



INVITATION TO BID NO: 16-001

Back Up and Restore Technology

for the
State Road and Tollway Authority

Instructions to Bidders:

All spaces below and all offer documents as outlined in Section 11 of the ITB are to be filled in with signatures where indicated. Failure to sign may render your bid invalid.

BID OF:

Name of Bidder: _____

Address: _____

City, State and Zip Code: _____

SUBMIT BID TO:

STATE ROAD AND TOLLWAY AUTHORITY
Leanna Jordan Pierre, Procurement and Contracts Manager
47 Trinity Ave 4th Floor
Atlanta, Georgia
30334

Bids Due and Open: March 23, 2016; 2:00 PM, Local Time (Atlanta, GA)

Schedule of Events

Release ITB	March 8, 2016
Deadline for Vendor Written Questions (Submit questions by email to lpierre@grta.org)	March 15, 2016 by Vendor's close of business
SRTA Responses to Written Questions	March 24, 2016
Bid Due Date & Opening	March 31, 2016, 2PM, Local Time
Notice of Contract Award	April 3, 2016

All questions should be submitted by email to lpierre@grta.org. Questions must be submitted no later than the deadline specified in the above Schedule of Events. Answers to written questions received will be available at the State Road and Tollway Authority (SRTA) website at <http://www.georgiatolls.com>.

Answers are provided for informational purposes only and will not be considered binding unless incorporated by amendment to this ITB. All questions and answers will be posted to the SRTA's website where the ITB document is located. **Bidders are reminded and encouraged to check this website daily for any changes to the ITB as well as to check this website for Notice of Contract Award. Posting of Notice of Award shall constitute official public notification.**

STATE ROAD AND TOLLWAY AUTHORITY INVITATION TO BID INSTRUCTIONS

1. PURPOSE OF PROCUREMENT

The State Road and Tollway Authority (SRTA) is issuing this Invitation to Bid (ITB) to establish an Contract for the purchase of back and restore technology, at the convenience of SRTA. All Bids submitted pursuant to this ITB shall be made in accordance with the provisions of this ITB, including these instructions, the attached specifications and any appendices.

2. SRTA BACKGROUND

SRTA is a state-level, independent authority created by the Georgia General Assembly to operate tolled facilities within the state. SRTA also serves as a financing arm for state and local transportation projects across the state. SRTA's Mission is to enhance the mobility in Georgia by providing innovative transportation choices and financial solutions. SRTA's vision is to be a world class tolling and financing provider of transportation solutions. Much of that capability is dependent on the success of the toll collection implementation to accommodate the needed technology and ability to grow within the system. SRTA's core values go to integrity, expertise, collaboration, providing great customer service and diversity.

SRTA currently operates the I-85 Express Lanes, a 16-mile stretch of I-85 from Old Peachtree Road to Chamblee Tucker Road, just south of I-285. The I-85 Express Lanes are High Occupancy Toll lanes in which registered vehicles with 3 or more passengers, transit, motorcycles, emergency and electric vehicles are not tolled. Since their opening in October 2011, usage of the I-85 Express Lanes has more than tripled. SRTA anticipates opening three new toll facilities (Express Lanes) within the next three years: the 75 South Express Lanes, the NWC Express Lanes, and the I-85 Express Extension. SRTA currently processes approximately 4 million transactions and receives approximately \$9 million in toll revenue annually with a transponder base of approximately 450,000 and an approximate account base of 275,000.

3. RESTRICTIONS ON COMMUNICATIONS WITH STATE STAFF

From the issue date of this ITB until the final award is announced, Bidders are not allowed to communicate, for any reason, with any SRTA, GDOT, GRTA or other State of Georgia staff except through the Issuing Officer named herein, as defined in this ITB, or as provided by existing work agreement(s). Prohibited communication includes all contact or interaction, including but not limited to telephonic communications, emails, faxes, letters, or personal meetings, such as lunch, entertainment, or otherwise. SRTA reserves the right to reject the Bid of any Bidder violating this provision.

4. SUBMISSION OF BIDS

Preparation of Bids should be made in such a way as to provide a straight forward, concise delineation of capabilities and compliance with requirements of this ITB. Expensive binders, colored displays, promotional materials, etc. are not necessary or desired. Emphasis should be concentrated on completeness and clarity of content.

Submit all bids to:

**State Road and Tollway Authority
Attn: Leanna Jordan Pierre - ITB No. 16-000
47 Trinity Ave. 4th floor
Atlanta, Georgia 30334**

The responsibility for submitting a bid to SRTA on or before the stated time and date will be solely and strictly the responsibility of the Bidder. SRTA will in no way be responsible for delays caused by the United States mail delivery, common carrier or any other cause or occurrence.

Verbal, faxed, or unsealed bids will not be accepted.

5. AMENDMENTS TO THE SOLICITATION (ADDENDA)/POSTPONEMENT OF BID SUBMISSION DEADLINE

SRTA reserves the right to revise or amend the solicitation up to the time set for the submission of bids. Such revisions and amendments, if any, shall be announced by written addenda to the ITB and posted on the SRTA website as set forth below. If an addendum significantly changes the ITB, the date set for the submission of proposals may be postponed by such number of days as in the opinion of SRTA shall enable potential Bidders to revise their bids. In any case, the bid submission deadline shall be at least five days after the last addendum, and the addendum shall include an announcement of the new date, if applicable, for the submission of bids.

