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**AGREEMENT FOR INTELLIGENT TRANSPORTATION SYSTEM
INTEGRATED SURVEILLANCE AND DATA MANAGEMENT
INFRASTRUCTURE SERVICES**

THIS AGREEMENT ("AGREEMENT"), made this ^{4th} day of ^{August} [] , 2004, by and between the State of Michigan, acting through the Department of Transportation ("STATE"),
a n d

Mobility Technologies, Inc., a Delaware corporation, with its principal place of business at Suite 220, 851 Duportail Road, Wayne, Pennsylvania 19087 ("MOBILITY TECHNOLOGIES").

WITNESSETH:

WHEREAS, the Intelligent Transportation Infrastructure Program ("ITIP") created by Section 5117(b)(3) of the federal Transportation Equity Act for the 21st Century ("TEA-21"), Pub. L. 105-178, as amended, provides funding for data services for the measurement of various transportation system activities as described in paragraph 14(e) ("DATA SERVICES") in the Detroit metropolitan area ("PROJECT") to aid in transportation and analysis while making a significant contribution to the intelligent transportation system ("ITS") program; and,

WHEREAS, the STATE has established a set of ITS Goals and the PROJECT can help achieve these goals as follows:

STATE ITS Goal	ITIP implementation satisfies through...
Goal 1: Improve safety, traffic flow, air quality, and fuel consumption	Reducing congestion and travel time
Goal 2: Improve operations	<ul style="list-style-type: none"> • Integrates and enhances legacy system • Self sustaining system • Provides comprehensive incident and event information to assist with traffic operations and emergency response
Goal 3: Improve functionality and reliability of hardware and software	<ul style="list-style-type: none"> • The Web-based system eliminates the need for STATE-sponsored software enhancements for this ATIS application
Goal 4: Develop effective partnerships	The program is a public-private partnership that reaches out to and embraces public agency stakeholders

WHEREAS, the various transportation activities which may be measured and/or collected under the ITIP PROJECT may include any and all sources of information related to traffic flow and/or conditions, both real-time and historical, including but not limited to video images, detector station information relating to volumes, speeds and classification, etc., accident information, construction information, weather information, homeland security information and

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all information collected and owned by MOBILITY TECHNOLOGIES under this AGREEMENT, unless otherwise restricted ("DATA"); and,

WHEREAS, Section 5117(b)(3) of TEA-21 provides further that this PROJECT can be made available to the metropolitan area of Detroit in the STATE at a federal cost of \$2,000,000; and,

WHEREAS, Section 5117(b)(3) of TEA-21 requires further that the PROJECT provide private technology commercialization initiatives to generate revenues which will be shared with the STATE pursuant to the TASK ORDER, as defined more fully below; and,

WHEREAS, federal funding will cover eighty percent of the cost of the PROJECT, but not to exceed \$2,000,000 per metropolitan area, the balance of the funding to come from private sector partners; and,

WHEREAS, the United States Department of Transportation ("USDOT"), Federal Highway Administration ("FHWA"), pursuant to the mandate of Section 5117(b)(3) of TEA-21, extended a competitively bid contract on June 21, 2002 to the team led by MOBILITY TECHNOLOGIES under the USDOT Information Technology Omnibus Procurement ("ITOP") program for the PROJECT that is carried out through specific federal task orders ("TASK ORDER"); and,

WHEREAS, the FHWA's purpose under the ITOP is to enter into a partnership with the private sector and state departments of transportation to develop and deploy the PROJECT to enhance data available for transportation operations, planning, analysis and maintenance purposes; and,

WHEREAS, the FHWA expected the offeror to propose a PROJECT that would satisfy both local needs and its own needs for commercialization purposes, the FHWA's intent being to spur the deployment of systems that will ultimately be self-supporting through commercial initiatives; and,

WHEREAS, MOBILITY TECHNOLOGIES is investing its own capital in the procurement, maintenance and installation of the infrastructure; and,

WHEREAS, the STATE desires to participate in the PROJECT and receive DATA

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following:

1. **RECITALS**--The foregoing recitals are incorporated by reference as a material part of this AGREEMENT.

