>Provide map-drawing for Virginia House of Delegates members, staff and attorneys. conduct demographic and election analysis for Virginia House of Delegate districts. Presentation to stakeholders</i> <i>Software utilized: Maptitude for Redistricting v6.0, AtlasGIS, PowerPoint, Excel, GoTo Meeting</i>

Start Date: January 2015	End Date: October 2020
Client/Project: U.S. Chamber of Commerce <i>Demographic and election analysis</i> <i>Reference contact: Jim Martin</i> <i>1615 H Street, NW, Washington, DC 20062</i> <i>(202) 463-5374</i> <i>JMartin@USChamber.com</i>	
Employer: Applied Research Coordinates	
Title/Percentage of time: Analyst, consultant / 20-25% of time	
Description: <i>Conduct demographic research and election analysis for political affairs department.</i> <i>Presentation to stakeholders</i> <i>Software utilized: Maptitude for Redistricting v6.0, AtlasGIS, PowerPoint, Excel, GoTo Meeting</i>	

EDUCATION

Education		
Degree	<i>B.A. with honors</i>	Year Completed: <i>1991</i>
Program	<i>US History – major concentration</i> <i>Classical History – minor concentration</i>	
University	<i>University of Chicago, 5801 S Ellis Ave Chicago, Illinois 60637</i>	

Additional Education		
Degree (i.e. PhD, Master's, Bachelors)		
Program		
University		

TRAINING – Provide any relevant technical or professional training related to the role resource will be providing on this project.

Technical or Professional Training	
Course Name	
Topic	
Date taken	

Certifications/Affiliations	
Name	
Topic/Description	
Date completed	

The Bidder must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the bidder/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to another project the bidder must provide a letter signed by the that Project Manager releasing the individual from the project.

APPENDIX A – RESUME(S)

Kent Stigall

Kent has over 35 years of experience working in the Legislative branch of Virginia Government. He has 30+ years of experience providing GIS, technology and legislative redistricting expertise to Virginia’s legislators, legislative staff and the Division of Legislative Services (DLS). The Division of Legislative Services is a non-partisan agency supporting both the House and Senate of Virginia. He has extensive experience training and supporting superiors, legislators, legislative aides and co-workers in the use of the state wide redistricting application. He has made presentations on “Redistricting Virginia” to Virginia legislative committees, universities and colleges.

Kent was Project manager/Senior GIS specialist for both the 2001 and 2011 statewide redistricting cycles of Virginia. He was responsible for researching and determining the best application and GIS software for redistricting Virginia in 2001 and 2011 and provided the initial research for redistricting in 2021 prior to retirement from DLS. He worked with the chosen redistricting software developer (CityGate GIS) to assure the redistricting application (AutoBound) met all of Virginia’s needs and expectations for the 2001 and 2011 redistricting cycles as well as preliminary requirements for the next generation redistricting application. Kent has drawn, imported, merged, combined, reviewed, analyzed, edited and/or published what is most likely 1,000’s of Virginia House, Senate and Congressional district maps using AutoBound since 1999. He has extensive experience creating/drawing voting precincts (VTDS), current and historical, using various GIS products including AutoBound and ArcView. The base geographic polygon features used in creating districts in Virginia are census blocks, VTDS, city, town and county boundaries as provided by the Census Bureau.

Kent provided “technical expertise” to the “Special Master” (Bernard Groffman) appointed by the courts to re-draw the Virginia congressional districts in 2015 and again to re-draw the House districts in 2018. He was responsible for assuring all the necessary components of redistricting were available and current including ad hoc reports and maps as well as drawing many legislative maps for the “Special Master”.

For redistricting Virginia in 1991 he was a Programmer/Analyst at the Division of Legislative Automated Systems (DLAS). DLAS was responsible for assimilating the Census Data to be used in the redistricting application running on a Wang mini-system computer as well as training and supporting Division of Legislative Services staff, legislators and legislative aides in the use of the redistricting application.

Since 1998 he has utilized ESRI products ArcView, ArcMap and ArcGIS extensively to generate maps, ad hoc reports and data for redistricting and other GIS applications.

Employment History

January 1998 to February 1, 2020 (retired) – Virginia Division of Legislative

September 1984 to January 1998 – Virginia Division of Legislative Automated Systems

June 1982 to September 1984 – Richmond Times Dispatch Newspaper

APPENDIX A – RESUME(S)

References

R. Jay Landis

Director of the Division of Legislative Automated Systems
(retired) King Richard Ct.
Mechanicsville, VA 23116
1 (804) 387-4989

Mark Rush

Waxberg Professor of Politics and
Law Director, Center for
International Education
Washington and Lee University
Lexington,
VA 24450
RushM@wl
u.edu
Office: 1 (540) 458 - 8904
Mobile: 1 (540) 460 – 7876

Julie Smith

10968 Greenaire Pl
Henrico, va
23233
jlsmith78@g
mail.com
(804) 306-
7447

APPENDIX A – RESUME(S)

FRED HEJAZI, PLS

Education:

BSCE/1984/Civil Engineering
Professional Land Surveyor, (Maryland 10947)
ESRI ArcStorm design and implementation
ESRI Spatial Data Engine (SDE) Management and Programming
ESRI Arc/Info 8.0 Training
ORACLE Database Administration
SUN Systems Administration
Data General Systems Administration
Census Phase 2 Training

Computer System Proficiencies:

Proficient in Programming in .Net development, VB, VC++, C# and ARCOjects, Javascript, Php, CSS
Systems Administration for SUN and Linux (Redhat, Ubuntu)
Oracle Database Management, MySQL, PostGRE/PostGIS
ESRI Arcview GIS, ARC/Info, ArcGIS Server, and ArcEngine
Google Maps API, Nokia Maps API, ArcGIS Online, Cloudmade API, GISCloud API
Corel Draw, Photoshop, Camtasia studio, FrontPage, Flash

Introduction:

17 years of redistricting experience at all levels of government. Mr. Hejazi has provided redistricting services to cities ranging from a few thousands to some of the largest in the country including Los Angeles County CA, King County WA, the City of Richmond, Virginia and the City of Indianapolis. Mr. Hejazi was the key designer of the Citygate’s redistricting products and has been the solution manager for the firm’s redistricting and reapportionment services since its inception.

Additionally, Mr. Hejazi has over 25 years of experience in Information System design, Geospatial Information Systems, Computer Aided Design, and Automated Mapping systems. 11 years of experience in Global Positioning Systems (GPS), geodetic control surveys, digital photogrammetry and aerial mapping.

His Geospatial Information Systems (GIS) experience includes over 20 years of application development, consulting, and project management, experience at all levels of government in North America. Key clients included, the US Census Bureau, Elections Canada, The US Army Corps of Engineers, NGA, 45 State Legislatures throughout the US and multiple City and County agencies, including Fairfax County, City of Richmond, Miami-Dade County, City of Houston, City of Tucson, King County WA, Montgomery County and Washington Suburban Sanitary Commission.

Project Experience:

DEMOGRAPHIC AND GIS CONSULTING SUPPORT FOR THE CITY OF AUSTIN’S FIRST CITIZEN REDISTRICTING COMMISSION. The Boundary of the City of Austin is a complex polygon which straddles 4 Counties. Citygate GIS was tasked with development of 10 nearly equal population districts which adequately addressed the City’s diverse minority demographics. Mr. Fred Hejazi was the project manager on the project and provided onsite support to the Austin redistricting commission. Citygate’s autoBound software was used to extract required demographic data from GIS files provided by the US Census Bureau, and Travis, Bastrop, Williamson and Hays

APPENDIX A – RESUME(S)

Counties. The aggregated data included more than 260 columns of data, including population, housing counts and racial and voting age demographics. This data was presented to the City’s redistricting commission and was subsequently used to create 10 Commission districts for the City.

CENSUS 2000/2010 TECHNICAL MANAGER AND SUPPORT COORDINATOR. Trained state users of autoBound redistricting to prepare them for the Phase 2 submissions to the Census Bureau and performing redistricting. Additionally, provided support for a variety of Phase 2 and year 2000/2010 redistricting issues. Some of the State and National agencies for which support was provided include:

State of Connecticut	State of Virginia 2000/2010	State of Pennsylvania
State of Alaska 2000/2010	State of Indiana 2000/2010	State of Nevada 2000/2010
State of Washington	State of South Dakota	State of Wisconsin
State of Nebraska	State of Illinois 2000/2010	State of Colorado 2010
State of South Carolina	State of Michigan 2000/2010	State of Oregon 2000/2010
State of Utah 2000/2010	State of Idaho 2000	Country of Canada
State of Hawaii 2000	State of Arkansas 2000/2010	State of New Mexico

DEVELOPMENT OF COMMISSION REDISTRICTING TOOL FOR ELECTIONS CANADA. AutoBound is a redistricting package developed by Citygate GIS. Mr. Hejazi was the project manager for a project performed for Elections Canada, where the software was adopted to use the Canadian data model and work flow. Some additional functionality included on-the-fly block splitting and handling of additional data layers. Citygate was used the 2000 and the 2010 redistricting cycles in Canada.

REDISTRICTING SUPPORT SERVICES FOR THE IOWA ASSOCIATION OF COMMUNITY COLLEGES AND SCHOOL BOARDS. Provided technical services in the development and implementation of a GIS application for school boundary redistricting. Iowa’s 375 school community districts are being aggregated into fifteen Director Districts and Area Educational Associations (AEA), which serve as Iowa’s managerial and community college districts.

TURN-KEY REDISTRICTING SERVICES FOR LOCAL GOVERNMENTS. Provided Census data development, redistricting, public presentations, map production, and legal descriptions for redistricting projects throughout the US, including: King County WA, Haverford Township PA, City of Newport RI, Adams County CO and Black Squirrel Creek Water district.

EXPERT WITNESS AND LEGAL SUPPORT IN REDISTRICTING CASES. Provided support to redistricting court cases, including map development, data analysis and in court testimony . Project included: Redistricting of City of Indianapolis IN for the Indiana Supreme Court. Redrawing the State of Indiana fair redistricting plan for the Indiana Secretary of State. Antony vs. Validoid, Redistricting plan for the County of San Diego before the California superior court.

APPENDIX A – RESUME(S)

ONSITE SUPPORT AT THE US CENSUS BUREAU. Worked onsite at the Census Bureau, providing support for the initial design, development and field testing of FDCA (Field Data Collection Automation) project.

DEVELOPMENT OF THE ARCGIS BASED CENSUS VTD TOOL. Mr. Hejazi was the lead designer and developer of the ARCGIS Based tool for performing the Census VTD/BBSP program. The tool automatically identifies differences between State and Census VTD files and allows the user to update the files quickly and efficiently. The tools was used to perform Phase 2 for the states of Pennsylvania, Indiana and Utah.

DEVELOPMENT OF THE ARCGIS BASED CENSUS LUCA AND BAS TOOLS. Mr. Hejazi was the lead designer on the Citygate developed tool which allows Counties to participate in the LUCA and BAS Census programs electronically. Citygate was contracted with ESRI to develop these tools as extension to the Arcview GIS software.

ONSITE REDISTRICTING SUPPORT SERVICES FOR THE COUNTRY OF BERMUDA. Worked with the Ministry of Works and Engineering to develop the FED Election map for Bermuda. Project included development of tools for automated calculation of redistricting plans and presentation of plans to the Redistricting Commission and the President.

February 8, 2021



Kimball Brace
Election Data Services, Inc.
6171 Emerywood Ct
Manassas, VA 20112-3078

Kim:

Thank you for reaching out to me to seek my involvement with a proposal to the Michigan Independent Citizens Redistricting Commission and the potential to work with the ICRC. As you know, I have many years of experience using GIS software and drawing redistricting maps for several states. I think that this is a good fit and I will be happy to work with you on this endeavor.

This letter will serve as a notice of commitment to work for you and EDS for this project, contingent on the award of the bid. I am available, willing, and I have the time needed to work on this project. As the President of my company, Applied Research Coordinates, I control my working time and am not assigned to other projects that would preclude me working on this project with you.

In support of the bid for the work for ICRC, I have sent you the information you have requested and that is required for the proposal. I look forward to working with you in this capacity, should the bid for work be awarded.

Please contact me, as needed, at the phone number or email below.

Thanks,

John

John B. Morgan
President, Applied Research Coordinates
202-557-8016
jmorgan4@cox.net

February 9, 2021

Kimball Brace
Election Data Services, Inc.
6171 Emerywood Ct
Manassas, VA 20112-3078

Kim:

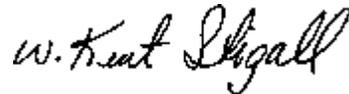
Thank you for seeking my involvement with a proposal to the Michigan Independent Citizens Redistricting Commission and the potential to work with the ICRC.

Contingent on the award of the bid this letter will serve as a notice of commitment to work for you and EDS on this project. I am willing and have the time available to work on this project. I control my working time and am not assigned to any other project that would preclude me from working on this project with you.

In support of the bid for the work for ICRC, I have sent you the information you have requested and that is required for the proposal. I look forward to working with you should the bid for work be awarded to EDS.

Thanks,

Kent

A handwritten signature in black ink that reads "W. Kent Stigall". The signature is written in a cursive, slightly slanted style.

W. Kent Stigall
804-356-3386
wkstigall@gmail.com



February 10, 2021

Kimball Brace
Election Data Services, Inc.
6171 Emerywood Ct.
Manassas, VA 20112-3078

Dear Mr. Brace,

I am pleased to offer our technology and services as a subcontractor to your firm in support of the Michigan Independent Citizens Redistricting Commission and the potential to work with the ICRC. Our firm has been providing redistricting technology for over 25 years. Our redistricting software was used in the State of Michigan for State Legislature and Congressional redistricting in 2000 and 2010. Additionally, we have supported county level redistricting throughout the State including Wayne County.

I look forward to working with you on this project. Please contact me if you have any additional questions.


Sincerely
Citygate GIS LLC.