Upon issuance, addenda will be considered part of the ITB and will prevail over inconsistent or conflicting provisions contained in the original ITB. Copies of all addenda will be made available on the SRTA website [SRTA Bid Opportunities](#). It is the responsibility of the Bidder to check the SRTA website daily to ensure that it has received notification of any changes to the ITB.

Proposers shall acknowledge receipt of all addenda by completing and submitting Offer Document #6 (Acknowledgement of Addenda), as part of its ITB. As with other required documentation, proposals that fail to reference receipt of addenda by inclusion of Offer Document #6 (Acknowledgement of Addenda) may be excluded from consideration for a contract award.

6. RESPONSIVENESS OF BIDS

Bids must be complete in all respects, as required in this ITB. A bid may be rejected by SRTA if it is conditional; incomplete; fails to meet any requirement included in the ITB; or, contains any alterations of form or other irregularities of any kind.

7. MULTIPLE BIDS

Bidders may be rejected if more than one bid is received from an individual, firm, partnership, corporation, or combination thereof, under the same or different names. Such duplicate interests may cause the rejection of all Bids in which such Bidder has participated.

8. WAIVERS

SRTA may waive informalities or irregularities including, but not limited to typographical, mathematical, obvious errors, or other informalities or irregularities.

9. MODIFICATION OR WITHDRAWAL OF BIDS

Modifications - SRTA will permit modifications to a bid after it has been submitted up until the bid submission deadline for accepting bids. The bid can be picked up by a representative of the Bidder and then it is the Bidder's responsibility to resubmit before the deadline.

Withdrawal - A bid may be withdrawn upon request by the Bidder without prejudice up until the bid submission deadline for submittal of bids, provided that the request is in writing, has been executed by the Bidder or the Bidder's duly authorized representative and has been filed with SRTA.

10. BID FORMAT

One hard original, one hard copy, and one electronic copy of all bid documents technical literature, and any supporting documentation shall be submitted prior to bid opening. If there are any conflicts or discrepancies between the submitted documents, the contents of the original hard copy shall govern. Bids must be identified as follows:

Bid of (Your Company Name's) ITB Number: 16-001

Bid Opening Date and Time: **March 31, 2016, 2:00PM, Local Time (Atlanta, Georgia)**

11. BID DOCUMENTS REQUIRED

For this procurement, **Bidders must sign (if applicable) and return: Cover page; Offer Document 1 (Contractor Information); Offer Document 2 (Bid Letter); Offer Document 3 (Bid Certification); Offer Document 4 (Statement of Responsibility); Offer Document 5 (Bid Price Sheet); Offer Document 6 (Acknowledgment of Addenda); Offer Document 7 (E-Verify Affidavit); and any Bidder Submitted Documentation.**

12. BID PRICE SHEET

Bidders must submit a three-year fixed price for the goods and services listed on Offer Document 6- Bid Price Sheet.

Bids containing provisions for late or interest charges cannot be awarded a contract. Bidders are instructed to remove or strike through any reference to this provision in or on vendor printed forms and to initial changes prior to submitting a Bid response to SRTA. Failure to do so could delay bid award or result in bid disqualification if not removed.

13. CONTRACT QUESTIONS, CLARIFICATIONS AND RECOMMENDATIONS

From the date of issuance of this solicitation through the date of contract award by the SRTA, all official communications to and from SRTA regarding this solicitation will be transmitted in writing (defined as being sent or received via letter or email on official firm/agency letterhead or by electronic mail). SRTA shall not be responsible for any oral statements made by its employees regarding this solicitation.

All vendor communications concerning this solicitation should be directed to the Procurement & Contracts Manager at lpierre@grta.org. **Unauthorized contact regarding this solicitation with other SRTA employees and/or Board members may result in disqualification.** Any oral communications will be considered unofficial and non-binding on the Authorities. Vendors should only rely on written statements issued by the Procurement & Contracts Manager.

14. CONTRACT ADDITIONS

Upon mutual agreement, products in addition to those listed in **Appendix B** may be added subsequent to contract award. The support costs quoted for these additional items should reflect the same discount from the normal costs as used in the determining the costs quoted in response to this ITB.

15. CONTRACT TERM

The Contract shall be for a base period of three (3) years (“Initial Term”). Thereafter, the Agreement may be renewed at the sole discretion of SRTA for up to four (4) additional terms of one year each to be evidenced in writing by Amendment to the Contract (each, a Renewal Term”). The Initial Term and any and all Renewal Terms may be referred to collectively as the “Term.” SRTA may, at its sole option, renew as to all of the products to be provided hereunder or as to only selected products.

16. CONTRACT

The contract that SRTA intends to use with the successful Bidder is attached to this ITB and identified as **Appendix A**. Prospective Bidders are urged to carefully read this Contract prior to making their offers. SRTA reserves the right to add provisions consistent with the successful Bidder's offer and to negotiate with the successful Bidder other additions to, deletions from, and/or changes in the language in the Contract, provided that no such addition, deletion or change in contract language would, in the sole discretion of SRTA affect the evaluation criteria set forth herein, or increase the prices offered by the successful Bidder. The insurance and indemnification provisions set forth in the draft Contract should be considered by Bidder when setting their prices, as such insurance and indemnification provisions are not likely to change from the draft version provided.