2. **INDEPENDENT CONTRACTORS**--The parties to this AGREEMENT are independent contracting parties, and nothing in this AGREEMENT shall be deemed to create a business partnership for purposes of sharing profits and losses. Nothing contained in this AGREEMENT shall be construed as creating any agency, partnership or other form of joint enterprise between the parties or to allow either party to bind the other or incur any obligation on its behalf.

3. **GENERAL**--MOBILITY TECHNOLOGIES shall perform the PROJECT in accordance with the TASK ORDER; the TASK ORDER's attachments and all applicable

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terms, conditions and attachments of the ITOP contract under which the RFP was issued, designated as Contract DTTS59-99-D-00445. The TASK ORDER and its attachments are incorporated by reference into this AGREEMENT as if physically attached to it.

4. **DELIVERABLES--MOBILITY TECHNOLOGIES** agrees to use commercially reasonable efforts to complete all PROJECT deliverables in accordance with the Schedule of Deliverables set forth in item 5.B of the TASK ORDER.

5. **PAYMENT--** All costs for the PROJECT in excess of the payments to be made under the TASK ORDER shall be the responsibility of MOBILITY TECHNOLOGIES.

6. **SUBCONTRACTOR PERFORMANCE AND PAYMENT BONDS--** MOBILITY TECHNOLOGIES shall take such measures as it deems appropriate to secure any statutory obligation to pay subcontractors and suppliers.

7. **INSURANCE--** If it has not done so already, MOBILITY TECHNOLOGIES, its contractors or subcontractors shall purchase and maintain, at their sole expense, for the duration of this AGREEMENT as set forth below in Paragraph 18, the following types of insurance issued by companies acceptable to the STATE:

(a) Workers' compensation insurance sufficient to cover all of MOBILITY TECHNOLOGIES' employees and those of any subcontractor working to perform this AGREEMENT, as required by the Workmen's Compensation Act, as amended.

(b) Public liability insurance for bodily injury, including death, and property damage, in the minimum amounts of five hundred thousand and no/100 dollars (\$500,000.00) per person and two million and no/100 dollars (\$2,000,000.00) per occurrence. These coverages shall be occurrence-based. The policy(ies) shall name the STATE as an additional insured and shall contain a provision that the coverages afforded shall not be cancelled or reduced unless the STATE has been given at least thirty (30) days prior written notice. Before the commencement of work under this AGREEMENT, MOBILITY TECHNOLOGIES shall furnish the STATE with a current certificate(s) of insurance showing the required coverages and provisions.

8. **INDEMNIFICATION--** MOBILITY TECHNOLOGIES agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the Michigan Department of Transportation, and all officers, agents, and employees thereof:

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- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to MOBILITY TECHNOLOGIES in connection with the services which MOBILITY TECHNOLOGIES will perform under the terms of this Contract, and
- b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, from environmental damage, degradation, response and cleanup costs, and from attorney fees or other related costs arising out of, under, or by reason of this Contract, except claims resulting from the sole negligence of wilful acts or omissions of said indemnitee, its agents, or its employees.

The STATE will not be subject to any obligations or liabilities by contractors of MOBILITY TECHNOLOGIES, their subcontractors, or any other person not a party to this Contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract, subcontract, or the solicitation thereof.

It is expressly understood and agreed that MOBILITY TECHNOLOGIES will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan Department of Transportation, and/or the Michigan State Transportation Commission.

In the event that the same occurs, it will be considered as a breach of this Contract, thereby giving the State of Michigan, the Michigan Department of Transportation, and/or the Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

9. **REVIEW RIGHTS**--The STATE and the FHWA shall have the right to review and inspect all PROJECT activities with reasonable notice at reasonable times.

