

TOLL SYSTEM INTEGRATION CONTRACT
BETWEEN
THE STATE ROAD AND TOLLWAY AUTHORITY
AND

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THIS TOLL SYSTEM INTEGRATION PROCUREMENT CONTRACT (“Contract”) is made and entered into as of the _____ day of _____, 2013 (“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 _____ corporation authorized to do business in the state of Georgia (the “TSI Contractor”). SRTA and TSI Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

WHEREAS, SRTA desires to engage a qualified and experienced contractor to provide tolling systems integration services (e.g., design, installation, integration, implementation, and systems maintenance) for certain of SRTA’s Toll Facilities, as more fully described in (a) the Request for Qualified TSI Contractors Tolling Systems Integrator/I-75 South Express Lanes Project and I-75 Northwest Corridor Express Lanes Project RFQC No. 92700-13-100214 and any addenda thereto and any documents referenced therein (collectively, the “RFQC”), (b) the Tolling Systems Integrator/I-75 South Express Lanes Project and I-75 Northwest Corridor Express Lanes Project RFP No. 92700-13-100214 and any addenda thereto and any documents referenced therein (collectively, the “RFP”), and (c) the Contract;

WHEREAS, the TSI Contractor has represented to SRTA that it is experienced and qualified and willing to provide all of the labor, materials, Equipment, and expertise needed to successfully provide the Toll System(s) as that work is more fully described in the RFP;

WHEREAS, SRTA has relied upon such representations and selected the TSI Contractor to furnish the Work; and

WHEREAS, pursuant to OCGA § 32-10-63(5), SRTA is authorized to contract for all Work that in the judgment of SRTA is necessary for completion of the design, construction, installation, testing, implementation, maintenance, and the provision of services and Deliverables (defined below in **Section 5.4-Project Schedule**) for the Projects under the Contract Documents and includes, without limitation, all plant, labor, materials, Equipment, systems, taxes, services and software and other facilities, installation, testing, operations and maintenance and other things necessary or proper for or incidental to the carrying out and completion of the terms of the Contract Documents (“Work”).

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 the Contract.
2. **Definitions.** Certain capitalized terms used herein shall have the meanings assigned to them as set forth in **Exhibit A to this Contract**. Other capitalized terms used but not defined in the Contract have the respective meanings set forth in the RFP.
3. **Inclusion and Priority of Documents.** The RFP, which is incorporated herein by reference as **Exhibit B**, and the TSI Contractor’s Technical Proposal (and any documents referenced therein)

submitted in response to the RFP, which is incorporated herein by reference as **Exhibit C** (collectively, the “TSI Contractor’s Proposal”), are integral parts of this Contract. The RFP, the TSI Contractor’s Proposal, this Contract (including all Change Orders, 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 TSI Contractor and SRTA, and shall control one over another in the following order: Any Amendments to the Contract, the Contract, the RFP, and the TSI Contractor’s Proposal.

- 3.1 Overview. This Contract provides the terms and conditions under which the Parties shall perform their respective roles with regard to the Projects. The terms of the Contract, however, shall govern each Project separately. By way of example and not by limitation, the TSI Contractor shall invoice SRTA separately for each Project pursuant to the terms of **Section 16 (Payment Terms)**. Likewise, **chronic failure (Section 32.1.3)**, shall be measured on a Project basis and not using a measurement based on the performance of the Projects in the aggregate, and Liquidated Damages shall be calculated based on the TSI Contractor’s performance of each Project independent of the other Project.
4. **Contract Term and Renewal.** This Contract shall begin on the Effective Date and shall continue until June 30, 2019 11:59 pm (local Atlanta time) (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 three (3) years each (each renewal a “Renewal Term”). The Initial Term and any and all Renewal Terms may be referred to collectively as the “Term.” The renewal of the Contract shall be at the sole discretion of SRTA and evidenced by an Amendment signed by both Parties. Subsequent to the execution of the Contract by both Parties, the Work to be rendered by the TSI Contractor shall commence by project once SRTA issues the TSI Contractor a Notice to Proceed for a project.
5. **Time and Manner of Performance.**
 - 5.1 **Work in General.** TSI Contractor agrees to provide and deliver all of the Work set forth in the Contract Documents. 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 RFP and, in particular, with each and every standard, specification, provision, criteria and requirement of **Section 3 (Technical Specifications), Section 4 (Project Management, QA/QC, System Design Process, Documentation, Installation and Testing), Section 5 (Training Plan and Program) and Section 6 (Maintenance)** of the RFP. TSI Contractor assumes full responsibility for the performance of the Work in a good and workmanlike manner in compliance with all applicable codes and safety and public health regulations. All Equipment and supplies furnished by TSI 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. TSI Contractor shall perform the services involved in the Work in a workmanlike and professional manner, consistent with the highest level of care and skill exercised by other providers of similar services in the industry.