Fred Hejazi - CEO



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APPENDIX B – ADDITIONAL STATEMENT OF WORK CONTRACT ACTIVITIES

In addition to the Standard Contract Terms, during the contract term and any extensions, the Contractor, including its employees, agents, representatives, and Subcontractors shall:

- A. Perform its duties to the MICRC in an impartial, unbiased and non-partisan fashion and in compliance with the Voting Rights Act, applicable federal and state law, in particular Article IV, Section 6 of the Michigan Constitution.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

- B. In addition to the requirements under Section 37 of the Contract regarding *Conflicts and Ethics*, maintain at all times the highest ethical standards and avoid conflicts of interest and demonstrate transparency in the conduct of its work for the MICRC. The Contractor understands that it is the MICRC's policy to conduct its business according to the highest moral, ethical and legal standards and agrees to uphold those standards of conduct and ethical principles. The Contractor agrees to comply with all applicable laws and regulations as well as the policies and procedures of the MICRC.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

- C. Provide disclosures regarding their redistricting work with individuals, groups or any public or private entities for the same or substantially similar work as set forth in the Standard Contract Terms. The sale of commercial Citygate software is exempt from these disclosure requirements. These disclosure requirements are ongoing and are the responsibility of the Contractor during the full contract term, including any extensions. The disclosures shall be provided for each of the following three (3) categories of relationships and identify which could give rise to a potential, actual or apparent conflict of interest and provide measures that would be taken to avoid or address a conflict, should one currently exist or is likely to arise in the future:

- a. List of past relationships;
- b. Identification of current relationships; and
- c. Identify any anticipated or future relationships.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



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APPENDIX B – ADDITIONAL STATEMENT OF WORK CONTRACT ACTIVITIES

D. In addition to other database compilation requirements, the Contractor shall specifically utilize and/or construct a precinct level database containing population statistics and election returns for each election of interest for the purpose of conducting a Racially Polarized Voting (“RPV”) / Racial Bloc Voting (“RBV”) and the statistical analysis of that data to produce estimates of voting patterns by race/ethnicity.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

E. Engage a consultant or subcontractor that has been approved by the Commission prior to formal engagement by the Contractor to conduct RPV /RBV analysis which shall include:

- a. Work with the Commission, its staff, attorneys and consultants to obtain needed data and other information required to conduct RPV/RBV analysis;
- b. Perform at a minimum each of the following three (3) standard analytic procedures for estimating the extent to which minorities and whites have voted differently as part of the RPV/RBV analysis:
 - i. Homogenous precinct analysis;
 - ii. Ecological regression; and
 - iii. Ecological inference;
- c. Provide RPV/RBV analysis of proposed redistricting plans and data to determine the existence of any potentially disenfranchised protected populations;
- d. Advise the Commission, its staff, attorneys and consultants, in particular the Voting Rights Act Legal Counsel, on the RPV/RBV analysis and underlying data for relevant proposed redistricting plans; and,
- e. Provide expert witness testimony in the event the redistricting plans are legally challenged.
 - i. Participation in litigation and the provision of expert witness testimony by the RPV/RBV analyst shall require a separate addendum to the original contract
- f. The contract terms shall reflect that the RPV/RBV analyst work up to \$75,000.00 is included in the \$989,000.00 original contract pricing for the original contract term through February 22, 2022. Any work that exceeds \$75,000.00 will be billed at a rate of \$350.00 per hour and invoiced to the Commission on a monthly basis.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



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APPENDIX B – ADDITIONAL STATEMENT OF WORK CONTRACT ACTIVITIES

- F. Once the RPV/RBV analyst is secured pursuant to subpart F of this Appendix, provide a description of their demonstrated experience with RPV/RBV activities including the following information:
- a. Highlight experience in data research, mapping and political analysis encompassed in a past RPV/RBV analysis, including methodologies utilized in past RPV/RBV analyses and the reasons for relying on a particular methodology or combination of methodologies.
 - b. If the outcome of the prior RPV/RBV analyses resulted in the modification of geographic districts.
 - c. Any relevant published work.
 - d. Specifically address demonstrated experience with RPV/RBV analysis as it pertains to the Voting Rights Act.
 - e. Provide a detailed, chronological resume of the RPV/RBV Analyst, including a description of their work experience relevant to their role as it relates to the contract work utilizing the required resume template labeled as Appendix A.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input checked="" type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): We are fine with this provision, and have submitted Dr. Handley's Vita to the Commission	

- G. The RPV/RBV Analyst shall be designated as a member of Key Personnel assigned to this contract as delineated in the Standard Contract Terms.

<input checked="" type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	



STATE OF MICHIGAN

MICHIGAN INDEPENDENT CITIZEN REDISTRICTING COMMISSION

APPENDIX B – ADDITIONAL STATEMENT OF WORK CONTRACT ACTIVITIES

Lisa R. Handley CURRICULUM VITAE

Professional Experience

Dr. Handley has over thirty years of experience in the areas of redistricting and voting rights, both as a practitioner and an academician, and is recognized nationally and internationally as an expert on these subjects. She has advised numerous clients on redistricting and has served as an expert in dozens of redistricting and voting rights court cases. Her clients have included the U.S. Department of Justice, civil rights organizations, independent redistricting commissions and scores of state and local jurisdictions. Internationally, Dr. Handley has provided electoral assistance in more than a dozen countries, serving as a consultant on electoral system design and redistricting for the United Nations, UNDP, IFES, and International IDEA. In addition, Dr.

Handley served as Chairman of the Electoral Boundaries Commission in the Cayman Islands.

Dr. Handley has been actively involved in research, writing and teaching on the subjects of redistricting and voting rights. She has co-written a book, Minority Representation and the Quest for Voting Equality (Cambridge University Press, 1992) and co-edited a volume (Redistricting in Comparative Perspective, Oxford University Press, 2008) on these subjects. Her research has also appeared in peer-reviewed journals such as *Journal of Politics*, *Legislative Studies Quarterly*, *American Politics Quarterly*, *Journal of Law and Politics*, and *Law and Policy*, as well as law reviews and edited books. She has taught political science undergraduate and graduate courses related to these subjects at several universities including the University of Virginia and George Washington University. Dr. Handley is a Visiting Research Academic at Oxford Brookes University in the United Kingdom.

Dr. Handley is the President of Frontier International Consulting, a consulting firm that specializes in providing electoral assistance in transitional and post-conflict democracies. She also works as an independent election consultant both in the United States and internationally.

Education

Ph.D. The George Washington University, Political Science, 1991

Present Employment

President, Frontier International Electoral Consulting LLC (since co-founding company in 1998).

Senior International Electoral Consultant Technical assistance for clients such as the UN, UNDP and IFES on electoral system design and boundary delimitation



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Visiting Research Academic, Centre for Development and Emergency Practice (CENDEP), Oxford Brookes University

U.S. Clients since 2000

American Civil Liberties Union (expert testimony in Ohio partisan gerrymander challenge and challenge to Commerce Department inclusion of citizenship question on 2020 census form)

Lawyers Committee for Civil Rights Under Law (expert testimony in challenges to statewide judicial elections in Texas and Alabama)

US Department of Justice (expert witness testimony in several Section 2 and Section 5 cases) Alaska: Alaska Redistricting Board (redistricting consultation, expert witness testimony) Arizona: Arizona Independent Redistricting Board (redistricting consultation, expert witness) Arkansas: expert witness for Plaintiffs in Jeffers v. Beebe

Colorado: Colorado Redistricting Board (redistricting consultation)

Connecticut: State Senate and State House of Representatives (redistricting consultation) Florida: State Senate (redistricting consultation)

Kansas: State Senate and House Legislative Services (redistricting consultation) Louisiana: Louisiana Legislative Black Caucus (expert witness testimony) Massachusetts: State Senate (redistricting consultation)

Maryland: Attorney General (redistricting consultation, expert witness testimony) Miami-Dade County, Florida: County Attorney (redistricting consultation)

Nassau County, New York: Redistricting Commission (redistricting consulting) New Mexico: State House (redistricting consultation, expert witness testimony) New York: State Assembly (redistricting consultation)



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New York City: Redistricting Commission and Charter Commission (redistricting consultation and Section 5 submission assistance)

New York State Court: Expert to the Special Master (drew congressional lines for state court) Ohio: State Democratic Party (redistricting litigation support, expert witness testimony) Pennsylvania: Senate Democratic Caucus (redistricting consultation)

Rhode Island: State Senate and State House (litigation support, expert witness testimony) Vermont: Secretary of State (redistricting consultation)

International Clients since 2000

United Nations

- Afghanistan – electoral system design and district delimitation expert
- Bangladesh (UNDP) – redistricting expert
- Sierra Leone (UNDP) – redistricting expert
- Liberia (UNMIL, UN peacekeeping mission) – redistricting expert
- Democratic Republic of the Congo (MONUC, UN peacekeeping mission) – election feasibility mission, electoral system design and redistricting expert
- Kenya (UN) – electoral system design and redistricting expert
- Haiti (UN) – election feasibility mission, electoral system design and redistricting expert
- Zimbabwe (UNDP) – redistricting expert
- Lead Writer on the topic of boundary delimitation (redistricting) for ACE (Joint UN, IFES and IDEA project on the Administration and Cost of Elections Project)

International Foundation for Election Systems (IFES)

- Afghanistan – district delimitation expert
- Sudan – redistricting expert
- Kosovo – electoral system design and redistricting expert
- Nigeria – redistricting expert
- Nepal – redistricting expert
- Georgia – electoral system design and district delimitation expert
- Yemen – redistricting expert
- Lebanon – electoral system design and redistricting expert
- Malaysia – electoral system design and redistricting expert
- Myanmar – electoral system design and redistricting expert



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- Ukraine – electoral system design and redistricting expert
- Pakistan – consultant for developing redistricting software
- Principal consultant for the Delimitation Equity Project – conducted research, wrote reference manual and developed training curriculum
- Writer on electoral boundary delimitation (redistricting), Elections Standards Project
- Training – developed training curriculum and conducted training workshops on electoral boundary delimitation (redistricting) in Azerbaijan and Jamaica

International Institute for Democracy and Electoral Assistance (International IDEA):

- Consultant on electoral dispute resolution systems
- Technology consultant on use of GIS for electoral district delimitation
- Training – developed training material and conducted training workshop on electoral boundary delimitation (redistricting) for African election officials (Mauritius)
- Curriculum development – boundary delimitation curriculum for the BRIDGE Project
- Project coordinator for the ACE project

Other international clients have included The Cayman Islands; the Australian Election Commission; the Boundary Commission of British Columbia, Canada; and the Global Justice Project for Iraq.

Publications

Books:

Does Torture Prevention Work? Liverpool University Press, 2016 (served as editor and author, with Richard Carver)

Comparative Redistricting in Perspective, Oxford University Press, 2008 (first editor, with Bernard Grofman).

Delimitation Equity Project: Resource Guide, Center for Transitional and Post-Conflict Governance at IFES and USAID publication, 2006 (lead author).

Minority Representation and the Quest for Voting Equality, Cambridge University Press, 1992 (with Bernard Grofman and Richard Niemi).

Academic Articles:

“Drawing Electoral Districts to Promote Minority Representation” Representation, forthcoming, published online DOI:10.1080/00344893.2020.1815076.

“Evaluating national preventive mechanisms: a conceptual model,” Journal of Human Rights Practice, Volume 12 (2), July 2020 (with Richard Carver).



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"Minority Success in Non-Majority Minority Districts: Finding the 'Sweet Spot'," Journal of Race, Ethnicity and Politics, forthcoming (with David Lublin, Thomas Brunell and Bernard Grofman).

"Has the Voting Rights Act Outlived its Usefulness: In a Word, "No," Legislative Studies Quarterly, volume 34 (4), November 2009 (with David Lublin, Thomas Brunell and Bernard Grofman).

"Delimitation Consulting in the US and Elsewhere," Zeitschrift für Politikberatung, volume 1 (3/4), 2008 (with Peter Schrott).

"Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence,"

North Carolina Law Review, volume 79 (5), June 2001 (with Bernard Grofman and David Lublin).

"A Guide to 2000 Redistricting Tools and Technology" in The Real Y2K Problem: Census 2000 Data and Redistricting Technology, edited by Nathaniel Persily, New York: Brennan Center, 2000.

"1990s Issues in Voting Rights," Mississippi Law Journal, 65 (2), Winter 1995 (with Bernard Grofman).

"Minority Turnout and the Creation of Majority-Minority Districts," American Politics Quarterly, 23 (2), April 1995 (with Kimball Brace, Richard Niemi and Harold Stanley).

"Identifying and Remediating Racial Gerrymandering," Journal of Law and Politics, 8 (2), Winter 1992 (with Bernard Grofman).

"The Impact of the Voting Rights Act on Minority Representation in Southern State Legislatures," Legislative Studies Quarterly, 16 (1), February 1991 (with Bernard Grofman).

"Minority Population Proportion and Black and Hispanic Congressional Success in the 1970s and 1980s," American Politics Quarterly, 17 (4), October 1989 (with Bernard Grofman).

"Black Representation: Making Sense of Electoral Geography at Different Levels of Government," Legislative Studies Quarterly, 14 (2), May 1989 (with Bernard Grofman).

"Minority Voting Equality: The 65 Percent Rule in Theory and Practice," Law and Policy, 10 (1), January 1988 (with Kimball Brace, Bernard Grofman and Richard Niemi).

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" Journal of Politics, 49 (1), February 1987 (with Kimball Brace and Bernard Grofman).

Chapters in Edited Volumes:



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“Effective torture prevention,” Research Handbook on Torture, Sir Malcolm Evans and Jens Modvig (eds), Cheltenham: Edward Elgar, 2020 (with Richard Carver).

“Redistricting” in Oxford Handbook of Electoral Systems, Erik Herron Robert Pekkanen and Matthew Shugart (eds), Oxford: Oxford University Press, 2018.

“Role of the Courts in the Electoral Boundary Delimitation Process,” in International Election Remedies, John Hardin Young (ed.), Chicago: American Bar Association Press, 2017.

“One Person, One Vote, Different Values: Comparing Delimitation Practices in India, Canada, the United Kingdom, and the United States,” in Fixing Electoral Boundaries in India, edited by Mohd. Sanjeer Alam and K.C. Sivaramakrishman, New Delhi: Oxford University Press, 2015.

“Delimiting Electoral Boundaries in Post-Conflict Settings,” in Comparative Redistricting in Perspective, edited by Lisa Handley and Bernard Grofman, Oxford: Oxford University Press, 2008.

“A Comparative Survey of Structures and Criteria for Boundary Delimitation,” in Comparative Redistricting in Perspective, edited by Lisa Handley and Bernard Grofman, Oxford: Oxford University Press, 2008.

“Drawing Effective Minority Districts: A Conceptual Model,” in Voting Rights and Minority Representation, edited by David Bositis, published by the Joint Center for Political and Economic Studies, Washington DC, and University Press of America, New York, 2006.

“Electing Minority-Preferred Candidates to Legislative Office: The Relationship Between Minority Percentages in Districts and the Election of Minority-Preferred Candidates,” in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman and Wayne Arden).

“Estimating the Impact of Voting-Rights-Related Districting on Democratic Strength in the U.S. House of Representatives,” in Race and Redistricting in the 1990s, edited by Bernard Grofman; New York: Agathon Press, 1998 (with Bernard Grofman).

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“Racial Context, the 1968 Wallace Vote and Southern Presidential Dealignment: Evidence from North Carolina and Elsewhere,” in Spatial and Contextual Models in Political Research, edited by Munroe Eagles; Taylor and Francis Publishing Co., 1995 (with Bernard Grofman).