10. **AUDITS**--The STATE shall have the right, at reasonable times, with reasonable notice, and at MOBILITY TECHNOLOGIES' principal office, to audit MOBILITY TECHNOLOGIES' books, documents and records to the extent that the books, documents and records relate to REVENUE for the PROJECT, as defined in paragraph 15. MOBILITY TECHNOLOGIES shall preserve books, documents and records that relate REVENUES for the PROJECT for a period of three (3) years from the end of each of MOBILITY TECHNOLOGIES' fiscal years. The STATE agrees to maintain the confidentiality of the books, documents and records to the full extent permitted by state law

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47 11. INSTALLATIONS ON PUBLIC RIGHTS-OF-WAY AND
48 STRUCTURES--MOBILITY TECHNOLOGIES shall comply with the following
49 requirements in installing the components of the PROJECT on public rights-of-way and
50 structures:

51 (a) MOBILITY TECHNOLOGIES shall obtain the prior written
52 approval, which shall not be unreasonably withheld, of the STATE before installing any
53 components of the PROJECT within public rights-of-way or on public structures,
54 including signs, under the jurisdiction of the STATE. The STATE's review and approval
55 of MOBILITY TECHNOLOGIES' installations is limited to determining acceptable
56 locations for the devices and methods for the installation. Locations will be deemed
57 acceptable when they comply with the STATE's Design Manuals for offset from the
58 roadway and protection of obstructions and neither interfere with the STATE's
59 maintenance or construction activities nor pose a hazard to the traveling public. The
60 plans for the proposed installations, future upgrades, the installation activities, the items
61 installed and their subsequent maintenance and upgrades (the "PLANS") shall all be in
62 accordance with the applicable provisions of STATE law and regulations. The STATE
63 shall grant MOBILITY TECHNOLOGIES, its sub-contractors or assigns such access for
64 installation and/or maintenance in the same manner and at similar times as it does to
65 STATE contractors or any utility performing maintenance. A professional engineer
66 licensed in Michigan shall stamp all of MOBILITY TECHNOLOGIES' PLANS. In
67 addition, the actual placement of the installations within the rights-of-way or on
68 structures shall be in compliance with STATE requirements. The STATE recognizes that
69 the components of the PROJECT are not utility facilities; nevertheless, they are most
70 closely analogous to utility facilities for purposes of the STATE's regulatory authority.

71 (b) MOBILITY TECHNOLOGIES may not attach PROJECT
72 components to existing Intelligent Transportation System equipment or facilities owned
73 by the STATE without specific authorization by the appropriate authorities.

74 (c) The STATE cannot authorize installations within rights-of-way
75 and on structures outside its jurisdiction or ownership. For installations within public
76 rights-of-way and on structures under the jurisdiction of other governmental or quasi-
77 governmental entities and on privately owned real property and structures, including
78 utility facilities situated within STATE rights-of-way, MOBILITY TECHNOLOGIES
79 shall be responsible for obtaining prior approval from the owner of the right-of-way,
80 structure or other property.

81 (d) MOBILITY TECHNOLOGIES shall be responsible for securing
82 and paying for the electrical power and telecommunications sources including but not
83 limited to antenna, fiber optic cable, transmitters, solar panels, wiring, or batteries
84 ("ELECTRICAL AND TELECOMMUNICATION FACILITIES") as deemed necessary
85 by MOBILITY TECHNOLOGIES as required to operate and maintain the components.
86 MOBILITY TECHNOLOGIES may not use ELECTRICAL AND
87 TELECOMMUNICATION FACILITIES and services provided to the STATE in any
88 manner or for any purpose unless specifically authorized in writing by the STATE.
89 ELECTRICAL AND TELECOMMUNICATION FACILITIES and equipment providing
90 operational capabilities and power to the PROJECT components and installed within the
91 right-of-way shall be considered part of the installation and must be included in any
92 PLANS. For installations within limited access right-of-way, the ELECTRICAL AND
93 TELECOMMUNICATION FACILITIES and equipment shall be designed so as to

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94 occupy as little of the right-of-way as possible while allowing for accurate system
95 operation, reasonable maintenance, growth and expansion of the PROJECT.