- 5.2 TSI Contractor's General Responsibilities. TSI Contractor shall furnish all design, engineering and other services, provide construction management and all Work, including all materials, Equipment, labor, and installations, and undertake all efforts necessary or appropriate, excluding only those materials, services and efforts which the Contract Documents expressly specify will be undertaken by the prime contractor to GDOT that will be responsible for the civil work on a particular Project (each a "Civil Contractor") or other Persons, to construct the Project and maintain it during construction, so as to achieve (a) a successful System Integration Test and Open to Tolling and as required in the RFP, including **Sections 4.5.3.4 (I-75S Toll Site and Toll Related ITS Turnover Schedule) and 4.5.3.5 (NWC Toll Site and Toll Related ITS Turnover Schedule) of the RFP** and (b) Project Acceptance. TSI Contractor's general responsibilities also include:
- 5.2.1 *Lane Equipment Installation.* TSI Contractor shall install, replace, and maintain in good condition throughout the Term, Equipment that complies with the requirements of the Contract Documents and that will identify vehicles equipped with a Transponder issued by SRTA (either directly by SRTA or through an SRTA-approved distributor) or, in the instance of interoperability, another toll operator .
- 5.2.2 *Properly Formed Transaction, Trip Building, Transmission to SRTA.* TSI Contractor shall be responsible for capturing data evidencing each Transaction Record and transmitting a properly formed Trip Transaction to SRTA (which will include all of the information required by the Contract Documents for each such Trip) in accordance with the RFP requirements. Without limiting the foregoing, TSI Contractor shall be responsible for determining the applicable toll for each Trip in accordance with the Dynamic Pricing System and transmitting the required data to SRTA pursuant to **Section 3** of the RFP. The TSI Contractor shall provide full reporting, audit trails and reconciliation functionality. Detailed level reports shall support summary level reports and data points (numbers) reconcile between them.
- 5.2.3 *Assistance with Enforcement and Collection Proceedings.* In connection with any dispute regarding a Trip, including in connection with enforcement and collection proceedings brought to collect tolls owed with respect to the Trip, at SRTA's request TSI Contractor, at its expense, shall provide reasonable assistance and cooperation to evidence the proper operation of the Express Lanes Toll Collection System and data furnished to SRTA's CSC as set forth in **Section 5.2.2 of this Contract.**
- 5.2.4 *Mitigation of Delay.* Use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying TSI Contractor's and its TSI Contractors' forces to other work, as appropriate.
- 5.2.5 *Disaster Recovery Plan.* Implementation of data backup and disaster recovery in accordance with **Sections 3.4, 3.7.1 and 4.3.5 of the RFP.**