“The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations,” in The Quiet Revolution: The Impact of the Voting Rights Act in the South, 1965-1990,



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eds. Chandler Davidson and Bernard Grofman, Princeton University Press, 1994 (with Bernard Grofman).

"Preconditions for Black and Hispanic Congressional Success," in United States Electoral Systems: Their Impact on Women and Minorities, eds. Wilma Rule and Joseph Zimmerman, Greenwood Press, 1992 (with Bernard Grofman).

Electronic Publication:

"Boundary Delimitation" Topic Area for the Administration and Cost of Elections (ACE) Project, 1998. Published by the ACE Project on the ACE website (www.aceproject.org).

Additional Writings of Note:

Amicus brief presented to the US Supreme Court in Gill v. Whitford, Brief of Political Science Professors as Amici Curiae, 2017 (one of many social scientists to sign brief)

Amicus brief presented to the US Supreme Court in Shelby County v. Holder, Brief of Historians and Social Scientists as Amici Curiae, 2013 (one of several dozen historians and social scientists to sign brief)

Amicus brief presented to the US Supreme Court in Bartlett v. Strickland, 2008 (with Nathaniel Persily, Bernard Grofman, Bruce Cain, and Theodore Arrington).

Court Cases since 2015

Ohio Philip Randolph Institute v. Larry Householder (2019) – partisan gerrymander challenge to Ohio congressional districts

State of New York v. U.S. Department of Commerce/ New York Immigration Coalition v. U.S. Department of Commerce (2018-2019) – challenge to inclusion of citizenship question on 2020 census form

U.S. v. City of Eastpointe (settled 2019) – minority vote dilution challenge to City of Eastpointe, Michigan, at-large city council election system

Alabama NAACP v. State of Alabama (decided 2020) – minority vote dilution challenge to Alabama statewide judicial election system

Lopez v. Abbott (2017-2018) – minority vote dilution challenge to Texas statewide judicial election system

Personhaballah v. Alcorn (2016-17) – racial gerrymander challenge to Virginia congressional districts

EXHIBIT B

No. _____

IN THE
Supreme Court of the United States

MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION, et al.,
Defendant-Applicant,

v.

DONALD AGEE, JR., et al.,
Plaintiffs-Respondents,

&

JOCELYN BENSON, in her official capacity as Michigan Secretary of State,
Defendant-Respondent.

**Emergency Application for Stay and
Request for an Immediate Administrative Stay**

To the Honorable Brett M. Kavanaugh
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Sixth Circuit

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PARTIES TO THE PROCEEDING

The parties to the proceeding below are as follows:

Defendant-Applicant Michigan Independent Citizens Redistricting Commission is the legislative body charged by Michigan's Constitution with configuring and adopting state senate, state house, and congressional voting districts. Defendant-Applicants Juanita Curry, Anthony Eid, Rhonda Lange, Steven Terry Lett, Brittnei Kellom, Cynthia Orton, Rebecca Szetela, Janice Vallette, Erin Wagner, Richard Weiss, Elaine Andrade, Donna Callaghan, and Marcus Muldoon are commissioners of the Commission who were sued below in their official capacities and participate here in their official capacities. In addition, former Commissioners Douglas Clark, M.C. Rothhorn, and Dustin Witjes were defendants in the district court in their official capacities, but they resigned from their positions and were replaced by their successors by operation of law. *See* Fed. R. Civ. P. 25(d).

Plaintiff-Respondents Donald Agee, Jr., Jerome Bennett, Dennis Leory Black, Jr., Jamee Burbridge, Beverly Ann Burrell, Jemmell Cotton, Teresa DuBose, Karen Ferguson, Michelle Keeble, Kimberly Hill Knott, Barbara Gail London, Glenda McDonald, Janet Marie Overall, Shirley L. Radden, Davonte Sherard, Michelle T. Smith, Kenyetta Snapp, Donyale Stephen-Atara, Tanesha Wilson are individual voter residing in the Detroit-area districts challenged in this action. In addition, Norma McDaniel was a plaintiff in the district court, but her claims were dismissed on summary judgment.

Defendant-Respondent Jocelyn Benson is the Secretary of State of the State of Michigan, and was sued in her official capacity below.

RELATED PROCEEDINGS

United States District Court (W.D. Mich.):

Donald Agee, Jr. et al. v. Jocelyn Benson et al., No. 1:22-CV-00272-PLM-RMK-JTN, March 23, 2022.

United States District Court (W.D. Mich.):

Michael Banerian et al. v. Jocelyn Benson et al., No. 1:22-CV-00054-PLM-RMK-JTN, January 20, 2022.

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U.S. Const. Amend. XIV, §1 19

TO THE HONORABLE BRETT M. KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. § 1651, applicants the Michigan Independent Citizens Redistricting Commission (the Commission) and its members in their official capacities respectfully apply to stay the injunction of a three-judge court of the Western District of Michigan (App., *infra*, 001a–116a), which enjoins the use of 13 legislative districts in future Michigan house and senate elections (including house elections in 2024), and to stay the ongoing remedial proceeding in the district court. The Court should also issue a prompt administrative stay pending resolution of this application. A stay is necessary to preserve the status quo as this Court considers the “sweeping holding” issued below that, if left undisturbed, “will have profound implications for the constitutional ideal of equal protection, “for the future of the Voting Rights Act of 1965, and for the primacy of the State in managing its own elections.” *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 282 (2015) (Scalia, J., dissenting).

In configuring Detroit-area districts, the Commission did everything this Court’s Voting Rights Act (VRA) and racial-gerrymandering precedents signals is necessary for voluntary VRA compliance, and it was not possible to do more than the Commission did. It employed a district-specific, functional analysis of racial voting patterns (a methodology the Court has embraced) that may be the most comprehensive ever adduced at the map-drawing phase of redistricting. Yet its plans still were found not to pass constitutional scrutiny. This Court’s immediate intervention is necessary to remedy this untenable state of affairs, where voluntary §2 compliance has become impossible.

Last decade, federal courts (including this one) collectively found more than 50 legislative and congressional districts around the nation to violate the Equal Protection Clause under the doctrine of *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (*Shaw I*), which subjects voting districts to strict scrutiny if race was the predominant factor in their configuration, *Cooper v. Harris*, 581 U.S. 285, 300–01 (2017).¹ Each case involved a fact pattern where a redistricting authority attempted to comply with the VRA by drawing districts to a racial target it believed would provide equal electoral opportunity. Those efforts failed constitutional scrutiny because the redistricting authorities applied “a single, ‘mechanically numerical’” target of minority voting-age population (typically black voting-age population (or BVAP)), but did not conduct a “functional analysis” to justify that target. *Bethune-Hill*, 326 F. Supp. at 176–80 (citation omitted); *see also, e.g., Cooper*, 581 U.S. at 301–02; *Wisconsin Legislature*, 595 U.S. at 404. This Court criticized one legislature for drawing a district to hit the majority-minority line of *Bartlett v. Strickland*, 556 U.S. 1 (2009), without evaluating whether white crossover voting for black candidates of choice would ensure realistic black electoral opportunity without a BVAP majority. *Cooper*, 581 U.S. at 305–06 & n.5. And a three-judge district court whose judgment this Court summarily affirmed recommended “[a] district effectiveness analysis,” which is “used to determine the minority voting-age population level at which a district becomes effective in providing a realistic opportunity” to elect. *Covington*, 316 F.R.D. at 169 n.46 (quotation and alteration marks omitted).

¹ *Cooper*, 581 U.S. 285 (two districts invalidated); *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128 (E.D. Va. 2018) (eleven); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (twenty-eight), *aff’d*, 581 U.S. 1015 (2017); *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1033–34 (M.D. Ala. 2017) (twelve); *Abbott v. Perez*, 138 S. Ct. 2305, 2334–35 (2018) (one); *see also Wisconsin Legislature v. Wisconsin Elections Comm’n*, 595 U.S. 398, 400 (2022) (one).

These decisions led some to believe the path to §2 compliance (assuming §2 could still survive constitutional scrutiny) was through race-neutral redistricting. But this Court disagreed in *Allen v. Milligan*, 599 U.S. 1 (2023), holding that Congress retains authority under the Reconstruction Amendments to “authorize[] race-based redistrictings as a remedy for state districting maps that violate §2.” *Id.* at 41. By consequence, states may not avoid §2 liability through race-blind line-drawing if the effect is to deny equal opportunity. To be sure, a race-blind approach will work if it happens not to “crack” or “pack” minority populations or if the state can otherwise mount successful after-the-fact defenses in §2 litigation under various relevant considerations. But this Court has stated that redistricting authorities may properly navigate the “competing hazards of liability” of the Fourteenth Amendment and the VRA by voluntary §2 compliance efforts *ex ante* that are “narrowly tailored,” which occurs “if the State has ‘good reasons’ for believing that its decision is necessary in order to comply with the VRA.” *Abbott*, 138 S. Ct. at 2315 (citations omitted). That doctrine, said this Court, provides the path “to harmonize these conflicting demands.” *Id.*

The question in this case is whether that is true. In configuring Detroit-area legislative districts, the Commission neither applied mechanical thresholds nor left its §2 obligations to chance. It had the best of reasons not to do the latter. Early draft plans prepared without much or any attention to race contained Detroit-area districts with very high BVAPs (even exceeding 70%) and neighboring districts with very low BVAPs (falling below 30% and even 10%). One of the nation’s leading voting-rights experts, Dr. Lisa Handley, advised that voting was racially polarized, and a former Department of Justice, Voting Rights Section, attorney warned of §2 liability in the

early drafts. The question became how to remedy the problem. Rather than pick a target like 50% or 55% BVAP, the Commission looked to “a functional analysis,” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 195 (2017), which compared rates of black cohesion, white crossover voting, and turnout by race.

In adjudicating the subsequent *Shaw* claim, the district court focused on the threshold predominance inquiry, “sometimes expressing disdain for a process that [this Court] ha[s] cautioned courts to respect.” *Easley v. Cromartie*, 532 U.S. 234, 250 (2001) (*Cromartie II*). Applicants disagree with its finding that race predominated in all Detroit-area districts subject to this suit and strongly disagree with much of what the court said in arriving at it. However, recognizing the deference owed its fact-finding, applicants do not challenge the predominance determination at this time. What matters for present purposes is that its findings of fact *describe* narrow tailoring. The district court recounted how Detroit-area districts with high and low BVAPs gradually and loosely converged towards the range supported by evidence, to the result that six Detroit-area senate districts had BVAPs between 35% and 45% and sixteen Detroit-area house districts had BVAPs between 35% and 55%. In that way, the cracking and packing of draft maps was cured.

Despite that, the district court felt it could “make short[] work” of the narrow-tailoring inquiry, App. 112a, and its haste shows. The court did not determine that any of the *Gingles* preconditions were unmet on the Commission’s record, find any technical or methodological error in Dr. Handley’s analysis, identify what §2 goal the Commission should have had (if any), or explain what (if anything) should have been done with districts of very high and very low BVAPs. Importantly, respondents (plaintiffs below) did not advocate a race-blind redistricting. Their lead claims were under

§2, which they proposed mechanically requires five 50%+ BVAP senate districts and ten 50%+ BVAP house districts, a task their expert admitted (1) required race-based redistricting and (2) was not supported by a district-effectiveness analysis. The district court did not address respondents' §2 claims or say much of anything else informative about the statute. It nitpicked the advice the Commission received and summarily announced the §2 concern was "highly speculative." App. 113a.

When the decision below is added to the larger corpus of relevant case law, one basic rule emerges: whatever the legislative body did, it was wrong. The decision hollows out all meaning from what this Court has "said on many occasions": that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975); *see also Growe v. Emison*, 507 U.S. 25, 34 (1993). It also denies states the "broad discretion" this Court has afforded them "in drawing districts to comply with the mandate of § 2." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429 (2006) (*LULAC*). Because this Court has yet to encounter a narrow-tailoring assertion built on anything like the analysis in this case, the Court is likely to note probable jurisdiction—and may do so in its discretion by means of this stay application. And, because at least five members of this Court are unlikely to conclude that states have no space for voluntary §2 compliance, there is more than a fair prospect that the decision will be reversed.

The equitable factors equally favor a stay. The injunction imposes irreparable harm as a matter of law both insofar as it enjoins Michigan law and insofar as it compels the Commission to undergo a difficult and strictly timed redistricting process to achieve a court-ordered deadlines that have yet to issue. That process will prove

uniquely difficult because the district court did not identify what federal law requires in this instance—whether it be 15 majority-minority districts; some smaller number of supermajority districts; or a race-blind draw, come what may. The district court set the Commission out to sea in a rudderless boat and is poised to issue orders in the coming days regulating its efforts. Meanwhile, Michigan’s election process has already begun, and the district court’s remedial process is likely to upend state-law deadlines to accommodate its campaign for new Detroit districts, which will prove difficult to administer on an expedited time frame before the August 2024 state house primary elections.

The Court should grant the application and issue a stay of the district court’s injunction and remedial proceeding pending applicants’ forthcoming appeal to this Court. The Court should also issue a prompt administrative stay pending resolution of this application. The Court would, in addition, be justified in construing this application as a jurisdictional statement, noting probable jurisdiction, and conducting prompt oral argument.

OPINIONS BELOW

The opinion and order of the district court holding 13 districts in Michigan’s state house and senate plans unconstitutional and enjoining their use in future elections is unreported. It is available at 2023 WL 8826692 and is reproduced at App. 001a–114a. The order of the district court denying applicants’ emergency motion for stay is unreported and is reproduced at App. 117a–121a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1253. The three-judge district court issued its injunction on December 21, 2023. App. 114a. Applicants filed a timely

notice of appeal and emergency motion to stay on January 4, 2024. D. Ct. Docs. 141, 142. The district court denied applicants' stay motion on January 8, 2024. App. 121a.

STATEMENT

A. Factual Background

1. After each decennial census, “[s]tates must redistrict to account for any changes or shifts in population.” *Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003). For most of Michigan’s history, redistricting was the province of the State’s legislature and, when it deadlocked, the courts. During the 2011 redistricting, the Republican Party controlled both houses of the legislature and the governorship. A federal court found that the legislature “packed” Democratic voters into Detroit-area districts, “making the surrounding districts . . . more Republican.” *See League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867, 882–93 (E.D. Mich. 2019), *vacated sub nom*, 140 S. Ct. 429 (2019). The legislature defended this approach by claiming the VRA commanded a concentration of black voters into a few supermajority BVAP districts, which had the political benefit to Republicans of limiting black influence in neighboring districts. D. Ct. Doc. 106, 4 Trial Tr. 130:12–131:13.

