

UNION PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is entered into by and between Michigan AFL-CIO (“AFL-CIO”), with a mailing address of 419 S. Washington Square, Lansing, MI 48933, and _____, with a mailing address of _____ (“Union”) for participating in the Endorsement Portal, in consideration of the mutual promises made herein, as follows:

1. **Term.** This Agreement will commence on the latest date signed below (the “Effective Date”) and continue in full force and effect for one (1) year unless otherwise terminated early under Section 11.
2. **Relationship.** During the term of this Agreement, AFL-CIO will provide access to, and Union will participate in, the Endorsement Portal (the “Portal”).

Union shall place its candidate questionnaires in the Portal. Union and AFL-CIO will encourage candidates to use the Portal to answer the questionnaires of Union and other labor organizations. Union will only have access to the candidates’ answers to its questionnaire(s). AFL-CIO will have access to all of the candidates’ answers to all of the questionnaires in the Portal for its own use. AFL-CIO will archive the answers for future use.

Union acknowledges that it is using a pre-designed product. Union will not have the right to control the design or manner of use of the Portal. The Portal is not customized for Union.

Union agrees that the Portal shall not be used to convey the non-public campaign plans, projects, activities, or needs of a political party, legislative caucus, candidate, or any of their agents to any person other than Union. Union agrees that AFL-CIO and the Portal shall not serve as a conduit for coordination as defined under the Federal Election Campaign Act (“FECA”) and Michigan Campaign Finance Act (“MCFA”) with political parties, legislative caucuses, candidates, or any of their agents.

3. **Fees.** In consideration for participating in the Portal, Union shall pay AFL-CIO a fee of _____ dollars (\$___) prior to accessing the Portal. Payments shall be made by electronic fund transfer or check to AFL-CIO at its business address or designated depository account.

Union acknowledges and understands that the pricing and payment terms applied to Union shall be those uniformly applied to all other participants. Union shall not receive any individual discount, adjustment, or waiver of payment terms that is not uniformly applied to all other participants. AFL-CIO reserves the right to adjust pricing at any time in its sole discretion.

4. **Ownership of Copyrights and Other Intellectual Properties.** Subject to the terms of this Agreement, AFL-CIO grants to Union a limited, non-exclusive, non-transferable, terminable license (without the right to sublicense except as permitted by AFL-CIO in advance in writing), to access and use the Portal provided by AFL-CIO pursuant to this Agreement. Union may use the Portal information solely for its own internal purposes. The right to use the Portal under the limited license provided under this Agreement shall be limited to Union and its employees, agents, contractors, consultants, and vendors, and to such other persons or entities that AFL-CIO has approved in advance in writing.

AFL-CIO shall own and retain all worldwide intellectual property rights and interests in and to the Portal, including but not limited to technology, hardware, software, codes, processes, techniques, designs, systems, data, the name Michigan AFL-CIO or any derivatives, enhancements or extensions thereof, and any other trademarks and logos that are owned or controlled and made available to Union through this Agreement or otherwise (whether owned by AFL-CIO or by any of its third party suppliers). No implied licenses are granted herein, and Union shall not use the Portal except pursuant to the limited rights expressly granted under this Agreement.

5. **Representation and Warranties.** Each party represents and warrants that: (a) it has full power and authority to execute, deliver, and perform its obligations under this Agreement; (b) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement; (c) this Agreement is valid, binding, and enforceable against it in accordance with its terms; and (d) neither the execution of this Agreement, nor the performance of its obligations under this Agreement, will conflict with, or result in a breach of, or constitute a default under, any provision of the governing documents of such party, or any applicable law or any contract or agreement to which a party is subject.

Further, AFL-CIO represents and warrants that: (a) it has the right to disclose and/or use all ideas, processes, techniques, and other information, if any, that AFL-CIO has gained from third parties and that AFL-CIO discloses to Union or uses in the course of performance of this Agreement, without liability to such third parties; (b) it has not granted and will not grant any rights or licenses to any intellectual property or technology that would conflict with AFL-CIO's obligations under this Agreement; and (c) it will not knowingly infringe upon any copyright, patent, trade secret, or other property right of any third party in the performance of this Agreement.

