



STATE OF MICHIGAN PROCUREMENT

Department of Transportation

425 West Ottawa Street., Lansing, MI 48933

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 4

to

Contract Number 20000000317

CONTRACTOR	Information	Yunex LLC
		9225 Bee Cave Rd.
		Austin, TX 78733
		VS0055275
	Contract Administrator	John Cane
		408-201-4404
John.Cane@yunextraffic.com		

STATE	Program Manager	Erik Smalley, P.E.	MDOT BFS
		517-636-6108	
		SmalleyE@michigan.gov	
	Contract Administrator	Ruth Thole	MDOT CSD
		517-335-4972	
		TholeR@michigan.gov	

CONTRACT SUMMARY				
Traffic Controllers – Technical and product support for installed controllers and existing TACTICS system				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
December 1, 2019	January 23, 2022	2; 1-year	January 23, 2024	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		As directed		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	4 months + 19 days	June 11, 2024
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,050,000.00		\$0.00	\$1,050,000.00	
<p>Effective December 13, 2023, this Contract is extended to June 11, 2024.</p> <p>Note: this Change Notice reflects the vendor's updated legal name as entered in SIGMA VSS.</p> <p>All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement and State Administrative Board approval on December 12, 2023.</p>				

FOR THE CONTRACTOR:

Yunex LLC

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

FOR THE STATE:

Signature

For Director

Michigan Department of Transportation

Agency



STATE OF MICHIGAN PROCUREMENT

Department of Transportation

425 West Ottawa Street., Lansing, MI 48933

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 3

to

Contract Number 20000000317

CONTRACTOR	Siemens Mobility, Inc. dba Yunex LLC
	9225 Bee Cave Rd
	Austin, TX 78733
	John Cane
	408-201-4404
	John.Cane@yunextraffic.com
VS0055275	

STATE	Program Manager	Erik Smalley, P.E.	MDOT
		517-636-6108	
	SmalleyE@michigan.gov		
	Contract Administrator	Ruth Thole	MDOT
517-335-4972			
TholeR@michigan.gov			

CONTRACT SUMMARY

Traffic Controllers – Technical and product support for installed controllers and existing TACTICS system

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2019	January 23, 2022	Two; 1-year	February 23, 2023
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		As directed	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	11 Months	<input type="checkbox"/>		January 23, 2024
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$50,000.00	\$1,000,000.00	\$1,050,000.00		

Effective February 24, 2023, the following changes are made to this Contract:

1. The State is exercising the remaining 11 months of the second and final option year. The revised contract expiration date is January 23, 2024.
2. Pricing on this Contract is increased per the attached Revised Schedule B. Items covered by this Contract but not listed on the Revised Schedule B will continue to be priced at a percentage off MSRP.
3. The Contract Value is increased by \$1,000,000.00.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement and State Administrative Board approval on January 17, 2023.

FOR THE CONTRACTOR:

**Siemens Mobility, Inc.
dba Yunex LLC**

Company Name

Authorized Agent Signature

John Cane, V.P. Operations

Authorized Agent (Print or Type)

2/22/2023

Date

FOR THE STATE:

Signature

Carol Rademacher for the Department Director

Name & Title

Michigan Department of Transportation

Agency

2/22/2023

Date

**REVISED SCHEDULE B
Contract 20000000317**

Commodity Code	Part Number	Product Name	U/M	Unit Price (Net with discount)
55081, 55089	8130-0102-001	Master controller, traffic signal master area responsive controller and traffic signal. Controller mechanism ONLY	EA	\$ 2,773.70
55081, 55089	MBV17046-001	Linux upgrade, MBV17046-001	EA	\$ 846.24
55081, 55089	Marc Upgrade	M50 marc upgrade	EA	\$ 1,441.80
55081, 55089	R102-2312	Repair EPAC 3108M60	EA	\$ 1,237.14
55081, 55089	R102-2300	Repair controller, EPAC3108M52	EA	\$ 1,050.00
55081, 55089	8133-0004-SSS	M60 Series: M62 ATC	EA	\$ 3,238.70
55081, 55089	8133-0000-SSS	M60 Series: M62 ATC Lite	EA	\$ 3,133.07
55081, 55089	8132-0000-000	M60 Series: M62 NEMA Linux No Software	EA	\$ 2,947.00
55081, 55089	8132-0000-SSS	M60 Series: M62 NEMA Linux No Comm, Any Software	EA	\$ 3,051.65
55081, 55089	8132-YYZZ-SSS	M60 Series: M62 NEMA Linux Any Comm, Any Software	EA	\$ 3,060.58
55081, 55089	MBV17086-001	M60 Series Kit: M62 NEMA Linux to M62 ATC Upgrade Kit (fact	EA	\$ 1,805.25
55081, 55089	MBV17085-001	M60 Series Kit: M52 O59 to M62 NEMA Linux Upgrade Kit	EA	\$ 1,491.29
55081, 55089	AAD17047-002	M60 Series SP: M60 16 Line Display	EA	\$ 642.06
55081, 55089	AAD17098-001	M60 Series SP: M60 Power Supply Module	EA	\$ 730.62
55081, 55089	AAD17048-001	M60 Series SP: ATC Comm Module	EA	\$ 1,022.54
55081, 55089	ACP17049-001	M60 Series SP: M60 Backplane	EA	\$ 1,225.90
55081, 55089	8165-00ZZ-000	2070LX Series: 2070 Linux No Comm, No Software	EA	\$ 2,053.28
55081, 55089	8165-00ZZ-SSS	2070LX Series: 2070 Linux No Comm, Software	EA	\$ 2,148.40
55081, 55089	8165-YYZZ-000	2070LX Series: 2070 Linux Comm, No Software	EA	\$ 2,155.78
55081, 55089	8165-YYZZ-SSS	2070LX Series: 2070 Linux Comm, Software	EA	\$ 2,250.08
55081, 55089	AAD16481-001	2070LX Series SP: 2070-7A Comm Module	EA	\$ 225.50
55081, 55089	AAD16594-001	2070LX Series SP: 2070LX Chassis and Motherboard 2009 TEB	EA	\$ 358.34
55081, 55089	AAD16484-005	2070LX Series SP: 2070-3B Front Panel Assy (8 Line)	EA	\$ 332.37
55081, 55089	PPS07882-001	2070LX Series SP: 2070-4A Power Supply	EA	\$ 306.68
55081, 55089	AAD16483-001	2070LX Series SP: 2070-2E+ Field I/O Module	EA	\$ 552.68
55081, 55089	AAD15753-004	2070LX Series SP: 2070-1C CPU Module Linux	EA	\$ 1,640.60
55081, 55089	MBV17084-001	M60 Series Kit: M52 OS9 to FIO/USB and KV2 Upgrade Kit	EA	\$ 1,394.00
55081, 55089	MBV17046-001	M60 Series Kit: M52 OS9 to Linux KV2 Upgrade Kit	EA	\$ 846.24
55081, 55089	AAD15288P001	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 Standard	EA	\$ 321.44
55081, 55089	AAD15288P002	M60 Series SP: Datakey for OS9 Standard (P002)	EA	\$ 262.40
55081, 55089	AAD15288P003	M60 Series SP: 2 PORT3 RS232 for OS9 Standard (P003)	EA	\$ 233.70
55081, 55089	AAD15288P004	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 FSK 2-V	EA	\$ 642.06
55081, 55089	AAD15288P005	M60 Series SP: Datakey for OS9 FSK 2-Wire (P005)	EA	\$ 613.36
55081, 55089	AAD15288P006	M60 Series SP: 2 PORT3 RS232 for OS9 FSK 2-Wire (P006)	EA	\$ 583.84

Commodity Code	Part Number	Product Name	U/M	Unit Price (Net with discount)
55081, 55089	AAD15288P010	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 MMF (P0)	EA	\$ 642.06
55081, 55089	AAD15288P011	M60 Series SP: Datakey OS9 MMF (P011)	EA	\$ 613.36
55081, 55089	AAD15288P012	M60 Series SP: 2 PORT3 RS232 for OS9 MMF (P012)	EA	\$ 583.84
55081, 55089	ACP16826-002	M60 Series SP: I/O Board for OS9 FSK Standard (1900)	EA	\$ 730.62
55081, 55089	ACP15026P001	M60 Series SP: M50 Modem for OS9 FSK Standard (1900)	EA	\$ 233.70



STATE OF MICHIGAN PROCUREMENT

Department of Transportation

425 West Ottawa Street., Lansing, MI 48933

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 2

to

Contract Number 20000000317

CONTRACTOR	Siemens Mobility, Inc. dba Yunex LLC
	9225 Bee Cave Rd
	Austin, TX 78733
	John Cane
	408-201-4404
	John.Cane@yunextraffic.com
VS0055275	

STATE	Program Manager	Erik Smalley, P.E.	MDOT
		517-636-6108	
		SmalleyE@michigan.gov	
	Contract Administrator	Ruth Thole	MDOT
		517-335-4972	
		TholeR@michigan.gov	

CONTRACT SUMMARY

Traffic Controllers – Technical and product support for installed controllers and existing TACTICS system

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2019	January 23, 2022	Two; 1-year	January 23, 2023
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		As directed	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 month	<input type="checkbox"/>		February 23, 2023
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$50,000.00	\$0.00	\$50,000.00		

Effective January 20, 2023, the following changes are made to this Contract:

- One month of the 12-month renewal period is exercised, and the contract expiration date is revised to February 23, 2023.
- The Contractor's contact is changed to John Cane.
- The Contract Administrator is changed to Ruth Thole.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement.