96 (e) MOBILITY TECHNOLOGIES shall require its contractor(s) to
97 certify to the STATE in writing that each completed installation complies with the
98 PLANS and specifications; all applicable STATE statutes, regulations, manuals, policies,
99 procedures, publications and criteria as set forth above in Paragraph 11(a); and all other
100 applicable codes, standards and criteria, including those generally accepted in the
101 industry. The STATE reserves the right to conduct spot inspections of completed
102 installations with its own forces or by contract. However, such spot inspections shall not
103 relieve MOBILITY TECHNOLOGIES of its obligation to require its contractor(s) to
104 provide certifications.

105 (f) This AGREEMENT does not create any property interest in
106 MOBILITY TECHNOLOGIES with respect to the approvals granted pursuant to this
107 paragraph. MOBILITY TECHNOLOGIES shall maintain the original or copies of the
108 approvals granted by the STATE as a permanent record. Upon completion of the
109 PROJECT, MOBILITY TECHNOLOGIES shall submit as-built PLANS for the
110 approved installations to the STATE, which shall maintain them as a permanent record.

111 (g) At the STATE's direction, MOBILITY TECHNOLOGIES shall
112 remove or relocate its installations from STATE rights-of-way or structures at its sole
113 expense, within sixty (60) days after receiving written notice, when such removal or
114 relocation is necessary to accommodate STATE projects or enhance public safety. The
115 STATE recognizes that where a relocation is requested, MOBILITY TECHNOLOGIES
116 will need to relocate the installation(s) to a mutually agreeable location which shall be at
117 the nearest mutually acceptable location in the immediate area of the original location.

118 (h) MOBILITY TECHNOLOGIES shall be responsible for obtaining
119 all other necessary approvals, permits and licenses as may be required for completion of
120 the PROJECT and operation and maintenance of the deployed PROJECT. MOBILITY
121 TECHNOLOGIES shall comply with all applicable statutory and regulatory requirements
122 governing safety and permitting in performing the PROJECT and maintaining and
123 operating the deployed PROJECT.

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126 **12. OPERATION AND MAINTENANCE OF SYSTEM--**

127 (a) Deployed Project. Upon completion of the PROJECT deliverables,
128 MOBILITY TECHNOLOGIES shall own, operate and maintain, at its expense, the
129 deployed PROJECT, including all of the equipment, devices, cables or lines, and
130 electrical and telecommunications services installed within the public rights-of-way or on
131 public structures with the approval of the STATE. Neither the STATE nor the FHWA
132 shall be responsible for operation and maintenance activities or for their cost. The
133 continued occupancy and use by MOBILITY TECHNOLOGIES of rights-of-way and
134 structures under the jurisdiction of the STATE shall be contingent upon the satisfactory
135 maintenance of the PROJECT and the delivery of DATA SERVICES in a form mutually
136 agreed upon by both parties and at a level of quality in accordance with the TASK
137 ORDER.

138 (b) Data Quality. The STATE will be responsible for assuring quality of
139 its data. MOBILITY TECHNOLOGIES will perform screening of the integrated data for
140 quality purposes. For non-ITIP generated data, MOBILITY TECHNOLOGIES shall,

141 where practical and applicable, flag data anomalies to the STATE and the U.S. DOT.
142 DATA will conform to the "acceptable" level presented in the Data Specifications table
143 in the TASK ORDER. During the System Requirements process, MOBILITY
144 TECHNOLOGIES and the STATE will review the data type and quality of agency data
145 and determine the suitability for integrating and using for the purpose of calculating
146 performance measures. Should problems be found with the data quality or quantity, the
147 problems will be described to the STATE and the U.S.DOT. Every effort will be made to
148 integrate the STATE data to the extent practical. During the period of this
149 AGREEMENT, the STATE reserves the right to perform, or cause to be performed,
150 quarterly audits to verify the DATA quality in the metropolitan area using its own
151 contractors at its expense.