In 2018, “voters in . . . Michigan approved [a] constitutional amendment[] creating [a] multimember commission[] that [is] responsible . . . for creating and approving district maps for congressional and legislative districts.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019) (citing Mich. Const. art. IV, § 6). The amendment vests redistricting authority with the Commission, which is composed of 13 registered voters, randomly selected by the Secretary of State, four of whom identify as Republicans, four of whom identify as Democrats, and five of whom affiliate with neither major party. Mich. Const. art. IV, § 6(2)(f). Individuals who in the past six years were

registered lobbyists, elected officials, candidates, employees of officials or candidates, or certain relatives of officials or candidates are ineligible for membership. *Id.* art. IV, § 6(1)(b) and (c); see *Daunt v. Benson*, 999 F.3d 299, 304 (6th Cir. 2021). The amendment is codified in a constitutional article titled “Legislative Branch,” Mich. Const. art. IV, and declares that “the powers granted to the commission are legislative,” *id.* art. IV, § 6(22). The amendment empowers the Commission to defend its plans in court and hire counsel of its choosing for that purpose, *id.* art. IV, § 6(6), and it declares that, “[i]n no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state,” *id.* art. IV, § 6(19).

The amendment directs the Commission to draw districts according to seven redistricting criteria in descending “order of priority.” *Banerian v. Benson*, 589 F. Supp. 3d 735, 736–37 (W.D. Mich. 2022) (*Banerian I*) (three-judge court) (quoting Mich. Const. art. IV, § 6(13)). These include that districts comply with federal law, be contiguous, “reflect the state’s diverse population and communities of interest,” “not favor or disfavor an incumbent elected official or a candidate,” “not provide a disproportionate advantage to any political party,” and “reflect consideration of county, city, and township boundaries.” *Id.* art. IV, § 6(13); see App. 003a–04a.

2. The Commission first convened in September 2020 in preparation for its inaugural redistricting. But this decade’s redistricting proved uniquely challenging because the U.S. Census Bureau was “six months late” in releasing the necessary redistricting census data due to the pandemic. *In re Indep. Citizens Redistricting Comm’n for State Legislative & Cong. Dist.’s Duty to Redraw Districts by Nov. 1, 2021*, 507 Mich. 1025, 961 N.W.2d 211, 212 (Mich. 2021) (Welch, J., concurring); App. 006a;

App. 115a (Neff, J., concurring). Despite these challenges, the Commission “act[ed] diligently pursuant to its constitutional mandate.” *In re Indep. Citizens Redistricting Comm’n*, 961 N.W.2d at 212 (Welch, J., concurring). The Commission conducted a remarkably transparent process with widespread citizen participation, resulting in more than 10,000 transcript pages of public sessions that were live-streamed in real time. App. 002a. The Commission met or surpassed every metric of public observation and participation established in the State Constitution, holding nearly 140 public meetings as of the time it adopted redistricting plans and receiving nearly 30,000 public comments. *See Banerian v. Benson*, 597 F. Supp. 3d 1163, 1166 (W.D. Mich.) (*Banerian II*) (three-judge court), *appeal dismissed*, 143 S. Ct. 400 (2022).

3. The Commission was obligated by virtue of federal supremacy and the State Constitution to produce maps that “comply with the voting rights act and other federal laws.” Mich. Const. art. IV, § 6(13)(a). The Commission recognized in advance of map-drawing that this would prove challenging, as Michigan’s black population is concentrated in Detroit, and its “population is almost 80% African-American.” App. 063a.

The Commission engaged accomplished advisors who “are highly respected in the redistricting field.” App. 115a–16a (Neff, J., concurring). The Commission retained Dr. Handley, a political scientist and VRA expert who has about 40 years of experience as a VRA practitioner and academic, D. Ct. Doc. 106, 4 Trial Tr. 205:18–20, sits “at the top of the list” of “go-to” DOJ Voting Rights Section experts, D. Ct. Doc. 104, 3 Trial Tr. 185:15–24, and has prepared many plaintiff-side expert reports in successful §2 lawsuits, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1309 (N.D. Ga. 2022) (in finding likelihood of success in §2 claim,

“[t]he Court found Dr. Handley’s testimony to be credible and her analyses to be sound”); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337, 2023 WL 7037537, at *116 (N.D. Ga. Oct. 26, 2023) (liability ruling on same basis); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 607 (N.D. Ohio 2008) (“Through Dr. Handley’s testimony . . . , the United States proved by a preponderance of the evidence that voting in Euclid is racially polarized.”); *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 441 (S.D.N.Y. 2010) (finding §2 liability based on the “methods employed by Dr. Handley”); *Lopez v. Abbott*, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (finding §2 preconditions met based on opinions of Dr. Handley). It also engaged Bruce Adelson, a former DOJ Voting Rights Section attorney, to provide legal advice related to VRA compliance. Mr. Adelson received two outstanding achievement awards in the second Bush administration, D. Ct. Doc. 104, 3 Trial Tr. 178:4–10, he frequently advises redistricting authorities, and his advice to the Arizona Independent Redistricting Commission was unanimously ratified by this Court in *Harris v. Ariz. Indep. Redistricting Comm’n*, 578 U.S. 253 (2016) (affirming *Harris v. Ariz. Indep. Redistricting Comm’n*, 993 F. Supp. 2d 1042 (D. Ariz. 2014)).

Dr. Handley analyzed racial voting patterns in metropolitan Detroit, studying all 13 statewide general-election contests between 2012 and 2020, more than 50 district-level elections between 2018 and 2020, and “over 30 Democratic primaries.” D. Ct. Doc. 106, 4 Trial Tr. 210:20–211:24. She examined these during the redistricting process, *id.* at 212:8–15, and compiled her iterative work in one final report, *id.* at 213:2–10; *see* App. 146a–236a.

Dr. Handley’s analysis revealed that, in Detroit-area general elections, voting is racially polarized. All such elections in Oakland County (located just north of

Detroit), and more than half in Wayne County (which contains Detroit), displayed polarization. App. 245a; App. 128a. Black cohesion levels exceeded 90%, and white voters cohesively voted against black-preferred candidates in Wayne and Oakland Counties, App. 167a–68a. Dr. Handley concluded that, “[b]ecause voting in Michigan is racially polarized, districts that provide minority voters with an opportunity to elect their candidates of choice must be drawn.” App. 162a.

However, Dr. Handley and Mr. Adelson advised the Commission not to pick “an arbitrary demographic target (e.g., 50% black voting age population) for all minority districts across the jurisdiction,” but instead to look to “[a] district-specific, functional analysis . . . to determine if a proposed district will provide minority voters with the ability to elect minority-preferred candidates to office.” App. 247a; *see* App. 008a–09a. To that end, Dr. Handley utilized the method she developed in the pioneering article Grofman, Handley, & Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C.L. Rev. 1383 (2000–2001), which this Court has cited favorably, *see Georgia*, 539 U.S. at 482–83. This method uses a mathematical formula that accounts for levels of black cohesion, white crossover voting, and turnout by race to calculate the percentage BVAP at which districts would afford black voters in the area a realistic opportunity to elect their candidates of choice. *See* App. 163a–66a; App. 248a–53a. Dr. Handley determined that BVAP percentage to be 35% in Wayne County and 40% in Oakland County. *See* App. 163a–66a; App. 008a–09a.

4. This analysis exposed problems in early draft plans commissioners had prepared. Draft plans contained districts with supermajority BVAP districts that far exceeded what black voters needed to have equal electoral opportunity, and

neighboring districts that fell below what black voters needed for that opportunity. For example, according to the district court's findings, an early senate plan contained three majority-BVAP districts in the Detroit area, including two with respective BVAPs of 76.56% and 63.77%, and neighboring districts of 7.8%, 10.98%, and 18.1% BVAP. App. 259a, 262a. As another example, an early house plan the district court analyzed contained six majority-minority districts with BVAPs running from 54.09% to 79.04% and neighboring districts, e.g., with BVAPs of 3.6%, 3.68%, 5.31%, 7.8%, 11.78%, 16.34%, and 28.62%. App. 266a, 272a; *see* App. 020a (partial display of relevant districts).² This pattern of BVAPs far exceeding 50% and falling below 30% (and even 10%) was consistent across early draft plans.

Around that time, the Commission's general counsel (Julianne Pastula) sent commissioners an email expressing that she and Mr. Adelson were "very concerned and alarmed" about "the packed districts" in draft plans, observing that the Commission would not be "able to justify the numbers coming out of today in a court." App. 012a. Following that and other iterations of similar advice, commissioners gradually drew BVAP down from supermajority levels and up from levels below 30%, as districts converged towards the 35% to 40% range, under Mr. Adelson's advice that there be "a little bit of a cushion" above the lowest point of the range, App. 013a. The district court tracked the progression of BVAPs that were dropped from supermajority levels and raised from low levels. *See, e.g.*, App. 014a, 20a, 26a, 32a, 34a, 38a, 49a. For example, senate district 1 began at 10.98% BVAP—a level that would not

² Differences in BVAPs reported by district between the trial exhibit and the district court's opinion arise because district numbers were changed between draft and final plans. The district court reported BVAP figures according to the final district numbering scheme, whereas the exhibit reports BVAPs by the draft numbering scheme.

plausibly afford equal black opportunity—and rose to 35.03% BVAP. App. 049a. As another example, house district 10 rose from 28.62% BVAP to 38.03% BVAP. App. 049a.

Ultimately, whereas early draft senate plans contained only three opportunity districts at supermajority levels, the enacted senate plan (named the Linden plan) resulted in six Detroit-area districts from 35% to 45% BVAP. App. 284a. In the final house plan (named the Hickory plan), the Commission arrived at 16 Detroit-area districts between 35.8% and 55.6% BVAP, App. 281a, whereas early plans contained lower numbers within that range.

5. Dr. Handley also examined dozens of Democratic primary election results, but she found they were not “particularly relevant to the mapmaking process for a number of reasons.” App. 287a (4 Trial Tr. 226:9–10); App. 008a. There was only one statewide primary (which is necessary for a district-effectiveness analysis), which did not exhibit black cohesion and thus cut against the notion that §2 liability might arise at the primary-election phase. App. 287a (4 Trial Tr. 226:12–16). Half the district primaries were not polarized, App. 287a–88a (4 Trial Tr. 226:17–18), and black-preferred candidates prevailed in most polarized contests, App. 287a (4 Trial Tr. 226:17–18). Further, Dr. Handley observed that, where black-preferred candidates lost in polarized primaries, “there wasn’t a clear relationship between the percentage BAVP of the district that they lost in and the loss of the candidate.” App. 287a–88a (4 Trial Tr. 226:23–227:5). District lines did not appear to cause inequality of opportunity in the primaries. Rather, the barrier to equal opportunity identified in her analysis existed at the general-election stage.

Accordingly, Dr. Handley and Mr. Adelson did not advise the Commission to take any race-based action based on primary elections. In a December 2021 email to a commissioner who had raised concerns about primary elections, Dr. Handley advised that “[w]e simply do not know what would happen in a primary in which minority voters are cohesive” because “we do not have sufficient information to anticipate what might happen in the future Democratic primaries in the proposed districts.” App. 051a. However, Dr. Handley performed a secondary analysis looking to Detroit-area Democratic primaries featuring minority candidates and determined that black-preferred candidates could prevail in Democratic primaries in districts as low as 26.53% BVAP. *See* App. 170a–71a; App. 255a.

6. On December 28, the Commission adopted the Linden and Hickory plans. The Linden plan received 9 of 13 votes from commissioners (two Democratic, two Republican and five independent members), and the Hickory plan received 11 of 13 (four Democratic, two Republican and five independent members).

In the subsequent 2022 elections, the Detroit-area districts provided much better than an equal opportunity for black voters to elect their preferred candidates. In 27 Detroit-area districts with BVAPs greater than 25%, black-preferred candidates had a combined success rate of 88.2% (27 of 27 general elections; 18 of 24 contested primaries). App. 155a–56a. The 2022 elections saw historic gains for black voters. The speaker of Michigan’s house of representatives is black for the first time, D. Ct. Doc. 104, 3 Trial Tr. 123:19–23, and black representatives occupy districts with a footprint in Macomb County for the first time, including one who beat a white incumbent, D. Ct. Doc 104, 3 Trial Tr. 122:3–14.

B. Procedural Posture

1. In March 2022, respondents brought this suit against the Commission, its members in their official capacities, and Michigan's secretary of state. Respondents' complaint brought §2 and equal-protection challenges against seven Detroit-area senate districts and ten Detroit-area house districts that were below 50% BVAP, but not against the five majority-minority Detroit-area house districts.³ App. 053a. A three-judge district court (Kethledge, Circuit Judge; Maloney and Neff, District Judges) was convened under 28 U.S.C. § 2284. *See Shapiro v. McManus*, 577 U.S. 39, 44 (2015).

In their §2 presentation, respondents sponsored an expert report demonstrating that ten majority-minority house districts and five majority-minority senate districts could be configured in the Detroit area. The expert who prepared these maps acknowledged at trial that race predominated, D. Ct. Doc. 102, 2 Trial Tr. 114:1–2, and that he did not conduct a functional analysis to determine whether 50% BVAP were necessary for black voters to elect their preferred candidates (in general or primary elections), D. Ct. Doc. 102, Trial Tr. 109:9–110:10.

The court narrowed the districts at issue in a summary-judgment ruling dismissing respondents' equal-protection claims against four districts and §2 claims against eight districts. App. 053a. The court conducted a six-day bench trial from November 1 to November 8, 2023.

2. On December 21, 2023, the district court issued a 114-page opinion finding equal-protection liability as to all remaining challenged districts and an

³ The district court stated at one point that the Commission's plans included no majority-minority districts, App. 002a, but that is clearly erroneous, *see* App. 281a. The court was describing respondents' selection of districts to challenge, not the Commission's enacted plans.

injunction forbidding the use of those districts in future elections. App. 001a–114a. The court found that the commissioners—whom it criticized as coming “to their task with no experience in redistricting and no knowledge of election law”—“relied heavily on their experts’ advice, particularly with regard to compliance with the federal Voting Rights Act.” App. 001a–02a. That, according to the court, was the problem: by endeavoring to comply with §2, the court held, “the Commission drew the boundaries of plaintiffs’ districts predominantly on the basis of race.” App. 002a. The court devoted 111 pages to its predominance analysis, describing the advice the Commission received and its efforts to draw BVAPs down where they were high and up where they were low. *See* App. 001a–114a.

The district court then made “shorter work of the Commission’s backup argument that its race-based line drawing can survive strict scrutiny.” App. 112a. First, the court found there could be no concern with Detroit-area “packing” because this Court “has yet to hold that any district violated § 2 on grounds of packing.” *Id.* Second, the court said Mr. Adelson’s concern was “highly speculative” because only districts of an “excessive *majority*” could arguably be packed, which the court regarded as inconsistent with Mr. Adelson’s and Dr. Handley’s recommendation of a “35-45%” range. App. 112–13a. Third, the court held that the “factual premise” for the Commission’s position was not “adequate” because Dr. Handley’s advice was founded on general elections, not primary elections. App. 113a. The court did not say what information the Commission should have gleaned from primary elections and did not address the supermajority BVAP draft districts or those falling well below any arguable equal-opportunity threshold. Nor did the district court resolve respondents §2 claim. It therefore remains a mystery what §2 requires in the Detroit region.