FOR THE CONTRACTOR:

**Siemens Mobility, Inc.
dba Yunex LLC**

Company Name

Authorized Agent Signature

John Cane

Authorized Agent (Print or Type)

1/13/2023

Date

FOR THE STATE:

Signature

Carol Rademacher for the Department Director

Name & Title

Michigan Department of Transportation

Agency

1/19/2023

Date



STATE OF MICHIGAN PROCUREMENT

Department of Transportation

425 West Ottawa Street., Lansing, MI 48933

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number **1**

to

Contract Number **20000000317**

CONTRACTOR	Siemens Mobility, Inc. dba Yunex LLC
	9225 Bee Cave Rd
	Austin, TX 78733
	Eric Gannaway
	586-488-5431
	eric.gannaway@yunextraffic.com
	VS0055275

STATE	Program Manager	Erick Smalley	MDOT
		517-636-6108	
	SmalleyE@michigan.gov		
	Contract Administrator	Laura Dotson	MDOT
517-230-1612			
DotsonL2@michigan.gov			

CONTRACT SUMMARY				
Traffic Controllers – Technical and product support for installed controllers and existing TACTICS system				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
December 1, 2019	January 23, 2022	Two 1-year	January 23, 2022	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		As directed		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		January 23, 2023
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$50,000.00		\$0.00	\$50,000.00	
<p>Effective January 20, 2022, the first of two available options is exercised, and the expiration date is revised to January 23, 2023.</p> <p>The State's Contract Administrator is changed to Laura Dotson.</p> <p>All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement.</p>				

FOR THE CONTRACTOR:

**Siemens Mobility Inc.
dba Yunex LLC**

Company Name

Authorized Agent Signature

Eric Gannaway

Authorized Agent (Print or Type)

1/14/2022

Date

FOR THE STATE:

Signature

Carol Rademacher for the Department Director

Name & Title

Michigan Department of Transportation

Agency

1/19/2022

Date



STATE OF MICHIGAN PROCUREMENT

Department of Transportation

Van Wagoner Building, 425 West Ottawa Street

P.O. Box 30050, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **200000000317**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Siemens, Siemens Mobility, Inc.
	Intelligent Traffic Systems
	56155 Roseway Dr. Shelby Twp, MI 48315
	Kevin Tomich
	(231) 468-5327
	Kevein.tomich@siemens.com

STATE	Program Manager	Erik M. Smalley, P.E.	MDOT
		517-636-6108	
		SmalleyE@michigan.gov	
	Contract Administrator	Klatra Pickett	MDOT
		517-355-0071	
		Pickettk1@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: Siemens Brand Name, Traffic Controllers – Technical and product support for currently installed controllers and the existing TACTICS central system.

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2019	January 23, 2022	Two, one (1) year	January 23, 2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		As directed	
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			
N/A			
MISCELLANEOUS INFORMATION			
<p>Siemens will only provide products and services, as stated within Schedule A and Schedule B.</p> <p>All other traffic signal equipment and case signs will be provided by the primary contract holder Carrier and Gable, Master Agreement (MA) number 1800000001.</p> <p>Attached Schedule B pricing is quoted with delivery charge.</p> <p>Separate delivery charges, technical support fees will not be accepted.</p>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$50,000.00

THIS IS NOT AN ORDER: This Master Agreement is awarded based on our inquiry bearing the solicitation ITN# 19000000060. Orders for delivery will be issued directly by the Department of Transportation through the issuance of a Delivery Order.

FOR THE CONTRACTOR:

Siemens Mobility, Inc.

Company Name

Authorized Agent Signature

Steve Gitkin / U.P. Sales

Authorized Agent (Print or Type)

David Buchfuehrer / Head of Finance - ITS

12/19/2019

Date

12/19/2019

FOR THE STATE:

Signature

Carol Rademacher

Name & Title

Department of Transportation

Agency

1/10/2020

Date

STATE OF MICHIGAN

Siemens Traffic Controllers

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

At the request of Siemens, the manufacturer, purchase of their currently installed Siemens traffic signal controllers will no longer be supplied or repaired by an authorized dealer or distributor. Maintenance and TACTICS central system support can only be provided by Siemens.

Siemens will sell stated products and accompanying service directly to MDOT at the existing contract language, pricing, service levels and Standard Terms that were previously provided by the primary (current) contract holder for Traffic Signal Equipment and Case Signs.

This statement of work identifies the general requirements as INSERTs from the primary Traffic Equipment and Case Sign contract holder, Carrier and Gable. Reference - MA 1800000001/Previous #591B7700047 and Ref: solicitation RFP 059116B0009348.

The term "Contractor" in this document refers to Siemens, Siemens Mobility, Inc. Intelligent Traffic Systems.

SCOPE

Siemens Traffic Controllers are currently installed and used statewide in compliance within the current Michigan Department of Transportation published Standard Specifications for Construction manual.

This contract will be used within the seven (7) statewide MDOT regions. (Reference Attachment A)

The Contractors will provide, technical and product support for currently installed controllers and the existing TACTICS central system.

The term of this contract is from December 1, 2019 thru January 23, 2022, an estimated two-year contract with two (2) one (1) year renewal options

1. Requirements

Siemens will only provide their brand name products, as listed within Schedule B.