At the end of the evaluation process, SRTA shall contact the apparent successful Bidder. Prior to the Contract award, the apparent successful Bidder will be required to enter into negotiations/discussions with SRTA to resolve any contractual differences before an award is made. These negotiations/discussions are to be finalized and all exceptions resolved within one (1) week of notification. Failure to resolve any contractual issues may lead to rejection of the Bidder. SRTA reserves the right to proceed to discussions with the next highest ranked Bidder. The Bidder should not expect to make any modifications to the Contract unless the same are necessary in order to ensure that the Contract is consistent with the Bid.

17. BASIS FOR AWARD

The lowest Bidder will be the Bidder submitting the overall lowest total price based on the quantity criteria listed in the Bid Price Sheet (**Offer Document 5**).

18. BIDDER RESPONSIBILITY

A Responsible bidder is one that SRTA believes to be responsible based on responses provided on the Bidder's "Statement of Responsibility Certification Form" and/or based on Bidder's responses to the requirements of the solicitation document. Responsibility shall generally be presumed. In order for a Bidder to be deemed non-responsible, SRTA must make an affirmative determination of non-responsibility. SRTA reserves the right to conduct additional due diligence into any Bidder's responsibility status. Such due diligence may include investigations into one or more of the following areas:

1. Whether bidder has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required bonds (if any) and insurance from sureties and insurance companies authorized to do business in Georgia.
2. Whether bidder is able to comply with the contract requirements, considering the firm's other business obligations.
3. Whether bidder is registered to do business in the State of Georgia and is listed as "ACTIVE/COMPLIANCE" with the Office of the Georgia Secretary of State.
4. Whether bidder is not presently debarred or suspended from bidding by any Federal or State governmental entity;
5. Whether bidder has within a three year period preceding this bid (or proposal) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
6. Whether bidder is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above.
7. Whether bidder has had a contract terminated for default in the last 3 years.
8. Whether bidder is currently under investigation for any possible breach of contract, or fraud or allegations of criminal activity related to the types of Services requested within this solicitation document. (And if yes, the circumstances, nature and magnitude of such investigation shall be considered in any possible non-responsibility determination).
9. Whether bidder has a satisfactory performance record.
10. Whether bidder has a satisfactory record of integrity and business ethics.
11. Whether bidder has satisfactory organization, experience, accounting and operational controls, and managerial and technical skills.

BIDDERS MUST COMPLETE AND SUBMIT ALL OFFER DOCUMENTS.

19. BID SUBSTITUTIONS, ALTERNATES, EXCEPTIONS, AND EXTENSIONS

Bidders that intend to propose alternate materials, services, techniques or equipment or substituted items that materially deviate from the items and/or services required in the Technical Requirements and specifications of this ITB, are strongly encouraged to request approval for such items, products and/or services from SRTA by the deadline for Questions set forth on the Cover Page of this ITB, but in no event later than **March 15, 2016**, for such proposed deviations to be considered.

If such a request is deemed by SRTA to have merit as an acceptable deviation, and is granted by SRTA, an addendum may be issued to all prospective Bidders to inform them of such an allowance, and/or to amend the requirements or specifications of this ITB.

SRTA reserves the right to extend the bid submission deadline based on such information, but is not required to do so. SRTA reserves the right to cancel the solicitation in its entirety and possibly re-advertise and issue a revised ITB for any reason.

Any exceptions that the Bidder has in their submitted Bids must also be clearly noted within the Bid to be considered by SRTA, regardless of whether or not such exceptions have been previously communicated to SRTA.

PLEASE NOTE THAT BIDDERS SUBMITTING EXCEPTIONS TO THE REQUIREMENTS AND SPECIFICATIONS OF THIS ITB IN THEIR SUBMITTED BID DO SO AT THEIR OWN PERIL, SINCE EXCEPTIONS MAY RESULT IN A DETERMINATION OF “NON-RESPONSIVENESS” OF THE BIDDER AND/OR THEIR BID.

20. REJECTION OF BIDS

SRTA reserves the right to reject any or all Bids submitted in response to this ITB.

21. SMALL AND MINORITY BUSINESS POLICY AND TAX INCENTIVE

It is the policy of the State of Georgia that small businesses, female-owned businesses and minority businesses have a fair and equal opportunity to participate in the State purchasing process. SRTA encourages all small businesses, female-owned businesses and minority-owned businesses to compete for, win, and receive contracts for goods, services, and construction. Potential respondents to this ITB are advised that O.C.G.A. § 48-7-38 provides for an income tax adjustment on the Georgia state income tax return of any company that subcontracts with a “Certified minority-owned” firm to furnish goods, property, or services to the State of Georgia. Any selection made as a result of this ITB will be made without regard to race, color, religion, sex, or national origin. This desire on the part of SRTA is not intended to restrict or limit competitive bidding or to increase the cost of the work. Any selection made as a result of this ITB will be made without regard to race, color, sex, religion, or national origin.