Judge Neff concurred in the result, stating that, “[a]lthough the majority reaches the correct result, I write separately because I believe the opinion is unnecessarily harsh to the Commission, Bruce Adelson, and Lisa Handley.” App. 115a. Judge Neff observed that the Commission’s “difficult job” became “nearly impossible . . . when the pandemic hit in 2020,” that commissioners “took the work seriously” and “worked hard to learn on the job,” and that she did “not believe there was any ill intention by any individual in this case.” App. 115a–16a. Commissioners, she concluded, did “all the best that could be expected.” App. 116a.

3. After the December 21 injunction, three commissioners resigned. They were replaced through a constitutionally prescribed process on January 4, 2024, and the Commission’s next act was to vote to appeal the injunction and seek a stay of the pending remedial process. The Commission filed its notice of appeal the same day, as well as a motion to stay the injunction in the district court. D. Ct. Docs. 141, 142. On January 5, the district court held a remedial hearing to hear competing positions of the parties on how to proceed with redistricting the Detroit-area districts in Michigan’s house and senate plans. D. Ct. Doc. 155.

The court announced on the record at the hearing that it intended to deny the motion to stay, *id.* at 73:9–13, but did not issue an order to that effect until Monday, January 8. *See* App. 117a–121a. In the ruling, the court held again that “[t]he Commission cannot show it engaged in a narrowly tailored approach,” stating that the “Commission had no data indicating how African American candidates of choice performed in the Democratic primaries in Detroit,” App. 119a, again ignoring Dr. Handley’s exhaustive analysis of primary elections and opinion that they provided inconclusive information, *see supra* pp. 13–14; App. 169a–71a (displaying primary election

analysis). In addressing the equities, the district court acknowledged that the Commission “can make a plausible showing that it will suffer irreparable harm” without a stay. App. 120a. It also recognized that “the Commission will face a tight timeline going forward as it endeavors to draw new Senate and House districts.” App. 120a. But it found the equities favored respondents nonetheless. App. 120a. In response to the Commission’s concern that respondents’ §2 claims remained unresolved, and that the Commission’s federal-law duties therefore remain unknown, the district court stated that “the Commission should . . . stop using the VRA as a proxy for race” and announced that “[t]he Court refuses to prescribe the Commission with a new racial target.” App. 120a–21a.

The district court has yet to issue a remedial schedule. It has denied a request by respondents for special elections to the Michigan senate in 2024, “[t]he next Michigan Senate elections are in 2026,” and the court has not yet identified a remedial deadline for the Commission to adopt a new senate plan. App. 121a. As for the house plan, the court ordered the Commission to publish proposed house maps for notice and comment by February 2, 2024, and that “[a] detailed scheduling order is forthcoming.” App. 121a.

Applicants now renew their stay request in this Court.

ARGUMENT

This case involves a serious effort by serious people to do a serious thing. The Commission embraced the obligations Congress imposed on it under §2, hired the nation’s preeminent advisors, and relied on a state-of-the-art analysis that may exceed in comprehensiveness anything any legislative body has ever relied on during redistricting. It completed its work in the most open and inclusive process in Michigan’s history. If the decision below were deemed correct, it would mean no one in the

United States today has any clue what §2 compliance entails. That is an untenable situation that urgently calls for this Court’s review—and reversal.

To obtain a stay pending appeal, an applicant must show (1) a reasonable probability that the Court will consider the case on the merits; (2) a fair prospect that a majority of the Court will vote to reverse the decision below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). “In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.” *Id.* A stay preserving the status quo would follow a venerable line of precedent granting such relief in redistricting cases. *See, e.g., North Carolina v. Covington*, 138 S. Ct. 974 (2018); *Abbott v. Perez*, 138 S. Ct. 49 (2017); *North Carolina v. Covington*, 137 S. Ct. 808 (2017); *Perry v. Perez*, 565 U.S. 1090 (2011); *Miller v. Johnson*, 512 U.S. 1283 (1994); *Karcher v. Daggett*, 455 U.S. 1303 (1982) (Brennan, J., in chambers). The standard is met here.

I. The Court Is Likely To Note Probable Jurisdiction and Reverse

The first two stay factors are satisfied. The Commission’s consideration of race did not “deny” anyone “the equal protection of the laws,” U.S. Const. Amend. XIV, §1, because it “was narrowly tailored to achieve a compelling interest,” *Bethune-Hill*, 580 U.S. at 193 (citation omitted). A racial-gerrymandering claim, which addresses racial classifications, is “analytically distinct from a vote dilution claim,” which addresses voting mechanisms that “minimize or cancel out the voting potential of racial or ethnic minorities.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995). Because a racial classification that satisfies strict scrutiny is “benign,” not invidious, *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 229 (1995), this Court’s racial-gerrymandering precedents

have without exception proceeded in two stages, first asking whether race predominated and then asking whether the predominant use of race was narrowly tailored to a compelling interest, *see, e.g., Miller*, 515 U.S. at 920–27; *Cooper*, 581 U.S. at 301–02; *Bethune-Hill*, 580 U.S. at 193–94. As noted, applicants do not agree with the district court’s predominance finding. But, respecting the deference this Court owes district-court findings of fact, applicants rest this application on the narrow-tailoring inquiry.

This Court’s precedent states that it has “assumed that complying with the VRA is a compelling state interest,” i.e., that “compliance with the VRA may justify the consideration of race in a way that would not otherwise be allowed.” *Abbott*, 138 S. Ct. at 2315. In truth, the Court has “done more than assume” this. Tr. of Oral Argument, No. 21-1086, *Merrill v. Milligan* at 56:4–7 (Barrett, J.). The Court upheld a Virginia legislative district under the narrow-tailoring inquiry, *Bethune-Hill*, 580 U.S. at 193–94, and the Court unanimously stated in *Cooper* that §2 justifies racially predominant redistricting “[i]f a State has good reasons to think that all the ‘Gingles preconditions’ are met.” 581 U.S. at 302. Respondents could hardly deny this, when their lead claim is a §2 claim (that was not resolved below).

This Court’s decision last Term in *Milligan* implicitly decided this question. The Court had before it options for ending §2’s application to single-member redistricting plans or construing it in a “race-neutral” manner, 599 U.S. at 30, and it declined, holding that Congress’s authority to enforce the Fifteenth Amendment justifies “race-based redistricting.” *Id.* at 41. In the strictest sense, then, §2 compliance is not a *state* interest, but an obligation Congress has imposed on the states within its “broad remedial powers,” *Fullilove v. Klutznick*, 448 U.S. 448, 483 (1980) (plurality

opinion); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 487 (1989) (plurality opinion) (“Congress, unlike any State or political subdivision, has a specific constitutional mandate to enforce the dictates of the Fourteenth Amendment”); *id.* at 521–22 (Scalia, J., concurring in the judgment) (similar point). The Commission did not gratuitously derive a set of race-conscious goals suited to its own policy objectives. *See, e.g.*, App. 020a–27a (describing what the district court perceived to be departures from commissioners’ redistricting preferences to achieve VRA compliance); *cf. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023). The Commission implemented what it believed to be the directive of Congress, based on this Court’s precedents, and—because its view of that directive was well-founded—it can hardly be blamed for having done so.

It would make no sense—and would be profoundly unfair—to hold, on the one hand, that Congress may constitutionally impose §2’s requirements on states and, on the other, that states may not constitutionally comply with them. *Abbott*, 138 S. Ct. at 2315 (recognizing the need to “harmonize” the “conflicting demands” of its precedents to avoid creating “competing hazards of liability” (citation omitted)). And while some Justices of this Court have dissented in varying degrees from this Court’s §2 holdings, Michigan has no leeway to pick and choose among opinions in ascertaining its legal obligations. *Cf. Alabama Legislative Black Caucus*, 575 U.S. at 305 (Thomas, J., dissenting) (“[T]he State is not the one that is culpable.”).

A. The Commission Had a Strong Basis in Evidence To Conclude That §2 Required Race-Based Redistricting

1. VRA §2 prohibits any voting “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. §10301(a). Such a violation occurs if “members

of a [protected] class . . . have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* §10301(b). A redistricting plan may violate §2 if it results in “the dispersal of blacks into districts in which they constitute an ineffective minority of voters or . . . the concentration of blacks into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986). In plain English, §2 prohibits “the cracking or packing—whether intentional or not—of large and geographically compact minority populations.” *Milligan*, 599 U.S. at 44 (Kavanaugh, J., concurring).

Contrary to the district court’s suggestion that “packing” claims are not cognizable under §2, App. 112a, this Court has repeatedly recognized that §2 liability arises from “packing” minority group members “into one or a small number of districts to minimum their influence in the districts next door.” *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994); *see also Voinovich v. Quilter*, 507 U.S. 146, 153–54 (1993). In function, packing and cracking feed into one another, because “packing dilutes the minority’s ability to spread its influence among multiple, neighboring districts.”⁴ *NAACP v. Snyder*, 879 F. Supp. 2d 662, 677 (E.D. Mich. 2012); *see also Thomas v. Bryant*, 919 F.3d 298, 311 (5th Cir. 2019). For example, the *Milligan* case was decided in the district court—whose judgment this Court affirmed without modification—as both a cracking and packing claim, as the plaintiffs proved that “the Plan packs Black population into District 7 at an elevated level of over 55% BVAP, then cracks Black population in Mobile, Montgomery, and the rural Black Belt across Districts 1, 2, and 3, so that none of them has more than about 30% BVAP.” *Singleton v. Merrill*, 582 F.

⁴ In this respect, the district court’s stay ruling erroneously considered only that the Commission “lowered BVAP levels in districts in metro Detroit,” App. 119a, but failed to appreciate that, according to its own findings, the Commission also *raised* BVAPs, which was the probable result of lowering them in packed districts.

Supp. 3d 924, 961 (N.D. Ala. 2022); *see also id.* at 1014 (ultimate finding). The district court was therefore wrong in stating that this Court “has yet to hold that any district violated §2 on grounds of packing.” App. 112a. Lower courts, too, have found liability, or likely liability, based on packing. *See, e.g., Robinson v. Ardoin*, 86 F.4th 574, 585 (5th Cir. 2023) (affirming likelihood of success determination where challengers “claimed that the majority of black voters were ‘packed’ into the single black-majority district, and the remaining were ‘cracked’ among the other five districts.”); *Bone Shirt v. Hazeltine*, 336 F.Supp.2d 976 (D.S.C 2004) (finding liability in a packing case); *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 3:22-cv-22, 2023 WL 2868670, at *1 (D.N.D. Apr. 10, 2023) (finding packing claim survived summary judgment).

2. A §2 challenger seeking to prove packing or cracking (or both) must prove “three threshold conditions”: that the relevant minority group is “‘sufficiently large and geographically compact to constitute a majority’ in some reasonably configured legislative district”; that the group is “‘politically cohesive’”; and that a white majority votes “‘sufficiently as a bloc’ to usually ‘defeat the minority’s preferred candidate.’” *Cooper*, 581 U.S. at 301–02 (quoting *Gingles*, 478 U.S. at 50–51). Accordingly, a state can establish narrow tailoring under §2 if it “has good reasons to think that all the ‘*Gingles* preconditions’ are met.” *Id.* at 302. The Commission had the strongest possible reasons to believe this.

First, the Commission had good reasons to believe the minority community in Detroit, with its nearly 80% black population, is “sufficiently large and geographically compact to constitute a majority” in reasonably configured districts. *Cooper*, 581 U.S. at 301 (citation omitted). Early draft house and senate maps contained districts in

Detroit exceeding the 50% BVAP mark, often by large margins. *See, e.g.*, App. 012a, 026a. Indeed, the principal concern was that the districts around Detroit were packed into “an excessive majority.” *Gingles*, 478 U.S. at 46 n.11. Draft plans contained districts with very high BVAPs neighboring districts with very low BVAPs. *See supra* pp. 11–12. The drafts contained more starkly uneven population distributions than a plan that “packs Black population” into one district “at an elevated level over 55% BVAP” and cracks the remainder in districts “so that none of them has more than about 30% BVAP.” *Singleton*, 582 F. Supp. 3d at 961.

The Commission also had good reasons to believe that—without opportunity districts—a future plaintiff could meet the second and third preconditions. It had what may be the most thorough polarized-voting analysis ever prepared at the map-drawing stage. Statewide general elections (reconstituted within counties having sufficient BVAP to produce reliable estimates of racial voting patterns) revealed that voting was racially polarized. All such elections in Oakland County, and more than half in Wayne County, displayed polarization. App. 245a. Black cohesion levels exceeded 90%, App. 245a, confirming that “a significant number of minority group members usually vote for the same candidates” in general elections—and thus that the second precondition was satisfied. *Gingles*, 478 U.S. at 56. And white voters cohesively voted against the black-preferred candidates in Wayne and Oakland Counties, App. 167a–68a, such that, without districts designed to afford equal opportunity, “a white bloc vote [would] normally . . . defeat the combined strength of minority support plus white ‘crossover’ votes” in general elections. *Gingles*, 478 U.S. at 56. The third precondition, too, would be satisfied without opportunity districts, which Dr. Handley advised the Commission to create. App. 162a.

Then, rather than rely on mechanical targets, Dr. Handley conducted “[a] district effectiveness analysis . . . to determine the minority voting-age population level at which a district becomes effective in providing a realistic opportunity” to elect. *Covington*, 316 F.R.D. at 169 n.46 (quotation and alteration marks omitted). This analysis showed that, if BVAPs fell below 35% in Wayne County and 40% in Oakland County, the districts may not provide equal black opportunity. *See App.* 162a–72a. Draft maps were vulnerable under that analysis. They concentrated black voting-age persons in six or so supermajority BVAP house districts and three supermajority BVAP senate districts and left remaining districts with BVAPs falling well below 30%, even down to single-digit levels. To satisfy the narrow-tailoring element, a redistricting authority “must assess whether the new districts it contemplates (not the old ones it sheds) conform to the VRA’s requirements.” *Cooper*, 581 U.S. at 303–04. The Commission had good reasons to believe the draft low-BVAP districts were cracked—because black-preferred candidates could not win there—and the supermajority-BVAP districts were packed—because they contained far more BVAP than necessary to secure equal electoral opportunity. On that foundation, the Commission’s counsel warned of §2 liability. *See App.* 012a. Reasons for §2 compliance get no better than that.