All other traffic signal equipment and case signs will be provided by the primary contractor Carrier and Gable. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as ordered during the CONTRACT period. (reference attached Standard Terms and Conditions).

The contract activities will be performed by the Contractor.

1.1 General

All equipment provided under this Contract shall be new and must be the latest model in current production and conform to all applicable industry standards to include, but not limited to the following:

Occupational Safety & Health Administration and Michigan Occupational Safety & Health Administration (OSHA & MIOSHA), Michigan Manual on Uniform Traffic Control Devices (MMUTCD), National Electrical Safety (NES), National Electrical Safety Code (NESC), American National Standards (ANSI), American Association of State Highway and Transportation Officials (AASHTO), and Institute of Transportation Engineers (ITE).

All equipment provided under this Contract shall be new and must be the latest model in current production and conform to all applicable industry standards to include, but not limited to the following:

Occupational Safety & Health Administration and Michigan Occupational Safety & Health Administration (OSHA & MIOSHA), Michigan Manual on Uniform Traffic Control Devices (MMUTCD), National Electrical Safety (NES), National Electrical Safety Code (NESC), American National Standards (ANSI), American Association of State Highway and Transportation Officials (AASHTO), and Institute of Transportation Engineers (ITE).

Standard Specifications

Products for this contract must comply with the attached Standard Specifications.

NO variations from the specifications will be accepted.

1.2 Traffic Signals and Equipment

Traffic Signals and Traffic Signal equipment and parts will be installed by MDOT and used in compliance with the current Michigan Department of Transportation published Standard Specifications for Construction manual (**Reference Attachment C and C1**)

The MDOT's published Standard Specifications for Construction manual, Can be located at: <http://mdotcf.state.mi.us/public/specbook/2012/>

Special Provision: Reserved

1.3 Reserved

1.4 Reserved

1.5 Quantity

Exact quantities to be purchased are unknown.

The Contractor will be required to furnish all requested parts and equipment as ordered.

1.6 Warranties

The Contractor guarantees that all material supplied shall be free from defects in material and workmanship.

All purchased products will comply with the warranty requirements as stated within the current Michigan Department of Transportation published Standard Specifications for Construction manual.

Siemens will help facilitate all manufacturer warranties in a speedy manner and will repair or supply product replacements whenever possible.

In that event MDOT receives a damaged or defective product or experiences installation issues contact:

- Siemens Service Department at Kevin Tomich; Sr Engineer (231) 468-5327

Siemens Mobility provided Warranty:

(a) Warranties.

Siemens warrants that: (i) each Product is free from defects in material and workmanship; (ii) each Product materially conforms to Siemens' specifications that are attached to, or expressly incorporated into this Agreement; and (iii) at the time of delivery, Siemens has title to each Product free and clear of liens and encumbrances (collectively, the "Warranties"). The Warranties do not apply to software furnished by Siemens. The sole and exclusive warranties for all software are set forth in the applicable Software License/Warranty Addendum.

(b) Conditions to the Warranties.

The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Product other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Product in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted industry standards; (iv) Buyer discontinuing use of the Product after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the warranty period described below; **(vi)** at Siemens' discretion, Buyer either removing and shipping the Product or non-conforming part thereof to Siemens, at Buyer's expense, or granting Siemens reasonable access to the Products to assess the warranty claims; **(vii)** Product not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (viii) Buyer not being in default of any payment obligation.

(c) Exclusions from Warranty coverage.

The Warranties do not apply to any equipment not provided by Siemens under this Agreement.

Any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Product (such as fuses, light bulbs and lamps). Siemens does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity. Products that are networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

(d) *Warranty Period.*

Buyer must provide written notice of any claims for breach of Warranties by the earlier of twelve (12) months from initial operation of the Product or eighteen (18) months from shipment. Additionally, absent written notice within the warranty period, any use or possession of the Product after expiration of the warranty period is conclusive evidence that the Warranties have been satisfied.

(e) *Remedies.*

Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Siemens' discretion, to repair or replacement of the Product, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price. The warranty on repaired or replaced parts is limited to the remainder of the original warranty period. Unless Siemens agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Product; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Siemens to perform its warranty obligations; (iii) transportation to and from the Siemens factory or repair facility; and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Article 9(b) or from their deteriorated condition. All exchanged Products replaced under this Warranty will become the property of Siemens.

(f) *Transferability.*

The Warranties are only transferable during the warranty period and only to the Product's initial end user.

THE WARRANTIES IN THIS ARTICLE ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 10 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USEAGE OF TRADE.

Contractor's Article 10 is attached.

1.7 Recall Requirements and Procedures

The Contractor will notify MDOT upon learning of product deficiency and will work with MDOT to rectify replacement of defective equipment at no additional cost to MDOT.

1.8 Quality Assurance Program

Siemens quality assurance program to include applicable ISO compliance standards.