22. RESPONSIBILITY FOR COSTS INCURRED

All costs incurred by any interested party in responding to this ITB shall be borne by such interested parties, and SRTA shall have no responsibility whatsoever for any associated direct or indirect costs related to the development or any other aspect of the bids or this ITB.

23. SALES AND USE TAXES

SRTA is exempt from paying sales and use taxes. All proposal prices must exclude sales and use taxes (if applicable).

24. RESERVED RIGHTS

SRTA reserves the right to reject any and all proposals or any portion of a specific proposal for any reason. Issuance of this ITB and receipt of bids does not commit SRTA to award a contract.

SRTA has the sole right to select the successful Bidder for contract award; to reject any bid as unsatisfactory or non-responsive due to non-conformance with the requirements of this ITB; to cancel the solicitation and to advertise for a new ITB; or not to award a contract as a result of this ITB.

SRTA reserves the right to accept any ITB deemed to be in the best interest of SRTA and to waive any irregularities in any bid that does not prejudice other Bidders.

25. PROJECT INFORMATION.

See Appendix B-Scope of Services for detailed project information.

BACK UP AND RESTORE TECHNOLOGY CONTRACT

This CONTRACT is made and entered into as of March __, 2016 (“Effective Date”), by and between the STATE ROAD AND TOLLWAY AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“SRTA”), and _____, a _____ authorized to do business in the State of Georgia (the “Contractor”). SRTA and Contractor may be referred to collectively as the “Parties” and individually as the “Party.”

WHEREAS, SRTA desires to engage a qualified and experienced contractor to provide enterprise software and/or hardware for VMware environments as more fully described in the SRTA Solicitation No. 16-001: Invitation For Bid for Back Up and Restore Technology and any addenda thereto and any documents referenced therein (collectively, the “IFB”); and

WHEREAS, Contractor has represented to SRTA that is experienced, qualified and willing to provide the labor, materials, equipment, and expertise need to successfully meet SRTA’s needs as more fully described in the IFB; and

WHEREAS, SRTA has relied upon such representations and selected the Contractor to furnish the Equipment, Maintenance and Support Services required in the IFB (collectively or individually referred to as “Work”); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated into this Contract.
2. **DEFINITIONS.** Any capitalized terms used in this Contract that are not defined in **Exhibit A** shall have the meanings ascribed to them in the **IFB**.
3. **INCLUSION AND PRIORITY OF DOCUMENTS.** The IFB, which is incorporated herein by reference as **Exhibit B**, and the Contractor’s Technical Proposal (and any documents referenced therein) submitted in response thereto, which is incorporated herein by reference as **Exhibit C** (collectively, the “Contractor’s Proposal”), are integral parts of this Contract. The IFB, the Contractor’s Proposal, this Contract (including all amendments, documents and exhibits referenced in this Contract) shall be collectively referred to as the “Contract Documents.” In the event of a conflict among the Contract Documents, the Contract Documents herein shall govern the contractual relationship between the Contractor and SRTA, and shall control one over another in the following order: Any formally executed Amendments to the Contract, the Contract, the IFB, and the Contractor’s Proposal.
4. **TERM AND RENEWAL.** This Contract shall begin on the Effective Date and shall continue until _____, 2017 (the “Initial Term”). SRTA may elect to renew this Contract on the same terms and conditions for up to four (4) additional renewal periods with a term of up to one (1) year each (each a “Renewal Term.” The Initial Term and each Renewal Term may be referred to collectively, as the “Term.” The renewal of the Contract shall be at the sole discretion of SRTA and evidenced in writing by Amendment to this Contract.
5. **TIME AND MANNER OF PERFORMANCE.**
 - 5.1. **Work in General/Notice to Proceed/Project Schedule.** Contractor agrees to provide and deliver to SRTA all of the software, hardware, labor, work and services set forth in the Contract Documents (collectively, the “Work”). All of the Work and each component thereof shall conform to each and every standard, specification, provision, criteria and requirement as applicable and as set forth in the IFB. All software, equipment and supplies furnished by Contractor will be new, manufactured by skilled, qualified and properly trained labor, be free and clear of all liens and encumbrances, and not violate any intellectual property rights of any third party. Contractor shall perform the Work in a workmanlike and professional manner, consistent with the level of care and skill exercised by other providers of similar services in the industry. The performance time will begin within seven (7) Business Days of the issuance of a Notice to Proceed, which shall be in writing and signed by SRTA and its designated representative(s). Unless an extension of time is granted by SRTA, Contractor will successfully, fully and entirely complete all installation services and post-installation acceptance testing within thirty-two (32) to forty-eight (48) hours of commencement.