B. The Commission’s Use of Race Was Narrowly Tailored

The Commission’s consideration of race was narrowly tailored “to prevent the cracking or packing.” *Milligan*, 599 U.S. at 44 (Kavanaugh, J., concurring). Racial considerations are narrowly tailored if they adhere to “a functional analysis of the electoral behavior within the particular election district.” *Bethune-Hill*, 580 U.S. at 194 (citation and alteration marks omitted). Redistricting authorities seeking to establish this defense must consider factors like “white crossover voting,” minority

cohesion levels, and turnout to determine whether a proposed district will “allow the minority group to elect its favored candidates.” *Cooper*, 581 U.S. at 304–05. Dr. Handley advised precisely that. App. 247a. She advised that the Commission not “simply set an arbitrary demographic target (e.g., 50% black voting age population),” App. 247a, mirroring this Court’s condemnation of “a mechanically numerical view” of VRA dictates, *Alabama Legislative Black Caucus*, 575 U.S. at 277; see *Cooper*, 581 U.S. at 305–06.

The Commission succeeded where the legislature in *Cooper* failed, as “it carefully evaluate[d] whether a plaintiff could establish the *Gingles* preconditions . . . in a new district[s] created without [race-based] measures.” *Cooper*, 581 U.S. at, 304. The evidence before it showed, for example, that draft house district 9—at 3.68% BVAP—would not enable that tiny group of black voters to elect their preferred candidates and that draft house district 17—at 69.29% BVAP—would “waste” black votes. See App. 272a. This was a far more thorough and reliable analysis than this Court found sufficient in *Bethune-Hill*, where the architect of the plan “met with” the incumbent, “discussed the [relevant] district with [other] incumbents,” and considered one primary election “in 2005.” *Bethune-Hill*, 580 U.S. at 194–95; cf. *id.* at 203 (Thomas, J., concurring in part and dissenting in part) (“[T]hat back-of-the-envelope calculation does not qualify as rigorous analysis.”).

In evening out BVAPs, the Commission avoided pitfalls identified in other racial-gerrymandering precedents that have repeatedly condemned high racial targets chosen with no analysis of crossover voting and turnout. See *Wis. Legislature*, 595 U.S. at 404; *Covington*, 316 F.R.D. at 175–76 (three-judge court); *Bethune-Hill*, 326 F. Supp. 3d at 175–80 (E.D. Va. 2018) (three-judge court). The gist of the district

court's predominance finding was that BVAPs fell from draft plans to final plans in those districts where it was high and rose in districts where it was low. That is what one should expect from a reasonably informed effort to cure cracking and packing: the BVAPs in supermajority-minority districts should come down and the BVAPs in surrounding districts should rise. Yet the district court did not consider its predominance findings in the narrow-tailoring analysis. *See* App. 112a–14a.

Nor did the Commission go “beyond what was reasonably necessary” to avoid §2 liability. *Shaw I*, 509 U.S. at 655. Its accuracy as to this range was (at best) loose, it did not insist on bringing all districts down even below 50% BVAP, and respondents do not allege that there are too many districts that afford equal black opportunity. Notably, where respondents propose five and ten majority-BVAP districts in the senate and house, respectively, the Commission provided a greater number of total opportunity districts by creating six senate and sixteen house opportunity districts—a strategy this Court has expressly ratified, *see Bartlett*, 556 U.S. at 23 (“various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or crossover districts” (citation and alteration marks omitted)). If this §2-compliance effort is not narrowly tailored, it is difficult to imagine what would be.

C. The District Court's Bases for Rejecting the Commission's Defense Lack Merit

1. The district court said nothing about this showing, which featured prominently, *inter alia*, in the Commission's post-trial briefing. D. Ct. Doc. 115 at 27–34. In an opinion that “sometimes express[ed] disdain for a process that [this Court] ha[s] cautioned courts to respect,” *Cromartie II*, 532 U.S. at 250; *see* App. 115a–16a (Neff, J., concurring), the court felt entitled to “make shorter work” of the narrow-tailoring

analysis than the predominance analysis, App. 112a, spending barely two-and-a-half pages of its decision on it, *id.* at 112a–14a. But narrow tailoring often presents “[t]he more substantial question” in cases where a redistricting authority admittedly endeavors to comply with §2. *Cooper*, 581 U.S. at 301; *see Abbott*, 138 S. Ct. 2334–35. Prior decisions applying this test devoted considerably more attention to this sensitive inquiry, even where there was “no evidence . . . showing that the legislature engaged in an analysis of *any* kind,” *Bethune-Hill*, 326 F. Supp. 3d at 176; *see id.* at 175–80; *see also, e.g., Covington*, 316 F.R.D. at 166–176.

Here, the district court had an 80-page expert report (including an analysis of dozens of primary elections, App. 153a–158a) recording what the Commission learned from its expert, various presentations Dr. Handley and Mr. Adelson delivered to the Commission, a 10,000-page legislative record documenting all the Commission’s activities, and the trial testimony of both Dr. Handley and Mr. Adelson to weigh. The narrow-tailoring portion of its opinion addresses practically none of it. This Court has directed lower courts “to exercise extraordinary caution in adjudicating” racial-gerrymandering claims, *Miller*, 515 U.S. at 916, yet perhaps no decision to date has been so dismissive of states’ obligations under the VRA or of sincere and well-founded efforts to fulfill them.

The district court did not address any of the *Gingles* preconditions or determine whether the Commission had good reasons to believe they were satisfied. *Compare* App. 112a–14a *with Cooper*, 581 U.S. at 301–02. It therefore did not find, and could not have found, that the Commission lacked good reasons to use race in *some* way, and respondents’ expert admitted that the VRA required race-based redistricting. The district court did not address its own charts demonstrating the very high and low

BVAPs of adjacent Detroit-area districts or suggest what the Commission should have done about that unevenness. The district court did not examine Dr. Handley's polarization analysis or identify any error of methodology (or anything else) in it. It did not even cite most of this Court's recent narrow-tailoring case law, including *Cooper*, *Bethune-Hill*, *Alabama Legislative Black Caucus*, *Abbott*, and the summary affirmance in *Covington*. It did not say whether it believed the Commission misread the results of its "district effectiveness analysis," *Covington*, 316 F.R.D. at 169 n.46, or whether it believed the Commission should not have undertaken such an analysis at all.

2. What the district court said about narrow tailoring was without merit.

First, it focused on the packing component of the Commission's narrow-tailoring argument and found the Commission's concerns "highly speculative" because of the absence of case law from this Court on packing. App. 112a–13a. That was erroneous for reasons explained. *See supra* pp. 22–23.

Second, the court called the Commission's theory "meritless" on the basis "that BVAPs above 35-45% BVAP" could not "amount to 'packing.'" App. 112a. However, without the use of race, the plans would likely have contained districts of more than 70% BVAP and less than 30% BVAP (even 10% BVAP), which raises "good reasons" to think that [the plans] would transgress the Act if [the Commission] did not draw race-based district lines." *Cooper*, 581 U.S. at 293 (citation omitted). The question became *what* goal should guide the drawing down of high BVAP districts and drawing up of low BVAP districts and *how* that goal should be derived. To be precise, the question was how far BVAP in the packed districts could come down without compromising their status as opportunity districts and how far up the BVAP in cracked

districts would need to rise for them to become opportunity districts. The Commission addressed that problem by converging district BVAPs loosely toward the range Dr. Handley identified, and it was narrowly tailored because the “evidence” supported that goal. *Cooper*, 581 U.S. at 306.

Third, the district court suggested the Commission erred in *not* utilizing a mechanical BVAP threshold, finding that districts would need to have an “excessive *majority*” in BVAP to justify the Commission’s concerns. App. 112a (citation omitted). Excessive-majority BVAP districts were before the Commission. And, to the extent the district court’s vague discussion meant that the Commission should have targeted the majority-minority line (50% plus one BVAP), instead of a range below 50%, its holding contravenes *Cooper*, which rejected the argument that “whenever a legislature *can* draw a majority-minority district, it *must* do so,” 581 U.S. at 305. Authorities seeking to tailor their use of race must consider whether “a crossover district would also allow the minority group to elect its favored candidates,” given that §2 can be “*satisfied* by crossover districts,” *Cooper*, 581 U.S. at 305. *Cooper* held that it is improper for states to target the majority-minority mark merely because *Bartlett* applied a majority-minority rule under “the first *Gingles* precondition,” such that groups falling short of a majority in the relevant area have no §2 remedy. *Id.* The district court criticized the Commission for not using 50% racial targets, contending that the Commission “limited these plaintiffs to a political *minority* in their districts.” App. 113a. That ignores the evidence before the Commission that Detroit-area districts did not need BVAP majorities to enable black voters to elect candidates of their choosing, due to white crossover voting. A 50% target would not have been narrowly tailored.

3. Echoing in part the arguments respondents proffered in support of their §2 claim, the district court also found the Commission lacked an “adequate basis for the factual premise of its theory” because its analysis “lacked any primary-election data that was relevant to whether black voters could elect their preferred candidates at these BVAP levels.” App. 113a; *see also* App. 120a–21a. This position “ask[ed] too much from state officials charged with the sensitive duty of reapportioning legislative districts.” *Bethune-Hill*, 580 U.S. at 195. The narrow tailoring inquiry asks whether the redistricting authority had “good reasons’ for thinking that the [VRA] demanded” the “steps” it actually took, *Cooper*, 581 U.S. at 301, not whether other bases in evidence might support alternative choices. Having found a probable §2 violation under general-election data, the Commission was justified in remedying it. It did not have to guess that future challengers would rely on primary data. This Court’s precedent, after all, has looked to “general elections” in the narrow-tailoring inquiry and has never held that examining primary elections is essential. *See id.* at 295, 301–06. The district court did not explain what the Commission should have discerned from primary elections, and respondents’ arguments based on primary results were properly directed to their (unresolved) §2 claims, not to their equal-protection claims.

Besides, Dr. Handley *analyzed* primaries and testified they did not provide a basis in evidence to do anything race-related. App. 287a–88a (4 Trial Tr. 226:5–227:5). The district court did not address her analysis or find any fault in it, and it inexplicably claimed in its stay ruling that “the Commission had no data indicating how African American candidates of choice performed in the Democratic primaries in Detroit.” App. 119a–20a. That is clearly erroneous. *See* App. 169a–71a; App. 254a–55a; App. 276a–77a. Because §2 “requires that minorities have an equal opportunity

to participate not only in primary elections but also in general elections,” “these two phases of the single election cycle must be separately considered and analyzed.” *Lewis v. Alamance Cnty., N.C.*, 99 F.3d 600, 616 (4th Cir. 1996) (Luttig, J., for the court). That is what Dr. Handley did. As described, her analysis of general elections revealed a barrier to equal opportunity at *that* stage and concomitant §2 vulnerabilities. Her analysis did not reveal a barrier to equal opportunity at the primary stage. The district court oddly announced that “everyone agrees” the primary elections supply the relevant information, App. 113a, which was not true and clearly erroneous, *see* D. Ct. Doc. 115 at 31–33; App. 276a–77a.

It also cited Dr. Handley’s contemporaneous observation to one commissioner that “we simply do not know” how black-preferred candidates would fare in polarized primaries. App. 113a. But that only proved the Commission’s good reasons for not relying on primaries. As Dr. Handley’s report to the Commission explained, future primary results would pose a §2 problem “*only if* voting in Democratic primaries is racially polarized.” App. 169a (emphasis added). Without a strong basis in evidence to conclude that Democratic primaries *would* be racially polarized, there was “no evidence that a §2 plaintiff could demonstrate the [second or] third *Gingles* prerequisite” and thus no basis to do *anything* race-related with respect to primaries. *Cooper*, 581 U.S. at 302. The district court’s suggestion that the Commission was supposed to pick higher BVAP targets based on what it “simply d[id] not know,” App. 113a, cuts against everything this Court has said in recent years about narrow tailoring.

The district court’s stay ruling confused matters further. It criticized Dr. Handley’s analysis as “incomplete”—again, without addressing Dr. Handley’s analysis of primaries—and then made the curious assertion that it “refuses to prescribe the

Commission with a new racial target” and advised it to “stop using the VRA as a proxy for race.” App. 120a–21a. But if the failure to consider primaries were truly the Commission’s error, a proper analysis of that data would likely point to a *different* racial goal, such as the majority-minority goal respondents vigorously proposed below. After all, respondents’ position all along has been that BVAPs between 35% and 45% are too low.

4. The district court also ignored that “States retain broad discretion in drawing districts to comply with the mandate of § 2.” *Shaw v. Hunt*, 517 U.S. 899, 917, n. 9 (1996) (*Shaw II*); accord *LULAC*, 548 U.S. at 429. Even assuming the Commission could have permissibly selected a higher BVAP goal, such as the 50% mark, the narrow-tailoring inquiry “cannot insist that a state legislature . . . determine *precisely* what percent minority population” the VRA “demands.” *Bethune-Hill*, 580 U.S. at 195. Moreover, this Court has said that states may create crossover districts “as a matter of legislative choice or discretion,” and that this “option . . . gives legislatures a choice that can lead to less racial isolation, not more.” *Bartlett*, 556 U.S. at 23 (plurality opinion). Majority-minority districts “rely on a quintessentially race-conscious calculus aptly described as the ‘politics of second best,’” and this Court has discouraged them in “communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice.” *Johnson*, 512 U.S. at 1020 (citation omitted). To compel states to draw majority-minority districts even where crossover districts perform would “tend to entrench the very practices and stereotypes the Equal Protection Clause is set against.” *Johnson*, 512 U.S. at 1029 (Kennedy, J., concurring in part and concurring in the judgment).

To properly account for states' legitimate discretion, the narrow tailoring inquiry must accommodate multiple reasonable §2-compliance routes if they exist, as would (at a minimum) be the case here. If the possibility of majority-minority districts establishes that districts below a majority (here, crossover districts) are not narrowly tailored, and the possibility of crossover districts proves that majority-minority districts are not narrowly tailored, then the options for §2 compliance would cancel each other out. But the concept of "discretion," *Shaw II*, 517 U.S. at 917 n. 9, implies more than one path to the same goal. VRA §2 compliance under the narrow-tailoring route would become impossible under the district court's view of the inquiry, and states' only option would be to close their eyes to race, get sued, and find out in court what §2 requires.

C. The Stay Factors Are Satisfied

For the foregoing reasons, the first two stay factors are satisfied. *See Hollingsworth*, 558 U.S. at 190. This Court has yet to encounter a narrow-tailoring effort as thoroughly supported in an evidentiary record as this, and—at a minimum—this case is not a serious candidate for summary affirmance, especially where the Commission followed this Court's repeated admonition to rely on "a functional analysis." *Bethune-Hill*, 580 U.S. at 195. This case falls within a right of direct appeal from a three-judge court, so the Court will note probable jurisdiction unless "the questions are so insubstantial as not to justify hearing argument." Stephen M. Shapiro, et al., *Supreme Court Practice*, § 7-11, p. 7-29 (11th Ed. June 2019); *Cox v. Larios*, 542 U.S. 947, 947 (2004) (Scalia, J., dissenting) ("This is not a petition for certiorari, however, but an appeal, and we should not summarily affirm unless it is clear that the disposition of this case is correct."). The issues here are of such profound importance that

the certiorari standard, too, would be met if it applied. Indeed, even the question whether primary (versus general) election data is essential for the narrow-tailoring inquiry is novel and calls for this Court’s fulsome review. And at least five Justices of this Court are likely to vote to reverse because the district court’s analysis cannot be correct, for reasons explained.