Further, Union represents and warrants that its Portal utilization does not violate, misappropriate, or infringe any intellectual property rights, any other proprietary rights, or any right of privacy or right of publicity of any third party.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY MAKES ANY

WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. AFL-CIO MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS, IMPLIED, OR STATUTORY) OR COVENANTS WITH RESPECT TO THE CONDITION, QUALITY, COMPLETENESS, PERFORMANCE, OR ACCURACY, OR OF THE TIMELINESS, USEFULNESS, OR SUITABILITY, OF THE PORTAL. NO TERMS OF THIS AGREEMENT WILL BE ENFORCEABLE BY OR CREATE ANY RIGHT OR CAUSE OF ACTION FOR OR ON BEHALF OF ANY PERSON OR ENTITY OTHER THAN UNION AND AFL-CIO, AND THEN ONLY TO THE EXTENT SPECIFICALLY SET FORTH IN THIS AGREEMENT. AFL-CIO SHALL NOT BE LIABLE FOR ANY LOSS, COST, DAMAGE, OR EXPENSE INCURRED BY UNION OR ANY THIRD PARTY (INCLUDING ATTORNEY FEES AND COSTS) IN CONNECTION WITH THE ACCESS TO AND USE OF THE PORTAL PROVIDED BY AFL-CIO, OR FOR ANY OTHER INJURY, DAMAGE, OR DISRUPTION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AFL-CIO SHALL UNDER NO CIRCUMSTANCE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DATA, OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. AFL-CIO'S MAXIMUM AGGREGATE LIABILITY UNDER ANY CIRCUMSTANCE SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY UNION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE.

Union acknowledges and understands that its payments for and use of the Portal provided by AFL-CIO under this Agreement may be regulated under and subject to state or federal campaign finance laws and other laws. Union is solely responsible for ensuring its compliance with such laws, including but not limited to source, reporting, and disclosure requirements under state and federal campaign finance laws, and AFL-CIO shall have no responsibility for ensuring or guaranteeing Union's compliance with such laws.

6. **Privacy.** AFL-CIO makes every effort to ensure the secure collection and transmission of information in the Portal using industry-accepted data collection and encryption methodologies, such as Secure Sockets Layer ("SSL"). AFL-CIO does not sell information to any third party.
7. **Confidentiality.** AFL-CIO and Union each acknowledge that Confidential Information may be exchanged between the parties. "Confidential Information" means all information disclosed (whether oral, written, or other tangible or intangible form) by one party (the "Disclosing Party") to the other party (the "Receiving Party") concerning or related to this Agreement or the Disclosing Party (whether before, on, or after the Effective Date) that (a) is provided to the Receiving Party in written or electronic form and is marked with a

conspicuous legend as being confidential; or (b) if provided orally or visually, is identified as confidential at the time of delivery and confirmed as confidential in writing to the Receiving Party within ten (10) days thereafter. The Receiving Party will, during the term of this Agreement and perpetually thereafter, maintain in confidence the Confidential Information of the Disclosing Party and will not use such Confidential Information except as expressly permitted herein. The Receiving Party will use the same degree of care in protecting the Disclosing Party's Confidential Information as the Receiving Party uses to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than reasonable care. Any Confidential Information of the Disclosing Party will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party's obligations under this Agreement.

Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the Receiving Party; (b) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party; (c) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information; (d) the Receiving Party receives from a third-party without restriction on disclosure and without breach of a nondisclosure obligation; or (e) is required to be disclosed pursuant to a judicial or legislative order or proceeding; provided that, to the extent permitted by and practical under the circumstances, the Receiving Party provides to the Disclosing Party prior notice of the intended disclosure and an opportunity to respond or object to the disclosure.

If required or requested by AFL-CIO, Union agrees to adopt and abide by a Confidentiality of Internal Information Agreement as a condition for accessing and using the Portal provided under this Agreement.