- 5.2. Cooperation. SRTA shall be entitled to full and prompt cooperation of the Contractor in all aspects of the Work. The Contractor shall use best efforts to minimize any disruption to SRTA's normal business operations when Contractor is performing the Work. Contractor agrees to remedy any disruption or malfunction according to the response times associated with the assigned priority level, as provided more fully in **Exhibit E (Service Level Agreement)**.
6. CONTRACTOR PERSONNEL. The Contractor shall provide sufficient professional personnel and staffing to provide the Work. Contractor warrants and represents that all persons assigned to perform under this Contract shall be employees or authorized subcontractors of Contractor and shall be fully qualified to perform the Work. Contractor shall include a similar provision in any agreement with any subcontractor and/or supplier selected to perform any work and/or to provide any Work. Contractor's failure to continuously provide adequate staffing may result in the termination of this Contract. All of Contractor's or its subcontractor's personnel shall comply with SRTA's confidentiality and security requirements while on SRTA's premises or otherwise performing the Work, including but not limited to obtaining criminal background checks and the execution of confidentiality agreements.
7. DATA OWNERSHIP/SECURITY. All data, records and operations history information in any way relating to SRTA, its customers or its projects shall remain the property of SRTA at all times during the Term of the Contract and after Contract termination for whatever reason. In addition to Contractor's obligations in **Section 14 (Confidentiality)**, Contractor shall ensure that no unauthorized personnel will have access to SRTA facilities or SRTA information.
8. SUBCONTRACTING AND ASSIGNMENT. Other than as specified in the Contract Documents, Contractor shall not assign, delegate, or subcontract this Contract to anyone other than Contractor's personnel to perform the Work, or assign any of its rights or obligations under this Contract without the prior written consent of SRTA, which may be withheld for any reason. If Contractor subcontracts any of the Work to be performed under this Contract, Contractor shall be as fully responsible to SRTA for the acts, errors, or omissions of Contractor's subcontractor and/or supplier and of the persons employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor. Contractor shall be obligated to assist SRTA in the enforcement of any rights that SRTA has against subcontractor. Contractor warrants that it shall make timely payments for Work performed to any subcontractor or supplier hereunder and Contractor shall indemnify and hold harmless SRTA and the State of Georgia for any breach of this Contract. Any assignments made in violation of this provision shall be null and void.
9. RELATIONSHIP OF THE PARTIES. Each Party, in the performance of this Contract, shall be acting in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other Party. The employees, agents, partners or contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other party's employees, agents, partners or contractors. The Parties expressly understand and agree that Contractor is an independent contractor of SRTA in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Contractor shall be solely responsible for all payments to its subcontractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for its employees.
10. PAYMENT TERMS.
- 10.1. General. For satisfactory performance of the Work, SRTA hereby agrees to compensate the Contractor in accordance with the prices set forth in **Exhibit D (Pricing)**.
- 10.2. Net 30 Days. SRTA agrees to pay Contractor for all undisputed amounts within thirty (30) Days of receipt of a valid invoice, provided that such Work has been accepted by SRTA as provided in the IFB or as provided herein.
- 10.3. Invoicing. Contractor shall deliver to SRTA an invoice for the Work on an annual basis. Contractor will submit an itemized billing, identifying the date and a description of the Work provided.

- 10.4. Payment not Acceptance. Payment or use of any Work or portions thereof by SRTA shall not constitute an Acceptance of any Work not performed in accordance with the Contract Documents.
- 10.5. No Disruption of Work. If Contractor has not received payment from SRTA within thirty (30) Days after receiving a valid invoice, Contractor agrees to provide SRTA written notice and a thirty (30) Day opportunity to cure without withholding, disrupting or delaying Work.
- 10.6. Full Compensation. All Work performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth above, which shall constitute full compensation for the Work
- 10.7. Firm Price Period. The prices set forth in **Exhibit D (Pricing)** shall be firm for the Term. If the Contractor wishes to increase the price of any line item listed in **Exhibit D (Pricing)** subsequent to the expiration of the Initial Term, then ninety (90) Days prior to conclusion of the Initial Term or a Renewal Term, as applicable, Contractor shall notify SRTA of such intent and the new pricing proposed by Contractor. A price increase, if any, shall not exceed fifteen (15%) percent of the regional MSRP price for new licenses at the time of renewal for each product purchased under perpetual licensing.

11. **EQUIPMENT AND MAINTENANCE.** Contractor shall obtain in SRTA's name and SRTA shall own all of the Equipment as required by the Contract Documents. To the extent all or part of the Work becomes a hosted solution, then all Equipment and hardware, if any, will be owned by SRTA. Throughout the Term of the Contract, Contractor shall maintain in good working order all hardware and Equipment. The Equipment shall in all ways during the Term, conform to the requirements as set forth in the manufacturer's specifications and the Contract Documents.

12. **WARRANTIES.**

12.1. Contractor shall provide 24x7x365 warranty support to SRTA for the Term of the Contract, as more fully described in the IFB.

In addition to any express or implied warranties provided by law, Contractor hereby expressly represents and warrants the following:

12.1.1. *Equipment, Hardware, Supplies and Materials.* Contractor represents and warrants that all hardware, Equipment, supplies and other material supplied under the Contract Documents shall (1) comply with and conform to all performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the IFB, (2) have a minimum service life as set forth in the IFB, and (3) shall be new, off the shelf, field proven and meet defined standards, as applicable

12.1.2. *Software.* Contractor represents and warrants that (1) all Software shall be provided pursuant to the Contract Documents and any update or revision to any of such software will be free from defects and will meet all specifications set forth in the Contract Documents and any documents referenced therein, (2) Contractor will, without charge to SRTA, correct any defects and make any fixes, additions, modifications or adjustments to any of such software or any update or revision to such software as may be necessary to keep the software in operating order in accordance with specifications at all times during the applicable warranty period, and (3) all software provided pursuant to the Contract Documents and any update or revision to any of such software will be free from viruses, worms, time bombs, back doors, Trap Doors, Trojan horses, Easter eggs, all other forms of malicious code and/or disabling devices.