2. Service Levels – Time Frames

2.1 Delivery

The Contractor must be able to delivery to MDOT's statewide division offices and regional locations. (**Reference Attachment A**)

All Contract Activities must be delivered within the following time frames:

In Stock Orders:

Parts and equipment in stock orders, will be delivered within 30 days.

Build Up Orders:

Parts and equipment that require additional assembly and build up are to be delivered within 120 calendar days after receipt of order. (example Controllers and Mast Arms)

Emergency Orders:

Delivered within 24 hours.

Delivery will be accepted between the hours of 7:30 a.m. and 3:30pm Monday thru Friday.

Emergency Orders will be expected within 24hours, regardless of the day ordered.

2.2 Installation

Installation is not a requirement. MDOT personnel will install equipment.

Contractor's Set-Up Fee: \$0.00

2.3 Technical Support and Repairs

The Contractor will provide technical support through e-mail, over the phone, or at site location to support the MDOT, Signal Operations Unit.

To include: Technical and product support for the existing TACTICS central system.

Traffic flow may be impacted during new installations, repairs or scheduled maintenance and the Contractor may be contacted for immediate technical support.

Due to the safety of the motoring public, the Contractor must resolve MDOT's technical support issues within 30 minutes.

If the caller's issue cannot be resolved within 30 minutes, on-site service must be scheduled. The on-site service must be performed within two (2) business days of the time the issue was scheduled for service.

Contractor's On-Site Service Fee at \$0.00

2.4 Reserved

2.5 Training

Contractor must be able to provide training statewide on traffic signal equipment, applicable parts and accessories. Training locations can be on –site – at the vendor's Michigan facility– or Designated MDOT facility

Training to include but not limited to the following:

1. Controller Programming
2. Detection implementation – up to ten (10) different types
3. Cabinet Equipment Implementation to include any applicable maintenance schedule and manuals.

Contractor training fee at \$0.00.

2.6 Reporting

The State may request reports on contract activities of purchase history.

2.7 Meetings

The State may request meetings to include, but not limited to:

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

3. Staffing

3.1 Roles and Responsibilities

The Contractor will respond to inquiries regarding the Contract Activities to include, but not limited to, assisting with installation questions, technical support, product ordering and delivery.

The Contractor will assign personnel with a technical background and working experience with products.

Primary Contact

Kevin Tomich
Sr Engineer
Kevein.tomich@siemens.com
(231) 468-5327

Emergency Contact

Kevin Tomich
Sr Engineer
Kevin.tomich@siemens.com

(231) 468-5327

Sam Markwood
Sr Engineer
Samuel.markwood@siemens.com
(586) 419-1815

3.2 Disclosure of Subcontractors

The Contractor is the manufacturer and does not intend to utilize subcontractors or suppliers. If at any time a subcontractor is used the Contractor will notify the listed Contract Administrator immediately.

3.3 Security

The contract activities require interaction with State personnel at State facilities and/or designated State trunk line or highways.

Upon request by the State, the Contractor shall provide the results of all security background checks of employees.

The State may decide to also perform a security background check. If so, the Contractor will be required to provide to the State a list of all personnel, to include freight personnel that will service the State of Michigan including name, date of birth and social security number.

4. Pricing

4.1 Price Term

Pricing is listed at a percentage off MSRP and will be firm for the entire length of the Contract.

Reference Schedule B for pricing.

The Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

*Siemens will only provide products, as listed within Schedule B.

*All other traffic signal equipment and case signs will be provided by the primary contract holder Carrier and Gable, Master Agreement (MA) number 1800000001.

4.2 Adjustments

Any adjustments will be reviewed based on changes in actual Contractor costs.

Any request must be supported by written evidence documenting the change in costs. The State 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 State 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.

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.

5. Ordering

5.1 Authorizing Document

The appropriate authorizing document for the Contract will be a delivery order (formally purchase order) issued by MDOT.

5.2 Emergency Orders

The Contractor must be able to expedite orders for emergency repairs and or replacements.

Emergency Orders will be delivered within 24 hours.

Contractor will provide a name and phone number for emergency orders.

5.3 Order Verification

The Contractor must have internal controls and to ensure that only authorized MDOT employees place orders.

6. Delivery

6.1 Delivery Programs

The Contractor will utilize the following transportation methods (UPS, FEDEX, Siemens fleet, and common carrier) in delivery of the Contract Activities.

This Contract requires Statewide delivery during stated business hours and emergencies.

(Reference Attachment A, MDOT Statewide Region Map)

6.2 Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate.

Shipments must be palletized whenever possible using the following:

- Manufacturer's standard 4-way shipping pallets
- Maximum height: 5'6", including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.

The cost of palletizing must be included in the unit price.

7. Acceptance

7.1 Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

Traffic Signals, parts and equipment will be inspected for compliance with the current Michigan Department of Transportation published Standard Specifications for Construction manual.

Parts and equipment will be approved or rejected upon delivery.

7.2 Final Acceptance

Reference attached Standard Terms and Conditions, item 16.

8. Invoice and Payment

8.1 Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order number; (c) quantity; (d) description
Contractor will send an invoice to the address and attention of the MDOT employee that issued the purchase order.