- 5.2.6 *Requests from Other Government Entities.* Provision to the appropriate Governmental Entities of the State of Georgia of the information required to be furnished by SRTA and related to the Work or the Project pursuant to Laws.
- 5.3 Notice to Proceed. The performance time will begin with the issuance of a Notice to Proceed, which shall be in writing and signed by SRTA's Project Manager.
- 5.4 Project Schedule. All Work and each deliverable set forth in **Sections 3, 4, 5, 6 and Appendix C (Deliverables Schedule) of the RFP** (collectively, "Deliverables" and individually, "Deliverable") shall be performed by the TSI Contractor within the times specified in the **Appendix C (Deliverables Schedule)** or as otherwise set forth in other applicable section of the RFP, as may be amended in writing and signed by SRTA and an authorized representative of the TSI Contractor, and in full cooperation with SRTA, SRTA-designated Representatives, the Georgia Department of Transportation ("GDOT") and GDOT's contractors, including the Civil Contractor. TSI Contractor shall pursue the Work without delay and shall be responsible for liquidated damages in the event of a delay as set forth in **Appendix D (Performance Requirements and SLAs) of the RFP** and **Section 28 of this Contract**. The TSI Contractor shall perform its Work according to the Civil Contractor's Project Schedule, and the SRTA-approved Master Project Schedule which will take into consideration the requirements set forth in **Sections 4.5.3.4 and 4.5.3.5 of the RFP**. SRTA may also reasonably change or amend the Master Project Schedule to accommodate conditions encountered during the progress of the Project. Changes in the Project Schedule will not change the Contract Sum. Unless an extension of time is granted by SRTA pursuant to **Section 17.3 (Delay and Extensions of Time)** of this Contract, TSI Contractor will successfully, fully and entirely complete all Work by the successful testing of Project Acceptance date.
- 5.4.1 *Suspension of Work.* SRTA shall have the authority to suspend, in whole or in part, Work on the Project for (i) failure of the TSI Contractor to correct conditions unsafe for laborers or for the general public, (ii) failure of the TSI Contractor to carry out provisions of the Contract Documents, (iii) failure to carry out SRTA's directions, (iv) unsuitable weather, or other conditions considered unsuitable for the prosecution of all or part of the Work, or (v) for any other condition or reason deemed by SRTA to be in the public interest. Such suspensions shall be for such periods as SRTA deems necessary. TSI Contractor may qualify for an extension of time pursuant to **Section 17.3 (Delay and Extension of Time)** for suspensions that are the result of subsections (iv) or (v) above.
- 5.4.2 *Completion of Construction.* TSI Contractor shall be required to perform the in-road installation of Work and the required testing, along with the delivery of the Deliverables on each Project within the prescribed number of days as set forth in the RFP or Master Project Schedule, as applicable.
- 5.4.3 *Delays by TSI Contractor.* If TSI Contractor is responsible for any delays in the time and sequence of the Project Schedule, TSI Contractor shall pay SRTA for all costs and damages suffered by SRTA as a result of such delays.

5.5 Cooperation. TSI Contractor shall coordinate and cooperate, and require its subcontractors to coordinate and cooperate, with SRTA, GDOT, and any other Persons as provided in **Section 4 of the RFP** to facilitate the full, efficient, effective and timely performance of all such monitoring, inspection, sampling, measuring, testing, reporting, auditing, other oversight functions and all other aspects of the Work, as applicable. TSI Contractor shall cause its representatives and key project staff to be available at all reasonable times for consultation with SRTA.

5.5.1 *With SRTA and SRTA-designated Representatives*. SRTA shall be entitled to full and prompt cooperation of the TSI Contractor in all aspects of the Work for each Project on which TSI Contractor performs Work. TSI Contractor will respond to SRTA's requests for information or other requests for which TSI Contractor's input is needed within the times set forth in the RFP, and if no such time frame is provided for in the RFP, then TSI Contractor will respond to SRTA's requests within the timeframe reasonably requested by SRTA. In addition to the Documentation required to be submitted as set forth in **Section 4 of the RFP**, TSI Contractor shall furnish documentation as anticipated in this Contract, including Escrow Letters, and insurance certificates when and as required by SRTA.

5.5.2 *With the Civil Contractor*. SRTA shall be entitled to full and prompt cooperation of the TSI Contractor in all aspects of the Work. For each Project on which TSI Contractor performs Work, TSI Contractor is required to cooperate with each Civil Contractor, subcontractors and suppliers to the Civil Contractor (as applicable). The TSI Contractor will be required to perform its Work as set forth in the Civil Contractor's Project Schedule, as that schedule may be amended by GDOT and/or SRTA from time to time, and the SRTA-approved Master Project Schedule which will take into consideration the requirements set forth in **Sections 4.5.3.4 and 4.5.3.5 of the RFP**. Prior to the Civil Contractor finalizing the Civil Contractor's Project Schedule, the TSI Contractor will be required to coordinate and cooperate with the Civil Contractor, including giving input regarding the Civil Contractor's Project Schedule as it may relate to TSI Contractor's Work. TSI Contractor shall also cooperate with the Civil Contractor, beginning shortly after GDOT selects the Civil Contractor, regarding design and review of plans and drawings, Requests for Information, and as otherwise set forth in **Section 4 of the RFP**. TSI Contractor shall respond to such requests within the time frames set forth in the RFP and if no time frame is provided, then TSI Contractor must respond as reasonably requested by SRTA. TSI Contractor shall be professional and responsive and thorough in its response to any requested communication, assistance, request for information, as the same may be made by GDOT or the Civil Contractor so as not to delay any aspect of the Work or the work to be performed by the Civil Contractor or its subcontractors or other GDOT contractors. However, TSI Contractor shall only take direction from SRTA and SRTA-designated Representatives. If TSI Contractor alleges that the Civil Contractor or other entity's act or omission to act will result in a delay to TSI Contractor, then no later than two (2) Business Days after the earlier of the commencement of such delay or upon learning of the possibility of a delay, TSI Contractor shall file a written claim with SRTA's Project Manager, detailing with specificity the nature of the

cause of the delay. Failure of TSI Contractor to furnish such notice within the specified time period shall result in the TSI Contractor's waiver of any delay claim resulting from such act or omission to act.