12.1.3. *Services/Labor.* Contractor represents and warrants that all labor and Maintenance and Support Services shall (1) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the IFB, (2) the labor and services to be performed hereunder will be performed on time, and in a workmanlike manner, consistent with the highest level of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the labor and services are provided.

12.1.4. *Intellectual Property*. As used in this Contract, “Intellectual Property” shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date. Contractor represents and warrants that (1) no aspect of the Work will violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights, (2) Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property used in the Work contemplated hereunder and Contractor has the right to permit SRTA access to, or use of, such software, hardware, methods, methodologies and Intellectual Property.

12.1.5. *Compliance with Laws, Rules and Regulations*. Contractor represents and warrants that (1) the Work will not be in violation of any applicable law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such laws and regulations and (2) Contractor will comply in all respects with all other laws, rules, regulations, ordinances of any governing authority that impact or relate in any way to the Work

12.2. Third Party Warranties. Contractor shall assign to SRTA the manufacturers' or other third party warranties for Equipment furnished to SRTA.

12.3. No-Waiver. Neither any provision of this Contract nor any decision of SRTA shall relieve the Contractor of responsibility for faulty Equipment, faulty workmanship, or omission of any Work. Any deviation in the Contract Documents shall be evidenced by an amendment signed by SRTA and will constitute an acceptance by SRTA of such deviation from the applicable Contract requirement. Notwithstanding the preceding sentence, such deviation will still need to pass acceptance or other testing as may otherwise be required in the Contract Documents.

12.4. Contractor Duty to Remedy. Contractor shall, within the time periods designated in the Contract Documents correct, remedy, replace, re-execute, supply omitted or defective Work and pay for any damage to other work resulting therefrom, without expense to SRTA.

12.5. Other Remedies. The remedies stated in **Section 12 (Warranties)** are in addition to the remedies otherwise available to SRTA, do not exclude such other remedies, and are without prejudice to any other remedies.

13. INTELLECTUAL PROPERTY.

13.1. General. Contractor shall provide SRTA with the Intellectual Property as set forth in the Contract Documents. Intellectual Property that consists of the software package offered by Contractor that will be delivered to SRTA shall include all documentation along with all appropriate licenses for the Intellectual Property. Intellectual Property that is proprietary to Contractor that consists of Contractor's (or its subcontractor's or supplier's) software package that will be used by Contractor to perform hosting services and other Work shall include all documentation along with a grant to use or otherwise access the Intellectual Property.

13.2. License. Contractor shall furnish SRTA with the third party-provided Intellectual Property the standard license offered by such third party provider. Such license shall, at a minimum comprise of an irrevocable, perpetual, non-exclusive, non-transferrable (except as provided below), fully paid (subject to SRTA's payment obligations under the Contract), royalty free license, for SRTA to use such Intellectual Property, for use anywhere in the State of Georgia. Notwithstanding the preceding sentence, SRTA shall have the right to transfer the applicable license to a successor in the event another entity is given the responsibility to maintain or otherwise operate tolls in the state of Georgia, provided that any such successor entity agrees to be bound by the license restrictions and confidentiality obligations contained herein. The Contractor shall secure all required licenses from any third party providers of Intellectual Property as detailed in the IFB that is not COTS, pursuant

to the terms set forth above in the name of SRTA, and shall ensure that such licenses are transferable to and assignable by SRTA, without additional compensation. The Contractor shall furnish SRTA with original license agreements it obtains from such third party providers of software and firmware upon request but no later than within ten (10) Days after issuance of the Notice to Proceed. The Contractor shall also provide to SRTA the computer programs, disks and documentation for all software and firmware it obtains from third parties. The license described herein shall include all updates, enhancements, modifications, upgrades, or other changes that are logical improvements or extensions of the Intellectual Property provided herein, and all error corrections, patches and bug fixes and any other derivative works created by Contractor or Contracting Parties as a result of this license ("Enhancements").

13.3. Exclusions. Except as expressly permitted by this Contract, SRTA agrees that it will not: (i) lease, loan, sublicense, or otherwise distribute the software; (ii) permit third party access to, or use of, the software; (iii) create derivative works based on the Contractor Intellectual Property; (v) reverse engineer, disassemble, or decompile the Contractor Intellectual Property; (vi) remove any identification or notices contained on the Contractor Intellectual Property.

14. CONFIDENTIALITY. The Parties acknowledge that in order to perform the Work called for in this Contract, it may be necessary to disclose to each other certain confidential information ("Confidential Information"). Each Party agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Maintenance and Support Services, and who, in the case of third parties, have executed a nondisclosure agreement consistent with the provisions hereof.

14.1. Open Records Act. SRTA's and other state entities' obligations hereunder shall be subject to the provisions of the Georgia Open Records Act (O.C.G.A. §50-18-70 *et seq.*), as it may be amended from time to time.