Invoice will match pricing listed on Schedule B.

*Products purchased not listed on Schedule B will indicated current market price and the percentage off MSRP.

8.2 Payment Methods

The State will make payment for Contract Activities as stated within the attached Standard Contract Terms, Section 20, Terms of Payment

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT).

Contractor must register with the State at https://www.michigan.gov/dtmb/0,5552,7-358,82550_85746---,00.html to receive electronic funds transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

9. Additional Requirements

9.1 Environmental and Energy Efficient Products

The Contractor must identify any energy efficient, bio-based, or otherwise environmental friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio based product label.

9.2 Hazardous Chemical Identification

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, et seq., as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

The Contractor must identify any hazardous chemicals that will be provided under any resulting contract.

9.3 Mercury Content

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

9.4 Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs.

STATE OF MICHIGAN

Siemens Traffic Controllers

SCHEDULE B PRICING

Attached

STATE OF MICHIGAN

MA: 20000000317

Siemens Traffic Contollers
(Maintenance and TACTIS Support)

SCHEDULE B PRICING MATRIX (Content: two (2) pages)

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using the table shown below. The pricing schedule should be submitted in a modifiable format (e.g., Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.

2. Price proposals must include all costs, to including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, palletizing).

3. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: ___n/a___ % discount off invoice if paid within ___n/a___ days after receipt of invoice.

4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Commodity Code Part Number Product Name			Current Price	
			Unit of Measure	Net Price Delivered with Discount
55081, 55089	8130-0102-001	Master controller, traffic signal master area responsive controller and traffic signal Controller mechanism ONLY	EA	\$ 2,160.00
55081, 55089	MBV17046-001	Linux upgrade, MBV17046-001	EA	\$ 766.00
55081, 55089	Marc Upgrade	M50 marc upgrade	EA	\$ 1,335.00
55081, 55089	R102-2312	Repair EPAC 3108M60	EA	\$ 1,145.50
55081, 55089	R102-2300	Repair controller, EPAC3108M52	EA	\$ 972.00
55081, 55089	8133-0004-SSS	M60 Series: M62 ATC	EA	\$ 2,891.70
55081, 55089	8133-0000-SSS	M60 Series: M62 ATC Lite	EA	\$ 2,501.55
55081, 55089	8132-0000-000	M60 Series: M62 NEMA Linux No Software	EA	\$ 2,393.60
55081, 55089	8132-0000-SSS	M60 Series: M62 NEMA Linux No Comm, Any Software	EA	\$ 2,478.60
55081, 55089	8132-YYZZ-SSS	M60 Series: M62 NEMA Linux Any Comm, Any Software	EA	\$ 2,845.80
55081, 55089	MBV17086-001	M60 Series Kit: M62 NEMA Linux to M62 ATC Upgrade Kit (fac	EA	\$ 1,583.55
55081, 55089	MBV17085-001	M60 Series Kit: M52 O59 to M62 NEMA Linux Upgrade Kit	EA	\$ 1,308.15
55081, 55089	AAD17047-002	M60 Series SP: M60 16 Line Display	EA	\$ 504.90
55081, 55089	AAD17098-001	M60 Series SP: M60 Power Supply Module	EA	\$ 573.75
55081, 55089	AAD17048-001	M60 Series SP: ATC Comm Module	EA	\$ 803.25
55081, 55089	ACP17049-001	M60 Series SP: M60 Backplane	EA	\$ 963.90
55081, 55089	8165-00ZZ-000	2070LX Series: 2070 Linux No Comm, No Software	EA	\$ 1,842.80
55081, 55089	8165-00ZZ-SSS	2070LX Series: 2070 Linux No Comm, Software	EA	\$ 1,927.80
55081, 55089	8165-YYZZ-000	2070LX Series: 2070 Linux Comm, No Software	EA	\$ 1,934.60
55081, 55089	8165-YYZZ-SSS	2070LX Series: 2070 Linux Comm, Software	EA	\$ 2,019.60
55081, 55089	AAD16481-001	2070LX Series SP: 2070-7A Comm Module	EA	\$ 202.30