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153 13. **INTELLECTUAL PROPERTY RIGHTS--** Rights to the
154 intellectual property used or created within the PROJECT and the licensing of those
155 rights shall be the property of MOBILITY TECHNOLOGIES, except as modified by the
156 provisions of Paragraph 14 below.

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158 14. **DATA RIGHTS AND EXCLUSIVITY--** (a) MOBILITY
159 TECHNOLOGIES shall make available to the STATE, the FHWA and other public
160 agencies that agree in writing to the terms of paragraph 13 and 14 of this AGREEMENT
161 all privately collected DATA or DATA SERVICES (as defined in paragraph 14(e) of the
162 PROJECT for their own internal and non-commercial public purposes and applications,
163 whether the DATA or DATA SERVICES are utilized by the agencies' own personnel or
164 by contractors and consultants retained by them. Contractors and consultants retained by
165 the public agency who use the DATA or DATA SERVICES shall also agree in writing to
166 the terms of paragraph 13 and 14 of this AGREEMENT. Whenever the STATE so
167 desires, it shall be able to receive raw DATA from the PROJECT in a form as provided in
168 Paragraph 14(c) below, for real-time applications, so long as such applications are for
169 internal agency purposes and do not make the DATA available in a form which is able to
170 be commercially exploited in real-time or archived applications. Permissible internal
171 agency usages of the DATA or DATA SERVICES include, but are not limited to,
172 incident detection and response, congestion management, traffic signal operation, safety,
173 planning, analysis, design, construction, maintenance and modal integration. The data
174 elements that are part of basic traveler information are the only data elements that
175 MOBILITY TECHNOLOGIES is required to provide for free for dissemination to the
176 public for personal use, whether by MOBILITY TECHNOLOGIES itself, and/or by the
177 STATE, or its agent. "BASIC TRAVELER INFORMATION" is defined as:
178 construction/maintenance information; road closures/major delays; major special events;
179 weather (where available) and road conditions; incidents/crashes; and high level (red,
180 yellow, green coding) congestion information. Other than BASIC TRAVELER
181 INFORMATION provided to the public for personal use, the STATE agrees that it will
182 not market, distribute, donate, or otherwise provide or cause to be provided the privately
183 collected DATA or DATA SERVICES to non-governmental entities for commercial use
184 and agrees to establish terms of use on its web site or sites that requires commercial users
185 to license the use of the DATA or DATA SERVICES from MOBILITY
186 TECHNOLOGIES. Furthermore, the STATE agrees that it may not, nor may it authorize
187 its contractors or consultants to, market, distribute, copy, make available or otherwise

188 commercially exploit any privately collected DATA or DATA SERVICES to which they
189 gain access. However, the STATE shall be able to provide historical traffic count DATA
190 to non-governmental entities for their internal use when requested in accordance with
191 STATE policies and procedures regarding recoupment of administrative costs incurred in
192 the provision of such DATA. Examples of traffic count DATA include average daily
193 traffic counts, peak hour traffic counts, peak hour factors, any and all hourly volumes,
194 and classifications.

195 (b) Furthermore, MOBILITY TECHNOLOGIES shall not require
196 exclusivity of the use of data collected by the STATE or other public agency and
197 incorporated into the PROJECT. The STATE or other public agency shall provide raw
198 and processed data to the PROJECT and shall retain rights to that data, subject to any
199 conditions required by the STATE and subject to the right of MOBILITY
200 TECHNOLOGIES to market that data to other private sector organizations in accordance
201 with Paragraph 14(a) above.