II. The Remaining Factors Overwhelmingly Favor a Stay

Absent a stay from this Court, the lower courts’ orders will upend the status quo and compel Michigan into new legislative redistricting plans, even as this Court determines whether the challenged plans satisfy constitutional scrutiny.

1. The irreparable-harm element is satisfied as a matter of law, given that “the [State’s] inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State.” *Abbott*, 138 S. Ct. at 2324, n.17; *see also Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”); *Miller*, 515 U.S. at 915 (“Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions.”). The district court acknowledged that this element favors the Commission. App. 120a. The Michigan Constitution vests vindication of the State’s relevant interests in the Commission, *see Mich. Const. art. 4, § 6(6)*, consistent with Michigan’s sovereign authority to choose what parties may “participate in litigation on the State’s behalf,” including “with counsel of their own choosing.” *Berger v. N. Carolina State Conf. of the NAACP*, 142 S. Ct. 2191, 2197 (2022).

It is a second irreparable injury that the Commission will (without a stay) be obligated to “adopt an alternative redistricting plan before” a date of the district

court's choosing "or face the prospect that the District Court will implement its own redistricting plan." *Karcher*, 455 U.S. at 1306 (Brennan, J., in chambers). In *Karcher*, Justice Brennan determined that the irreparable-harm element was met (and a stay warranted) because of this choice facing the New Jersey legislature, *see id.*, and the district court acknowledge that "[t]here's no doubt the Commission will face a tight timeline going forward as it endeavors to draw new Senate and House districts." App. 120a.

The harms are even more pronounced here because of factors unique to Michigan. The 2018 amendment to the State Constitution declared an express policy that "[i]n no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state." Mich. Const. Art. IV, § 6(19). Even if the Commission succeeds in redistricting on tight deadlines that will be imposed upon it, irreparable harm will result from the truncated process that may thwart State constitutional directives as to the house plan. The 2018 amendment directs the Commission to conduct hearings and a 45-day notice-and-comment period, Mich. Const. Art. IV, § 6(9) and (14)(b), that will be difficult (even impossible) to conduct consistent with election timelines in 2024. The people of Michigan created "a redistricting plan animated by a principle of self-determinism," such that "public comments" inform how the Commission "draw[s] the district lines." *Banerian II*, 597 F. Supp. 3d at 1167. While the district court has yet to identify a timeline for reconfiguring house districts, it is unlikely to provide the Commission with an ample opportunity for fulsome public comment, which requires that map-drawing be measured in months, not days. The people of Michigan, however, have stated that only plans produced by the Commission "acting pursuant to

this section” should govern Michigan elections. *Id.* art. IV, § 6(19). A process in contravention of the State Constitution irreparably harms the state.

2. There is more. The Commission’s task is uniquely difficult among remedial tasks because the district court did not adjudicate respondents’ §2 claims. Thus, while the district court has declared its view of what §2 strategy is not supportable, it did not indicate what strategy is correct. This case therefore stands in contrast to other redistricting injunctions providing such clarity. *See, e.g., Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La.) (after issuing preliminary injunction, holding: “The appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district.”), *stay and certiorari granted before judgment* 142 S. Ct. 2892 (2022).

A racial-gerrymandering plaintiff “ask[s] for the elimination of a racial classification.” *Rucho*, 139 S. Ct. at 2502. But respondents here did not want that: they wanted plans with specified numbers of majority-black districts, which their expert acknowledged would be race-based plans. Because the district court did not adjudicate that claim, the Commission is faced with the difficult task of discerning whether to draw without racial considerations or whether to employ *different* ones. Similarly, while the district court suggested that primary data provides the useful information, it made no determination about what those data show. Notably, plans respondents proposed in their first remedial filing raise difficult §2 questions. For example, their senate plan contains three majority-minority districts of roughly 68%, 58%, and 55% BVAP neighboring districts below 20% BVAP, *see* D. Ct. Doc. 136-3 at 14, which would stand condemned by comparison to respondents’ own liability-phase map, which contained *five* majority-Black Detroit-area districts. Had the Commission adopted this

new plan, it might have been invalidated in *this* lawsuit by the advocacy of *these* respondents, *their* counsel, and *their* expert.⁵

In sum, the district court forced the Commission to navigate the “competing hazards of liability” in a rudderless boat. *Abbott*, 138 S. Ct. at 2315 (citation omitted). In seeking to assuage this concern, the district court’s stay ruling (as noted) suggested the Commission’s task is as simple as not “using the VRA as a proxy for race.” App. 121a. But that curious verbal formulation misses that, where §2’s prerequisites are satisfied, the statute “insists that districts be created precisely because of race.” *Abbott*, 138 S. Ct. at 2314. The Commission’s record found §2’s prerequisites satisfied (and the district court did not disagree), respondents insisted below that they were satisfied (albeit to direct a different racial goal), and the district court’s remedial role includes assessing whether a plan the Commission adduces complies with all dictates of federal law, including the VRA, *see Perry v. Perez*, 565 U.S. 388, 393 (2012). It makes no sense for the district court to summarily announce it “refuses to prescribe the Commission with a new racial target,” App. 121a, when it did not find that §2’s prerequisites are unmet (either for primary or general elections). This sets the Commission up for failure later.

3. The irreparable-harm element as to the injunction against the house districts should further be informed by “considerations specific to election cases.”

⁵ To make matters worse, at the January 5 remedial hearing, members of the court suggested that attorneys from Baker & Hostetler, LLP, the firm that represented the Commission at trial, should not advise the Commission about Voting Rights Act issues as they relate to the remedial process, *see, e.g.*, D. Ct. Doc. 155 at 67:21–24, even though the firm is best positioned to advise on what may properly be gleaned from the trial record and the opinion below. We are unaware of any redistricting case where a court has attempted to exert control over a legislative body’s choice of advisors at any juncture of redistricting or redistricting litigation.

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (per curiam). Under the *Purcell* principle, “federal district courts ordinarily should not enjoin state election laws in the period close to an election, and . . . federal appellate courts should stay injunctions when . . . lower federal courts contravene that principle.” *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). The *Purcell* principle applies here as to the house plan because the “State’s election machinery is already in progress,” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964), as Michigan’s secretary of state advised the district court, see D. Ct. Doc. 113 at 2–4. The district court has announced that one or more remedial orders are forthcoming to place strict temporal (and possibly other) limits on the Commission’s redistricting effort, and those orders will likely have to upend state-law requirements.

To be sure, the Commission recognizes that the timing of the district court’s injunction with sufficient time for a highly compressed redistricting does not so thoroughly threaten “chaos” such that the *Purcell* principle commands a stay standing alone. See *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Nevertheless, it is clear that the injunction injects federal power into election-preparation efforts, such that state laws, procedures, and best practices will be stretched and overridden to some degree. This factor, when combined with the others, confirms that irreparable harm stands at its paramount level.

4. The three stay factors are amply satisfied, so this is not among the “close cases” where it is appropriate to “weigh the relative harms to the applicant and to the respondent.” *Hollingsworth*, 558 U.S. at 190. Even if it were, the balance of equities favors applicants, as it has favored states in many redistricting stay proceedings, see

supra 19. Although the district court believed this factor favors respondents’ right to “maps that are not racially gerrymandered,” App. 120a, this again ignored that respondents’ principal contention below was, not that they are entitled to redistricting free from racial classifications, but that the Commission should have employed different classifications—indeed, the very types of classifications that this Court has held do *not* satisfy strict scrutiny, *Cooper*, 581 U.S. at 301–02; *Wisconsin Legislature*, 595 U.S. at 404. The district court did not determine whether they established a right to race-based districts in the form of five and ten majority-black senate and house districts, respectively. Because it is a mystery what respondents’ rights are, it is difficult to understand how such rights could weigh heavily in the balance of equities or how a vaguely defined right to maps “that are not racially gerrymandered” can even be understood. App. 120a. By comparison, the harms running the other way are, as shown, discrete, palpable, and well established in law.

CONCLUSION

The Court should grant the application and issue a stay of the district court’s injunction and remedial proceeding pending applicants’ forthcoming appeal to this Court. The Court should also issue a prompt administrative stay pending resolution of this application. The Court would, in addition, be justified in construing this application as a jurisdictional statement, noting probable jurisdiction, and conducting prompt oral argument.

January 9, 2024

Respectfully Submitted,

/s/ Richard B. Raile

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EXHIBIT C

From: Nate Fink <nfink@finkbressack.com>
Sent: Thursday, January 4, 2024 2:16 PM
To: Fleming, James J.
Cc: Braden, E. Mark; McKnight, Katherine L.; David Fink; jbursch@burschlaw.com; Banks, Amia; Pattwell, Michael J.; Patrick T. Lewis; datiya@bakerlaw.com; Green, Jennifer K.; Raile, Richard
Subject: RE: Meet and Confer (Agee v. Benson)

[External Message]

Jay,

Below is the Commission's list of special master candidates and proposed schedule (note that the proposed schedule is subject to change). We are available any time 3:00 p.m. and later today to meet and confer. Please let us know what's best for you. Thanks.

SPECIAL MASTER CANDIDATES

The Commission would propose Professor [Nathaniel Persily](#) of Stanford University and Professor [Michael Barber](#) of Brigham Young University as special masters. Both are available. Professor [Bernard Grofman](#) of the University of California, Irvine, might also be an option, but we have not been able to confirm his availability.

SCHEDULE

The Commission would propose the following remedial schedule:

- Last day for Commission to publish draft maps for notice and comment: Friday, February 2, 2024
- 45 day notice-and-comment period: February 2, 2024, to Monday, March 18, 2024
- Last day for Commission to vote to adopt plan: Friday, March 22, 2024
- Last day for other parties to submit proposed plans: Friday, March 22, 2024
- Deadline for parties to file written objections to proposed plans: Friday, March 29, 2024
- Deadline for special master's report and recommendation: Friday, April 12, 2024
- Deadline for parties to object to special master's report and recommendation: Friday, April 19, 2024
- Deadline for court to adopt remedial plan: Monday, April 29, 2024
- Deadline for candidates to qualify to ballot: Monday, May 13, 2024 (20 day extension of current deadline)

We would note the following are holidays observed during the relevant time-period:

MLK Day – January 15
President's Day – February 19
Ramadan – March 10 to April 8
Good Friday – March 29
Easter – March 31
Passover – April 22 to April 30
Mother's Day – May 12



Nathan J. Fink

T: [248-971-2500](tel:248-971-2500)

E: nfink@finkbressack.com | W: <http://www.finkbressack.com>

A: 38500 Woodward Ave., Suite 350, Bloomfield Hills, MI 48304

A: 645 Griswold St., Suite 1717, Detroit, MI 48226

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From: Fleming, James J. <jfleming@clarkhill.com>

Sent: Thursday, January 4, 2024 7:50 AM

To: Green, Jennifer K. <jgreen@clarkhill.com>

Cc: Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; David Fink <dfink@finkbressack.com>; Nate Fink <nfink@finkbressack.com>; jbursch@burschlaw.com; Banks, Amia <abanks@clarkhill.com>; Pattwell, Michael J. <mpattwell@clarkhill.com>; Patrick T. Lewis <plewis@bakerlaw.com>; datiya@bakerlaw.com

Subject: Re: Meet and Confer (Agee v. Benson)

Good morning:

Please let us know if the following work for meet and confer today: 9:30am, 10:00am, 10:15am, 10:30am, 10:45am, 11:00am, 11:15am, 11:30am, 11:45am.

If this morning will not work please let us know alternative times in the afternoon

We will circulate a zoom invite.

Jay Fleming
Attorney at Law
Clark Hill PLC

On Jan 3, 2024, at 11:01 PM, Green, Jennifer K. <jgreen@clarkhill.com> wrote:

Hi Mark. I think whatever message was supposed to be sent accidentally got deleted before it was sent. Can you resend?

Also, for purposes of scheduling the meet and confer, I would request we do it in the morning, as I have a court hearing in the afternoon. Thank you,

Jen

From: Braden, E. Mark <MBraden@bakerlaw.com>

Sent: Wednesday, January 3, 2024 6:05 PM

To: Green, Jennifer K. <jgreen@clarkhill.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; David Fink <dfink@finkbressack.com>; nfink@finkbressack.com; jbursch@burschlaw.com; Fleming, James J. <jfleming@clarkhill.com>; Banks, Amia <abanks@clarkhill.com>; Pattwell, Michael J. <mpattwell@clarkhill.com>

Subject: Re: Meet and Confer (Agee v. Benson)

[External Message]

Sent from my iPad

On Jan 3, 2024, at 5:28 PM, Green, Jennifer K. <jgreen@clarkhill.com> wrote:

[External Email: Use caution when clicking on links or opening attachments.]

I'm reaching out to set up a time for the meet and confer ordered by the Court. Can you let me know a few times that work for you tomorrow? You already have a few of our proposed names for special master, and in your brief, you mentioned that you would have a few names ready for Friday. As such, can you email us your list of names tonight so we can review them before the call tomorrow? Thanks!