Commodity Code	Part Number	Product Name	Unit of Measure	Net Price Delivered with Discount
55081, 55089	AAD16594-001	2070LX Series SP: 2070LX Chassis and Motherboard 2009 TE	EA	\$ 321.30
55081, 55089	AAD16484-005	2070LX Series SP: 2070-3B Front Panel Assy (8 Line)	EA	\$ 302.60
55081, 55089	PPS07882-001	2070LX Series SP: 2070-4A Power Supply	EA	\$ 275.40
55081, 55089	AAD16483-001	2070LX Series SP: 2070-2E+ Field I/O Module	EA	\$ 477.70
55081, 55089	AAD15753-004	2070LX Series SP: 2070-1C CPU Module Linux	EA	\$ 753.10
55081, 55089	MBV17084-001	M60 Series Kit: M52 OS9 to FIO/USB and KV2 Upgrade Kit	EA	\$ 1,170.45
55081, 55089	MBV17046-001	M60 Series Kit: M52 OS9 to Linux KV2 Upgrade Kit	EA	\$ 665.55
55081, 55089	AAD15288P001	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 Standard	EA	\$ 252.45
55081, 55089	AAD15288P002	M60 Series SP: Datakey for OS9 Standard (P002)	EA	\$ 206.55
55081, 55089	AAD15288P003	M60 Series SP: 2 PORT3 RS232 for OS9 Standard (P003)	EA	\$ 183.60
55081, 55089	AAD15288P004	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 FSK 2-W	EA	\$ 504.90
55081, 55089	AAD15288P005	M60 Series SP: Datakey for OS9 FSK 2-Wire (P005)	EA	\$ 481.95
55081, 55089	AAD15288P006	M60 Series SP: 2 PORT3 RS232 for OS9 FSK 2-Wire (P006)	EA	\$ 459.00
55081, 55089	AAD15288P010	M60 Series SP: Datakey and 2 PORT3 RS232 for OS9 MMF (P	EA	\$ 504.90
55081, 55089	AAD15288P011	M60 Series SP: Datakey OS9 MMF (P011)	EA	\$ 481.95
55081, 55089	AAD15288P012	M60 Series SP: 2 PORT3 RS232 for OS9 MMF (P012)	EA	\$ 459.00
55081, 55089	ACP16826-002	M60 Series SP: I/O Board for OS9 FSK Standard (1900)	EA	\$ 573.75
55081, 55089	ACP15026P001	M60 Series SP: M50 Modem for OS9 FSK Standard (1900)	EA	\$ 183.60

* Extended Cost includes freight

*There are no separate charges for Emergency deliveries

*Per attached Standard Terms, MDOT has 45 days from date of invoice to submit payment.

*Invoices will show retail price and 15% off MSRP price

*Quantities unknown, the State is not obligated to purchase any quantity.