14.2. No Obligation of Confidentiality. Neither Party shall have any obligation of confidentiality with respect to any information which: (i) is or becomes (through no improper action or inaction of the receiving Party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving Party to have been in its possession or known by it prior to the receipt under this Contract; (iii) is rightfully disclosed to the receiving Party by a third party without restriction; (iv) is disclosed by the receiving Party with the written approval of the disclosing Party; (v) is developed independently by the receiving Party without any reference, whether direct or indirect, to the Confidential Information of the disclosing Party; or (vi) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act, provided the disclosing party is promptly notified in order to resist or limit any such disclosure by the receiving Party.

14.3. Use of Confidential Information. Contractor shall use the confidential information solely for the purpose of providing the Work required under the Contract Documents and shall not in any way use the confidential information to the detriment of SRTA.

14.4. Return of Confidential Information. Except as otherwise provided in the Contract or by law, Contractor shall return to SRTA any confidential information immediately on request but no later than upon the termination for whatever reason of this Contract.

15. INDEMNIFICATION.

15.1. Indemnification. Contractor hereby agrees to indemnify and hold harmless the SRTA, the State of Georgia and its departments, agencies, authorities and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent Federal, State or

local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

15.2. DOAS. Risk Management will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, SRTA will request the Attorney General to endeavor to keep the Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

15.3. Intellectual Property Indemnification. Contractor represents and warrants that it will have at all times while performing the work and labor needed for the Work the necessary permissions and licenses to supply the Intellectual Property to SRTA and to perform the Work. Contractor shall defend all suits or claims for infringement of any patent rights and shall defend, indemnify, save and hold SRTA, its agents, and assigns harmless from loss on account thereof resulting from the use by SRTA or any of its employees or agents of equipment supplied under this Contract. This intellectual property infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of SRTA, its employees or agents modifying or altering any part or component, alone or in combination with any other part or component, except as consented to by Contractor.

16. LIMITATION OF LIABILITY

16.1. SRTA. Except for a breach of **Section 13 (Intellectual Property)** or **Section 14 (Confidentiality)**, SRTA shall not, under any circumstances, be liable for any incidental, consequential, special, punitive, exemplary or indirect damages, lost business profits or lost data arising out of this Contract, even if SRTA is informed of the possibility of such damages. SRTA's liability to Contractor, if any, shall be limited to direct damages and in such case, only to the extent of the amount SRTA has paid to or owes Contractor under this Contract for the twelve months immediately preceding Contractor's claim.

16.2. Contractor. Except for a breach of **Section 13 (Intellectual Property)** or **Section 14 (Confidentiality)**, Contractor's liability to SRTA shall be limited to direct damages and in no other event shall Contractor be liable for any incidental, consequential, special, punitive, exemplary or indirect damages arising out of this Contract, even if Contractor is informed of the possibility of such damages.

17. DEFAULT/REMEDIES

17.1. Event of Default. Contractor shall be in breach under this Contract upon the occurrence of any one or more of the following events or conditions:

17.1.1. Contractor has fails to meet the service levels as set forth in **Exhibit E (Service Level Agreement)** of the Contract in the same category for more than three (3) consecutive months or fails to meet the service levels as set forth in **Exhibit E (Service Level Agreement)** of the Contract in any category more than six (6) times in any rolling twelve (12) month period;

17.1.2. Contractor has assigned its rights and obligations under this Contract in violation of this Contract; or,

17.1.3. Any representation in the Contract Documents made by Contractor to SRTA pursuant to the Contract Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made.

17.2. Remedies. Upon an Event of Default, SRTA may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in SRTA's notice to Contractor.

18. CONFLICTS OF INTEREST. The Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Work in a manner that is free of appearance or fact of impropriety. The Contractor promises to allow no such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops.

19. MAINTENANCE. Contractor shall perform the maintenance services and as more fully described in the IFB.

20. MISCELLANEOUS PROVISIONS.

20.1. Compliance with Laws. Contractor shall perform its obligations hereunder in accordance with all applicable federal, State, and local government law.

20.2. Parties Bound. This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.

20.3. Time of the Essence. Time is of the Essence for this Contract.

20.4. Trading with State Employees. Contractor warrants that the provisions of O.C.G.A. §§45-10-20 *et seq.* have not and will not be violated under the terms of this Contract.

20.5. Governing Law and Venue. This Contract is a Georgia agreement made under the laws of the State of Georgia. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum.

20.6. Notices. All notices, notifications, requests, or other communications (excluding invoices) hereunder shall be in writing and transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), to the Parties at the respective addresses set forth below. Invoices may also be sent by U.S. Mail, postage prepaid. Notices will be deemed to have been given when received, unless otherwise noted in the Contract. If a Party refuses to accept delivery or fails to take delivery, notice shall be deemed given on the day delivery is first attempted. Notice may also be given by email, provided a hard copy of the notice is also transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), to the parties at the respective addresses set forth below.

State Road and Tollway Authority
Att: IT Director
47 Trinity Avenue, 4th Floor
Atlanta, Georgia 30334
Phone: (404) 893-6100
Fax: (404) 893-6144
Email: rtipia@georgiatolls.com

Phone:
Fax:
Email:

20.7. Compliance with Laws; Taxes. The Contractor will pay all taxes lawfully imposed upon it that may arise with respect to this Contract.