202 (c) MOBILITY TECHNOLOGIES and the STATE shall exchange
203 data by providing such data in the form in which each party generates its data.
204 MOBILITY TECHNOLOGIES commits to providing STATE with DATA in a format
205 that is mutually agreed upon by both partners. To access DATA collected by
206 MOBILITY TECHNOLOGIES, the STATE shall provide a computer, Internet browser
207 and Internet connectivity. Subject to and consistent with relevant STATE policies and
208 procedures, the STATE commits to sharing access to publicly collected data, including
209 video images, in a mutually agreed upon format with MOBILITY TECHNOLOGIES.
210 The data and DATA shall be accessible by MOBILITY TECHNOLOGIES and the
211 STATE via an Internet connection, where each party is responsible for the costs of its
212 Internet connection to its facility. If either party chooses additional connectivity, any
213 installation and monthly communication costs are the responsibility of the requesting
214 party. However, it shall be the responsibility of MOBILITY TECHNOLOGIES to
215 ensure the existence of compatible interfaces for such lines.

216 (d) If MOBILITY TECHNOLOGIES transfers ownership of all or any
217 portion of the PROJECT to another private entity, it shall require its successor in interest
218 to afford the STATE and other public agencies the same rights with respect to both the
219 privately collected DATA and publicly collected data.

220 (e) DATA SERVICES is subject to the provisions of paragraph 14 and
221 is defined as follows: a compilation of raw and processed traffic DATA to the STATE; a
222 feed of BASIC TRAVELER INFORMATION for the STATE's consumer web site to
223 display compilations of DATA to individuals for non-commercial use; a sensor
224 information management system to provide the STATE a graphical and textual display of
225 lane-by-lane DATA for each sensor; an archived DATA warehouse for the STATE that
226 compiles the raw sensor, and basic incident and event information into a searchable
227 archived database system; commercialized traveler information that disseminates DATA
228 to the broadcast media and other commercial users such as telematics and logistics
229 providers; and support for non-commercial 511 telephone services by providing BASIC
230 TRAVELER INFORMATION to the STATE or its contractor.

231 (f) In no event, shall the terms of this contract be construed in a
232 manner that is contrary to the provisions of the Freedom of Information Act, 1976 PA
233 442, MCL 15.231 et seq.

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235 15. REVENUE SHARE REINVESTMENT--MOBILITY
236 TECHNOLOGIES agrees to reinvest in the PROJECT a share of the revenue received by
237 it from the sale or marketing of information obtained from the operation of the deployed
238 PROJECT in the Detroit metropolitan area attributable to the ITIP traffic monitoring
239 sensor system sales to other private sector organizations in accordance with the following
240 conditions.

241 (a) MOBILITY TECHNOLOGIES shall reinvest annual commercial
242 revenue from the PROJECT attributable to the ITIP sensor system in the Detroit
243 metropolitan area ("REVENUE") in accordance with the following formula established
244 by the FHWA, which shall be applied separately for each metropolitan area and which
245 shall not be subject to periodic renegotiation by the parties:

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- 247 (1) 0% for REVENUE up to \$250,000
- 248 (2) 5% for REVENUE between \$250,000.01 and \$1,000,000
- 249 (3) 10% for REVENUE above \$1,000,000
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251 For example, if annual REVENUE is \$1,500,000, the share reinvested in
252 the PROJECT will be \$87,500, calculated as follows:

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254	(1)	from \$0 to \$250,000	=	\$250,000	x 0% = \$ 0
255	(2)	from \$250,000.01 to \$1,000,000	=	\$750,000	x 5% = \$37,500
256	(3)	from \$1,000,000.01 to 1,500,000	=	\$500,000	x 10% = \$50,000
257					<u>TOTAL \$87,500</u>

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259 (b) MOBILITY TECHNOLOGIES shall escrow the reinvestment
260 share annually, on the basis of MOBILITY TECHNOLOGIES' fiscal year, which runs
261 from January 1 to December 31, on or before May 1 of each year. Supporting
262 documentation demonstrating how the share was calculated shall accompany the escrow.