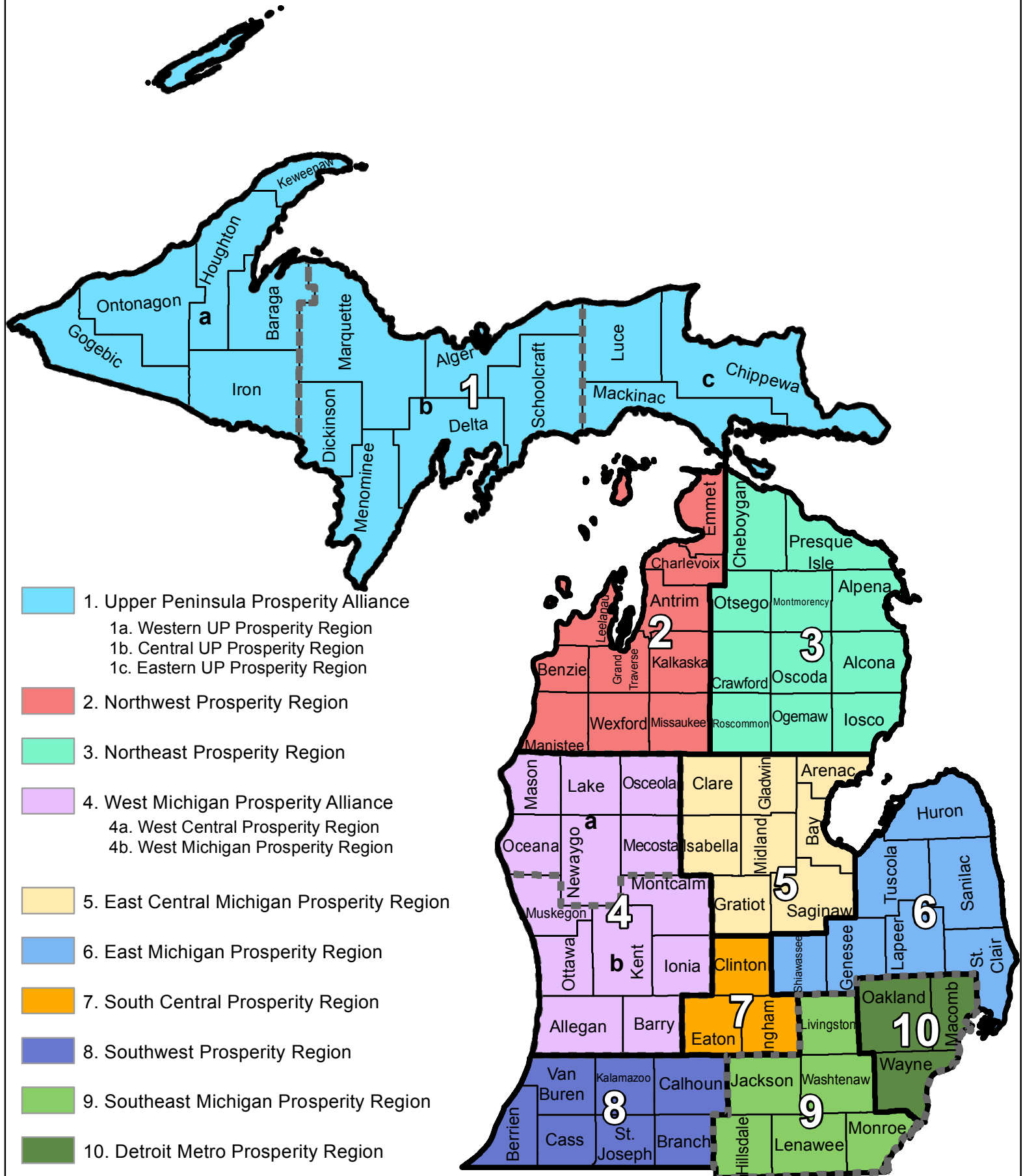
STATE OF MICHIGAN

Region Map

Attachment A

See Attached

State of Michigan Prosperity Regions



- 1. Upper Peninsula Prosperity Alliance
 - 1a. Western UP Prosperity Region
 - 1b. Central UP Prosperity Region
 - 1c. Eastern UP Prosperity Region
- 2. Northwest Prosperity Region
- 3. Northeast Prosperity Region
- 4. West Michigan Prosperity Alliance
 - 4a. West Central Prosperity Region
 - 4b. West Michigan Prosperity Region
- 5. East Central Michigan Prosperity Region
- 6. East Michigan Prosperity Region
- 7. South Central Prosperity Region
- 8. Southwest Prosperity Region
- 9. Southeast Michigan Prosperity Region
- 10. Detroit Metro Prosperity Region
- Service Delivery Regions

STATE OF MICHIGAN

Siemens Traffic Controllers

Attachment B – Basic Requirements

The following listed standards are located in the current Michigan Department of Transportation published Standard Specifications for Construction manual.

NO variations from the specifications or provisions will be accepted.

*Specifications can be located at <http://mdotcf.state.mi.us/public/specbook/2012/>
OR contact MDOT Publications to order a copy for the manual, (517) 322-1676.

- | | |
|---|-------------|
| 1. STRUCTURAL STEEL | Section 906 |
| 2. MISCELLANEOUS METAL PRODUCTS | Section 908 |
| 3. ELECTRICAL AND LIGHTING MATERIALS | Section 918 |
| 4. PERMANANENT TRAFFIC SIGNAL MATERIALS | Section 921 |

STATE OF MICHIGAN

Siemens Traffic Controllers

Attachment C1 – Special Provisions

Reserved

STATE OF MICHIGAN

Siemens Traffic Controllers

Attachment D – Warranty Addendum

Article 10

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SIEMENS IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE. SIEMENS' MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM. BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 10 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 10 EXTEND TO SIEMENS' AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Siemens, Siemens Mobility, Inc. (“**Contractor**”), Michigan Corporation. This Contract is effective on December 1, 2019 (“**Effective Date**”), and unless terminated, expires on January 23, 2022.

This Contract may be renewed for up to two (2) additional one (1) year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State 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 State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

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

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

If to State:	If to Contractor:
Klatra Pickett, Buyer 425 West Ottawa Street P.O. Box 30050 Lansing, MI 48909 Pickettk1@michigan.gov 517-335-0071	Eric Gannaway Siemens Mobility, Inc. Intelligent Traffic Systems 44425 Phoenix Dr. Sterling Heights, Mi 48094 586-488-5431 eric.gannaway@siemens.com www.usa.siemens.com/siemensits-mi

3. **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")

State:	Contractor:
Klatra Pickett, Buyer 425 West Ottawa Street P.O. Box 30050 Lansing, MI 48909 Pickettk1@michigan.gov 517-335-0071	Eric Gannaway Siemens Mobility, Inc. Intelligent Traffic Systems 44425 Phoenix Dr. Sterling Heights, Mi 48094 586-488-5431 eric.gannaway@siemens.com www.usa.siemens.com/siemensits-mi

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

State:	Contractor:
Erik M. Smalley, P.E. Operations Field Services Division 6333 Lansing Road Lansing, MI 48909 517-636-6108 Cell SmalleyE@michigan.gov	Eric Gannaway Siemens Mobility, Inc. Intelligent Traffic Systems 44425 Phoenix Dr. Sterling Heights, Mi 48094 586-488-5431 eric.gannaway@siemens.com www.usa.siemens.com/siemensits-mi

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$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 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the

Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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 State).

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

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 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 State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

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

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

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

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

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

21. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

- 22. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

- 23. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

- 24. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 25. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

- 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 State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 27. Limitation of Liability.** The State 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 State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 29. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 30. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes

whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any 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 State'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.
- 31. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 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 State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

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

- 32. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the

information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 0, Termination for Cause.

- 33. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 34. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 35. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 36. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 37. 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.
- 38. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 39. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 40. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
- 41. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

42. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
43. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, 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 STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
44. **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.
45. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
46. **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.
47. **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.