20.8. Waiver and Severability. The waiver by either Party of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision of this Contract. Any such waiver must be in writing in order to be effective, and no such waiver shall establish a

course of performance between the Parties contradictory to the terms hereof. All provisions of this Contract are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed so as to carry out the full intention of the Parties.

- 20.9. No Third Party Beneficiaries. Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Contract.
- 20.10. Non-Exclusivity. This Agreement is entered into solely for the convenience of SRTA and the State of Georgia, and in no way precludes SRTA from obtaining like goods or services from other suppliers upon prior approval of SRTA. Such approval shall be made at the sole discretion of SRTA, and shall be conclusive.
- 20.11. Headings. The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.
- 20.12. Counterparts. The Parties may execute this Contract in counterparts.
- 20.13. Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction, the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.
- 20.14. Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, Sections **7 (Data Ownership/Security), 10 (Payment Terms), 12 (Warranties), 13 (Intellectual Property), 14 (Confidentiality), 15 (Indemnification), 16 (Limitation of Liability), 17 (Default/Remedies), and 20 (Miscellaneous Provisions)** shall survive the termination for whatever reason of this Contract.
- 20.15. Publicity. Contractor shall not issue a press release or otherwise publicize the Work or this Contract without the prior written permission of SRTA's Director of Marketing and Communications.
- 20.16. Registered Lobbyists. Contractor represents and warrants that Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual, which is incorporated herein by reference.
- 20.17. Entire Contract; Amendment. This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. SRTA shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Contractor which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No amendment to this Contract shall be valid unless made in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed effective as of the day and year first above mentioned.

STATE ROAD AND TOLLWAY AUTHORITY

CONTRACTOR (SEAL)

By: _____
Christopher Tomlinson
Executive Director

By: _____
Name: _____
Title: _____

Witness: _____

Witness: _____

EXHIBIT A
DEFINITIONS.

Business Day(s) means Monday through Friday excluding State recognized holidays.

Confidential Information shall have the same meaning assigned to it in **Section 14 (Confidentiality)** of the Contract.

Contract Documents shall have the same meaning assigned to it in **Section 3 (Inclusion and Priority of Documents)** of the Contract.

Contract shall have the same meaning assigned to it in **Section 3 (Inclusion and Priority of Documents)** of the Contract.

Contractor shall have the same meaning assigned to it in the preamble of the Contract.

Contractor's Proposal shall have the same meaning assigned to it in **Section 3 (Inclusion and Priority of Documents)** of the Contract.

Contractor's Technical Proposal shall have the same meaning assigned to it in the ITB.

Days shall mean calendar days unless otherwise specified in the Contract.

DOAS shall have the same meaning assigned to it in **Section 15.2 (DOAS)** of the Contract.

Effective Date shall mean the date set forth in the preamble of the Contract.

Enhancements shall have the same meaning assigned to it in **Section 13.2 (Intellectual Property)** of the Contract.

Equal Acceptance Testing shall have the same meaning assigned to it in the ITB.

Equipment shall have the same meaning assigned to it in the preamble of the Contract.

Fund shall have the same meaning assigned to it in **Section 15.1 (Indemnification)** of the Contract.

Georgia Open Records Act shall refer to O.C.G.A § 50-18-70 *et seq.*

IFB shall have the same meaning assigned to it in the in the preamble of the Contract.

Intellectual Property shall have the same meaning assigned to it in **Section 12.1.4. (Intellectual Property)** of the Contract.

Maintenance and Support Services shall have the same meaning assigned to it in the preamble of the Contract.

MSRP means the manufacturer's suggested retail price.

Notice to Proceed shall have the same meaning assigned to it in the ITB.

O.C.G.A mean the Official Code of Georgia Annotated.

Party/Parties shall have the same meaning assigned to it in the preamble of the Contract.

SLA or Service Level Agreement shall have the same meaning assigned to it in the ITB.

SRTA means the State Road and Tollway Authority.

State shall mean the State of Georgia.

Term shall have the same meaning assigned to it in **Section 4 (Term)** of the Contract.

Work shall have the same meaning assigned to it in the preamble of the Contract.

EXHIBIT B
The IFB.

Incorporated by reference.

EXHIBIT C
CONTRACTOR'S TECHNICAL PROPOSAL.

Incorporated by reference.

EXHIBIT D
PRICING

EXHIBIT E
SERVICE LEVEL AGREEMENTS

Level of Severity	Description of Severity	Follow-Up	Response SLA	Support
Priority One	Production application down or major malfunction resulting in majority of users unable to perform their normal functions.	SRTA will receive a follow-up communication regarding a Priority 1 Case from Contractor within two (2) hours.	1 Hour	24 x 7
Priority Two	Critical loss of application functionality or performance resulting in high number of users unable to perform their normal functions.	SRTA will receive a follow-up regarding a Priority 2 Case from Contractor within six (6) hours.	3 Hours	24 x 7
Priority Three	Moderate loss of application functionality or performance resulting in multiple users impacted in their normal functions.	SRTA will receive a follow-up about a Priority 3 Case from Contractor within two (2) Business Days.	1 Business Day	24 x 7
Priority Four	Minor loss of application functionality or product feature question.	SRTA will receive a follow-up about a Priority 4 Case from Contractor within five (5) Business Days.	1 Business Day	24 x 7