8. **Indemnification.** Each party (the "Indemnifying Party"), at its sole expense, will defend, indemnify, and hold the other party and its directors, officers, employees, contractors, agents, successors, and assigns (collectively, the "Indemnified Party") harmless from and against any damages, settlements, liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) awarded by a court resulting from any claim, suit, action, or proceeding (collectively, the "Claim") against an Indemnified Party arising from or related to: (a) gross negligence or willful misconduct of the Indemnifying Party (or any individual or entity acting on its behalf); or (b) any alleged breach or breach of the Indemnifying Party's obligations or representations or warranties set forth in this Agreement. The Indemnifying Party's indemnification obligations under this Section 8 are conditioned upon the Indemnified Party: (a) giving prompt notice of the Claim to the Indemnifying Party once the Indemnified Party becomes aware of the Claim; (b) granting sole control of the defense (including, but not limited to, selection and management of counsel) and settlement of the Claim to the Indemnifying Party (except that the Indemnified Party's prior written approval will be required for any settlement that reasonably can be expected to

require an affirmative obligation of or result in any ongoing liability to the Indemnified Party); and (c) providing reasonable cooperation to the Indemnifying Party and, at the Indemnifying Party's request and expense, assistance in the defense or settlement of the Claim. No Claim shall be settled by the Indemnifying Party without the consent of the Indemnified Party, whose consent shall not be unreasonably withheld.

9. **Assignment.** This Agreement may not be assigned by either party without the express written advance consent of the other party. Union understands and agrees that AFL-CIO may subcontract with third-party vendors to create or operate the Portal in whole or in part.
10. **Publicity.** Union agrees that AFL-CIO may communicate to candidates that Union is a participant in the Portal. AFL-CIO shall not otherwise publicize Union's participation in the Portal without Union's express written permission. AFL-CIO agrees that Union may publicize to candidates that it is a participant in the Portal, but Union shall not otherwise publicize the Portal without AFL-CIO's express written permission.
11. **Early Termination.** Either party may terminate this Agreement early with or without cause upon thirty (30) days' written notice. Should either party default in the performance of this Agreement or materially breach any of its obligations under this Agreement including, but not limited to, the Confidentiality provision, the non-breaching party may terminate this Agreement immediately if the breaching party fails to cure the breach within thirty (30) business days after having received written notice by the non-breaching party of the breach or default. Upon early termination, AFL-CIO has the right to retain the answers to Union's questionnaires for future use. Upon early termination, Union will receive a pro rata refund of its fee.
12. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt when delivered by email, personally, by courier, or overnight delivery service, and forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid.
13. **Mediation and Arbitration.** The parties shall attempt in good faith to resolve any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof (the "Dispute"), promptly by negotiation between persons who have authority to settle the Dispute.

Any Dispute that is not resolved by meeting and conferring shall be submitted to arbitration under the commercial arbitration rules of the American Arbitration Association at its offices in Michigan. The costs of the arbitration shall be shared equally by the parties. The award of the arbitrator shall be final and binding on the parties, and may be enforced in any Michigan court of competent jurisdiction.

14. **Amendments and Waivers.** Any provision of this Agreement may be amended or waived only with the written consent of the parties. The failure of either party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, and no waiver by either party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.
15. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and superseded all other agreements or understandings, whether oral or written.
16. **Choice of Law.** The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of Michigan, without giving effect to the principles of conflict of laws.
17. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.
18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
19. **Force Majeure.** Neither party shall be liable for any failure of or delay in the performance of its obligations (except for payment obligations) under this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to natural disasters and other acts of God, terrorist acts, war, strikes or labor disputes, national emergencies, embargoes, government orders, or any other force majeure event.
20. **Advice of Counsel.** Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

The parties have executed this Agreement on the respective dates set forth below.

Michigan AFL-CIO (“AFL-CIO”)

_____ (**“Union”**)

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: 419 S. Washington Square
Lansing, MI 48933

Address: _____

Phone Number: _____

Phone Number: _____

Email: _____

Email: _____