Jen

Jennifer K. Green

Member

Clark Hill

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EXHIBIT D

FILED
12-22-2023
CLERK OF WISCONSIN
SUPREME COURT

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

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MADISON, WI 53701-1688

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Web Site: www.wicourts.gov



December 22, 2023

To:

Daniel S. Lenz
Electronic Notice

Douglas M. Poland
Electronic Notice

Scott B. Thompson
Electronic Notice

Jeffrey A. Mandell
Electronic Notice

Elizabeth M. Pierson
Electronic Notice

Rachel A. Snyder
Electronic Notice

*Distribution List Continued on Pages 8-10

You are hereby notified that the Court has issued the following order:

No. 2023AP1399-OA Clarke v. Wisconsin Elections Commission

On this same date, this court issued a decision concluding that Wisconsin's current legislative maps contain districts that violate Article IV, Sections 4 and 5 of the Wisconsin Constitution. The court therefore enjoined the Wisconsin Elections Commission from using the current legislative maps in all future elections. Accordingly, new Wisconsin legislative district maps must be adopted. To facilitate the adoption of new maps,

IT IS ORDERED that the court appoints the team of Dr. Bernard Grofman and Dr. Jonathan Cervas to serve as the court's consultants in this matter. The court contacted all of the persons identified by one or more of the parties as potential consultants to inquire regarding their capabilities and availability. The court determines that Dr. Grofman and Dr. Cervas possess the requisite expertise to assist the court in this case;

IT IS FURTHER ORDERED that the Director of State Courts is instructed to enter into one or more retainer agreements between the court and Dr. Grofman and Dr. Cervas for their services. The Director of State Courts shall promptly send fully executed copies of all such retainer agreements to the clerk of this court, who shall file the retainer agreements into the record of this case;

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IT IS FURTHER ORDERED that Dr. Grofman and Dr. Cervas shall have no contact with the parties in this matter, their attorneys, or the experts retained by the parties other than through service of materials filed with the court, as outlined in this order;

IT IS FURTHER ORDERED that on or before 4:00 p.m. on December 26, 2023, Dr. Grofman and Dr. Cervas shall submit a letter to this court identifying the technical specifications and necessary data that should be submitted with each of the parties' proposed remedial maps and supporting materials. The letter shall be attached to an email addressed to clerk@wicourts.gov. The clerk shall file the letter into the record in this case. The parties' submissions described in the following paragraphs shall fully comply with the requirements identified in this letter;

IT IS FURTHER ORDERED that the parties shall confer and attempt to reach a stipulation as to the redistricting data that will be used in this case by all the parties, Dr. Grofman and Dr. Cervas, and this court. No later than 5:00 p.m. on December 30, 2023, the parties shall file either a stipulation as to the redistricting data or a report that the parties were unable to reach a stipulation on that subject. If the parties stipulate that redistricting data other than that maintained by the Legislative Technology Services Bureau or the United States Census Bureau is to be used in drawing remedial maps, the parties shall file with this court an electronic storage device containing a copy of all stipulated data and shall serve an electronic storage device containing that data on Dr. Grofman and on Dr. Cervas by overnight delivery service. The clerk of this court shall maintain a physical file with all such electronic storage devices filed in this case;

IT IS FURTHER ORDERED that by 5:00 p.m. on January 12, 2024, each party may file a proposed remedial map, one or more supporting expert reports as described below, and other supporting materials, all complying with the parameters set forth in this court's December 22, 2023 decision and with the technical specifications and data requirements identified by the December 26, 2023 letter submitted by Dr. Grofman and Dr. Cervas. Any brief filed in support of a proposed map shall not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional serif font is used. In the alternative, a party may file a letter brief stating that the party supports a map proposed by another party. A letter brief filed in support of another party's proposed map shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. In making a submission pursuant to this paragraph, the party shall use the electronic filing system to file the proposed map, supporting brief, expert report(s), and any other supporting documents. Each party filing such documents through the electronic filing system shall deliver eight courtesy hard copies to the clerk of this court by 5:00 p.m. on January 12, 2024, and shall serve via overnight delivery one courtesy hard copy of such documents to Dr. Grofman and one courtesy copy to Dr. Cervas. To the extent a party's submission includes (1) digital redistricting data that has not been previously filed with the court pursuant to a stipulation and/or (2) other supporting digital files, by 5:00 p.m. on January 12, 2024, the party shall file with the clerk of this court an electronic storage device containing such data or digital files. The party shall accomplish service of this digital material by sending via overnight delivery to the other parties and to both Dr. Grofman and Dr. Cervas an electronic storage device containing the

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same data or digital files as filed with the court. The parties may not send anything to Dr. Grofman or Dr. Cervas that has not been filed with the court and served on the other parties;

IT IS FURTHER ORDERED that any expert report filed in support of a proposed map and accompanying its supporting brief shall set forth the expert's qualifications to offer expert opinions on this subject and shall explain the proposed map and its compliance with the redistricting considerations contained in this court's December 22, 2023 decision. Each expert report shall strive for brevity and shall contain an executive summary not to exceed five pages if a monospaced font is used or 1,100 words if a proportional serif font is used;

IT IS FURTHER ORDERED that on or before January 22, 2024, each party may file a response brief which shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional serif font is used;

IT IS FURTHER ORDERED that no later than 5:00 p.m. on January 22, 2024, any non-party that was previously granted leave to file an amicus curiae brief in this proceeding may file a non-party brief, not to exceed 15 pages if a monospaced font is used or 3,300 words if a proportional font is used, in support of or opposing a proposed map;

IT IS FURTHER ORDERED that any other non-party that has not previously been granted leave to file an amicus curiae brief in this proceeding and that wishes to file an amicus curiae brief in support of or in opposition to a proposed map must file a motion for leave of the court to file a non-party brief. Wis. Stat. § (Rule) 809.19(7). Non-parties should consult this court's Internal Operating Procedure III.B.6.c., concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it and shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. Any motion for leave, with the proposed non-party brief attached, shall be filed no later than 5:00 p.m. on January 22, 2024. Any proposed non-party brief for which this court does not grant leave will not be considered by the court;

IT IS FURTHER ORDERED that the form, pagination, appendix, and certification requirements for the briefs outlined above shall be the same as those governing standard appellate briefing in this court for a brief-in-chief and response;

IT IS FURTHER ORDERED that, in addition to the information exchanged via the court filings required above, the parties shall produce to each other, by January 15, 2023, all other data and inputs that their experts used in their remedial analyses. No further discovery shall be permitted;

IT IS FURTHER ORDERED that Dr. Grofman and Dr. Cervas shall prepare and file a written report by February 1, 2024. The report and any supporting documents shall be attached as a pdf document to an email addressed to clerk@wicourts.gov. The clerk of this court shall immediately file the report and supporting documents into the record of this case, which will result in the service of those documents on the parties to this case through the electronic filing

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system. Their report shall evaluate each of the parties' submissions based on the criteria identified in the court's December 22, 2023 opinion. Only if no such submission meets the criteria identified in the court's December 22, 2023 opinion should Dr. Grofman and Dr. Cervas submit their own proposed remedial map. Dr. Grofman and Dr. Cervas may, however, suggest technical corrections or minor changes to the parties' submissions as required. Any such technical corrections or minor changes shall be explained in their report. In preparing their report and any proposed remedial map, Dr. Grofman and Dr. Cervas shall not consider any fact outside the record in this case. To the extent that the submission of Dr. Grofman and Dr. Cervas includes (1) digital redistricting data that has not been previously filed with the court or (2) other supporting digital files, Dr. Grofman and Dr. Cervas shall send via overnight delivery to the clerk of this court and to each party an electronic storage device containing such digital data or digital files. The clerk of this court shall file the electronic storage device into the record of this case immediately upon receipt;

IT IS FURTHER ORDERED that, in addition to the information exchanged via the court filings required above, on February 1, 2024, Dr. Grofman and Dr. Cervas shall also send via overnight delivery all other data and inputs used in their remedial analyses. No further discovery of Dr. Grofman and Dr. Cervas shall be permitted;

IT IS FURTHER ORDERED that the parties and all amici who have been granted leave to participate may submit a response brief addressing the report of Dr. Grofman and Dr. Cervas on or before 5:00 p.m. on February 8, 2024. The response briefs shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional serif font is used;

IT IS FURTHER ORDERED that the reasonable costs and expenses incurred by Dr. Grofman and Dr. Cervas pursuant to the retainer agreement(s) identified above shall be borne by the parties as determined by the court in a future order;

IT IS FURTHER ORDERED that, notwithstanding the terms of Wis. Stat. § 809.14(3), the filing of a motion in this proceeding shall not operate as an automatic stay of any of the deadlines set forth in this order; and

IT IS FURTHER ORDERED that the "Joint Motion . . . for Corrected LTSB Redistricting Dataset," filed by petitioners, Rebecca Clarke et al.; the Democratic Senator respondents, Senator Tim Carpenter et al.; intervenor-petitioner, Governor Tony Evers; and intervenors-petitioners, Nathan Atkinson et al.; to which a joint response was filed by the Republican Senator respondents, Senator Rachael Cabral-Guevara et al.; intervenor-respondent, the Wisconsin Legislature; and intervenors-respondents, Billie Johnson et al., is denied.

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REBECCA GRASSL BRADLEY, J. (*dissenting*). With no lawful authority, the majority (1) outsources the legislature's constitutional responsibility for redistricting to two out-of-state, unelected, and unaccountable political scientists; and (2) gives the director of state courts carte blanche to enter into contracts with these "consultants" with no cap on the fees the parties—including the taxpayers—will be compelled to pay for their "services." The majority sticks the bill for these "services" on the parties but shields the "consultants" from cross-examination, depositions, or any other discovery. So much for the "transparency" the majority often promises but seldom delivers. In abdicating its constitutional duties, the majority allows out-of-state interests to control the rebalancing of political power in Wisconsin. Although the misdeeds of the majority in this case are shocking, they are nonetheless fitting, considering out-of-state money controlled their recent elections. But the people of Wisconsin never consented to this shameless abuse of power.

The majority's order appointing Drs. Grofman and Cervas as "consultants," like the rest of their decisions in this case, raises more questions than it answers. True to form, the majority blazes by procedural irregularities, due process concerns, and abdication of its constitutional duty. The order does not specify with any certainty what roles these two unelected political scientists will play in this litigation and does not identify under what authority the court will be relying on their services. Consistent with their actions throughout this litigation, the members of the majority simply make it up as they go, giving themselves power without any legal basis.

Specifically, the order does not say whether the majority appoints Drs. Grofman and Cervas under Wis. Stat. § 805.06 (allowing for court-appointed referees) or under Wis. Stat. § 907.06 (allowing for court-appointed expert witnesses). This distinction matters because it determines the procedures and limitations of the services provided by Drs. Grofman and Cervas. See Ehlinger v. Hauser, 2010 WI 54, ¶204, 325 Wis. 2d 287, 785 N.W.2d 328 (Ziegler, J., concurring in part, dissenting in part) ("The statutes providing for court-appointed referees or expert witnesses are rife with procedural safeguards that ensure litigants due process of law."). A court-appointed referee under Wis. Stat. § 805.06 assists the court with "matters of account" and obtaining facts to achieve the correct result in complicated litigation matters. Id., ¶76 (majority op.). Additionally, a court-appointed referee can "make findings of fact and conclusions of law" in a written report to be filed with the court. Wis. Stat. § 805.06(5)(a). The parties are statutorily entitled to a hearing on the referee's written report, and the court may adopt or modify the report in whole or in part. Wis. Stat. § 805.06(5)(b). When a court appoints a referee, it "should clearly delineate the court's expectations regarding the types of evidence the referee should examine and the form of the report, including whether the referee should make findings of fact and conclusions of law." Ehlinger, 325 Wis. 2d 287, ¶89. Alternatively, a court-appointed expert witness is subject to cross-examination by the parties, can provide expert opinions for the court's consideration, and is also permitted to generate a written report. See Wis. Stat. § 907.06.

The majority's order frames Drs. Grofman and Cervas as "consultants" hired by the court, but no statutory authority exists for the court to hire outside technical advisors to assist with its decision making. See Wis. Stat. § 751.09 ("In actions where the supreme court has taken

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original jurisdiction, the court may refer issues of fact or damages to a circuit court or referee for determination."). If instead the majority relies on some "inherent" power to appoint Drs. Grofman and Cervas as "consultants" in the remedial phase of this case, the majority does not indicate the source of this "power."

While not explicit, the order may be read to suggest the majority intends to have Drs. Grofman and Cervas function as referees under Wis. Stat. § 805.06. For the parties' sake, the order should have made clear under what authority the court appoints the two political scientists and what limitations will be placed on their services. This is important because while court-appointed referees may "share in judicial labor," they "cannot assume the place of the judge." State ex rel. Universal Processing Servs. of Wis., LLC v. Cir. Ct. of Milwaukee Cty., 2017 WI 26, ¶75, 374 Wis. 2d 26, 892 N.W.2d 267. The majority should be particularly mindful of unconstitutionally ceding and delegating its judicial power over substantive matters to two unelected political scientists. Id., ¶136 (Rebecca Grassl Bradley, J., concurring in part, dissenting in part).

The order requires the parties to submit proposed remedial maps that comply with the redistricting considerations detailed in today's majority opinion. As my dissent discusses, however, the majority leaves its amorphous "partisan impact" consideration undefined and provides no direction to the parties regarding how it can be met to the majority's liking. Is it the majority's intention to cede its responsibility for defining this new "partisan impact" metric to Drs. Grofman and Cervas? If so, shouldn't the parties be made aware of how the majority's consultants will consider this metric in analyzing the parties' proposed maps? Will it be the "partisan symmetry" metric¹ defined and developed by Dr. Grofman? These are questions neither the majority opinion nor the order answer, and the omissions seem intentional. No record exists under which maps could be created, so the majority unilaterally chooses "consultants" to draw the maps the majority desires.

If Drs. Grofman and Cervas, as the majority's consultants, will be developing and measuring the partisan symmetry of the proposed maps and opining to the court about which map best meets the criteria outlined in the majority opinion, it would appear they will operate more as expert witnesses rather than referees. If that is the case, they should be subject to depositions and cross-examination so the parties have the opportunity to explore how Drs. Grofman and Cervas formulated their opinions. The order, though, is vague on the duties and responsibilities of the consultants. It allows the majority to quietly delegate its judicial power to two consultants without having to define or apply its own opaque "partisan impact" consideration.

The order allows Drs. Grofman and Cervas to propose their own maps for the court's consideration if they decide none of the parties' proposed maps comply with the criteria listed in

¹ Bernard Grofman & Gary King, The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering After LULAC v. Perry, 6 Election L.J. 2, 6 (2007).

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the majority opinion. Again, the order provides no clarity as to how the political scientists should develop their own proposed maps and does not offer the parties any opportunity for discovery of the political scientists' considerations in drawing their proposed maps. In the event this is the course taken by the majority and the political scientists, it risks becoming an abdication of the court's judicial power vested in the court (but certainly not consultants) by Article VII, Section 2 of the Wisconsin Constitution.

Lastly, the parties may object to the appointment of Drs. Grofman and Cervas because no party, besides the Clarke petitioners, had any meaningful opportunity to suggest experts. Without briefing by the parties, much less their knowledge or consent, the majority contacted Drs. Grofman and Cervas *ex parte* to solicit their services. The majority should not have sprung this monumental change on the parties without input from each of them.

This entire case is rife with procedural and substantive defects produced by the majority's ridiculously expedited timeline. In its haste, the majority orders the parties to propose maps that comply with all of the parameters set forth in its opinion, but the majority failed to define each of the criteria it will consider. Two unelected political scientists will rebalance political power in this state, without any lawful authority and without the consent of the people of Wisconsin.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this dissent.

BRIAN HAGEDORN, J. (*dissenting*). The court's order is problematic. As Justice Rebecca Grassl Bradley's dissent explains, the selection of these consultants, the legal authority undergirding their appointment, and the responsibilities they will undertake all raise a host of questions. I likewise dissent to the order.

Samuel A. Christensen
Clerk of Supreme Court

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