263 (c) If requested, MOBILITY TECHNOLOGIES shall make available
264 to the STATE and its representatives within ten (10) days of such request books,
265 documents, records and all other information pertinent to this revenue share reinvestment,
266 for inspection and audit. MOBILITY TECHNOLOGIES shall preserve books,
267 documents and records and all other information that relate to the revenue share
268 reinvestment for a period of three (3) years from the end of each MOBIL
269 TECHNOLOGIES' fiscal years.

270 (d) MOBILITY TECHNOLOGIES, after consultation with the
271 STATE, shall invest the amount of the REVENUE share escrowed exclusively for needs
272 and activities related to the PROJECT. Examples of acceptable expenditures include, but
273 are not limited to, operation and maintenance of existing ITS equipment as described
274 above in this subparagraph, defrayal of costs related to integration of legacy and new
275 systems and DATA SERVICES, DATA, and installation of additional sensors and
276 different technologies for the PROJECT.

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278 16. OFFSET PROVISION--MOBILITY TECHNOLOGIES agrees
279 that the STATE may offset the amount of any Michigan tax or liability of MOBILITY
280 TECHNOLOGIES that is owed to Michigan against any payments due MOBILITY
281 TECHNOLOGIES under this or any other contract with the STATE.

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17. **WARRANTY**— (a) **Limited Warranty.** **MOBILITY TECHNOLOGIES** warrants that it shall perform its obligations hereunder in accordance with generally accepted industry standards applicable to the performance of obligations of a similar nature. In the event of any breach of the foregoing warranty, and provided that STATE reports such breach to **MOBILITY TECHNOLOGIES** in writing within 90 days following the date of performance of the obligations in question, **MOBILITY TECHNOLOGIES** shall, as its sole obligation and STATE's sole and exclusive remedy, promptly repair, replace or re-perform the obligation in question, without additional cost to STATE, so as to correct the warranty non-compliance as promptly as practicable (within 60 days to the extent technically feasible).

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(b) **Disclaimer.** **WITH THE EXCEPTION OF THE EXPRESS WARRANTY PROVIDED IN PARAGRAPH 17(a), MOBILITY TECHNOLOGIES AND ALL AFFILIATES OF MOBILITY TECHNOLOGIES SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO ANY THE PERFORMANCE OF ANY OF ITS OBLIGATIONS HEREUNDER OR ALL OR ANY PORTION OF THE PROJECT.**

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18 **DURATION OF AGREEMENT**-- All PROJECT deliverables required in paragraph 4 shall be completed by the dates specified in the TASK ORDER unless extended by mutual agreement as evidenced by a signed writing. The revenue reinvestment shall continue until the PROJECT is deactivated or removed by agreement of the parties.

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19. **TERMINATION**—The STATE has the right to terminate this AGREEMENT for any of the reasons and in accordance with the conditions that follow:
(a) The STATE may terminate this AGREEMENT in whole or part for cause at any time, which termination shall be effective upon sixty (60) days' written notice; provided, however the STATE shall first give **MOBILITY TECHNOLOGIES** written notice of any deficiency and a period of thirty (30) days (or more if specified by the notice) after receipt of the notice to remedy such deficiency. If the STATE terminates this AGREEMENT for cause, it shall have all right and remedies available to it under this AGREEMENT and the law, including the right to seek damages.
(b) The STATE may terminate this AGREEMENT if federal funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period.
(c) If the STATE terminates this AGREEMENT for either of the reasons set forth above, disposition of any equipment, devices, cables and lines ("EQUIPMENT") purchased prior to the date of termination that have been or will be installed as part of the PROJECT shall proceed in the manner set forth below in Paragraph 21. In the event of termination, **MOBILITY TECHNOLOGIES** shall have the

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327 right to access any data generated by the EQUIPMENT by paying the monthly PROJECT
328 operating costs necessary for transmitting and receiving this data on an on-going basis.
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330 20. **FORCE MAJEURE**-- (a) Neither party will incur any liability to
331 the other if its performance of any obligation under this AGREEMENT is prevented or
332 delayed by causes beyond its control and without the fault or negligence of either party.
333 Causes beyond a party's control may include, but are not limited to, acts of God or war,
334 changes in controlling law, regulations, orders or the requirements of any governmental
335 entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and
336 quarantines, general strikes throughout the trade and freight embargoes.

337 (b) **MOBILITY TECHNOLOGIES** shall notify the STATE orally
338 within five (5) business days and in writing within ten business(10) days of the date on
339 which **MOBILITY TECHNOLOGIES** becomes aware, or should have reasonably
340 become aware, that such cause would prevent or delay its performance. Such notification
341 shall (i) describe fully such cause(s) and its (their) effect upon performance, (ii) state
342 whether performance under the AGREEMENT is prevented or delayed and (iii) if
343 performance is delayed, state a reasonable estimate of the duration of the delay.
344 **MOBILITY TECHNOLOGIES** shall have the burden of proving that such cause(s)
345 delayed or prevented its performance despite its diligent efforts to perform and shall
346 produce such supporting documentation as the STATE may reasonably request. After
347 receipt of such notification, the STATE may elect either to cancel the AGREEMENT or
348 to extend the time for performance as reasonably necessary to compensate for
349 **MOBILITY TECHNOLOGIES'** delay.

350 (c) In the event of a declared emergency by competent governmental
351 authorities, the STATE by notice to **MOBILITY TECHNOLOGIES** may suspend all or a
352 portion of the AGREEMENT until such emergency is over.
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354 21. **DISPOSITION OF EQUIPMENT**--If **MOBILITY**
355 **TECHNOLOGIES** ceases to operate, maintain and manage the PROJECT deployed
356 pursuant to this AGREEMENT and does not transfer ownership of the PROJECT to
357 another private entity, it shall dispose of equipment, devices, cables and lines
358 (collectively "EQUIPMENT") installed in the metropolitan area as part of the PROJECT
359 in a commercially reasonable manner at its own expense. The STATE shall not be liable
360 for any removal or disposition costs and shall have the right of first refusal to purchase
361 the EQUIPMENT installed in the metropolitan area at fair market value.
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363 22. **NOTICES**-- Any notices or communications required or permitted
364 by this AGREEMENT or given in connection with it, including invoices and payments,
365 shall be in writing and made by certified mail, overnight courier service, first-class mail,
366 postage prepaid, or personal delivery, to the following addresses:
367

368 for the STATE:
369 Director, Michigan Department of Transportation
370 425 West Ottawa
371 Lansing, MI 48933
372

373 for MOBILITY TECHNOLOGIES:

100

406 28. COUNTERPARTS-- This AGREEMENT may be executed in
407 one or more counterparts, each of which shall be deemed an original and all of which
408 together shall constitute one and the same instrument. This AGREEMENT shall become
409 binding when any one or more counterparts hereof, individually or taken together, bear
410 the signatures of both parties hereto. For the purposes hereof, a facsimile copy of this
411 AGREEMENT, including the signature pages hereto, shall be deemed an original.
412

413 IN WITNESS WHEREOF, the parties have executed this AGREEMENT-the date
414 first above written.
415

416 ATTEST:

417 *John P. Collins* 7/27/04
418 Title: Vice Pres & Corp. Counsel DATE
419

MOBILITY TECHNOLOGIES, INC.
BY *David D. Ametta* 7/27/04
Title: President DATE

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STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION

BY *G. [Signature]* AUG 04 2004
For Director DATE