5.5.3 *With Other Third Parties.* TSI Contractor is required to cooperate, as applicable, with other subcontractors and suppliers, utility companies, other governing authorities, and all other entities required to perform work on the Project or otherwise responsible for oversight, supervising, inspecting or performing any part of the Project.

5.5.4 *Performance of Work Directed by SRTA Only.* Notwithstanding any provision to the contrary, TSI Contractor shall only take direction from SRTA or SRTA-designated Representatives regarding any and all aspects of the Work. No other party has the authority to amend or change any aspect of the Project or otherwise direct TSI Contractor with regard to any and all aspects of the Work.

5.6 Project Meetings.

5.6.1 *Civil Contractor Design Coordination Meetings.* Pursuant to **Section 4.6 of the RFP**, TSI Contractor shall be required to participate in progress meetings related to the design, implementation and construction phases of each Project. For construction and implementation meetings that occur early in the Civil Contractor's Project Schedule, TSI Contractor may, upon SRTA's consent, participate in such meetings via telephone. As the Civil Contractor's construction progresses to the point where the TSI Contractor is required to participate in the preliminary and final walk throughs as set forth in **Section 4.5.3.3 (Toll Site Transition/Site Acceptance Requirements) of the RFP**, TSI Contractor shall participate in the construction progress meetings in person.

5.6.2 *Project Progress Meetings.* TSI Contractor shall participate in all Project Progress Meetings as set forth in **Section 4.1.3 of the RFP**, at least once per month, or such other frequency as requested by SRTA to review, discuss and resolve matters relating to coordination, services, quality control, performance, customer service, tolling, payment and other matters arising under the Contract Documents. The Parties shall schedule all meetings at on-site at SRTA's offices unless the Parties mutually agree otherwise.

5.6.3 *Other Internal Project Meetings.* TSI Contractor shall also participate in any other meetings as set forth in **Section 4.1 of the RFP**, as requested by SRTA and/or SRTA-designated Representatives. TSI Contractor and SRTA shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another.

5.7 On-site Coordination.

5.7.1 *Control of Site/Third Party Claims.* TSI Contractor may have to perform Work on the roadway at the same time other contractors are performing their work on the

Project. TSI Contractor may enter the Project site solely to allow TSI Contractor and/or its subcontractor(s) to prepare for and perform the Work. TSI Contractor must coordinate with the Civil Contractor or other contractors, as applicable, regarding access to and from the Project site, and ensure familiarity with the locations in which TSI Contractor may stay within in order to perform the Work. TSI Contractor assumes all risk and liability resulting from or arising out of the acts and inactions of itself, its employees, agents, subcontractors, and suppliers, including but not limited to damage caused to the work performed or Equipment and supplies stored at the Project site.

5.7.2 *Incident Response.* In the event of an incident that may occur on or near the roadway and in which TSI Contractor or its subs may be involved, TSI Contractor shall for itself and its subcontractors, complete any forms and furnish the required information to SRTA or its designated representative. For any incidents that involve the Civil Contractor and/or its subcontractors, TSI Contractor shall complete the forms and furnish the necessary information as required by GDOT or follow other procedures as requested by SRTA or GDOT, as applicable.

5.8 SRTA's Project Manager. SRTA's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, in connection with, or in any way related to or on account of, the Contract Documents. The TSI Contractor agrees that in the event of dispute as to cooperation with the Civil Contractor, other contractors of SRTA or GDOT or with other Governmental Entities, SRTA's Project Manager shall decide all matters in the event of such a dispute and decisions made by SRTA's Project Manager shall be binding, subject only to **Section 31 (Dispute Resolution)** of this Contract.

6. Documentation.

6.1 Accuracy. All Documentation required to be provided to SRTA by the TSI Contractor shall be complete and accurate in all respects and tailored as necessary to the needs of each Project.

6.2 Ownership of Documentation. With the exception of COTS, which will be subject to their own standard terms, TSI Contractor hereby grants to SRTA a fully paid up, perpetual and irrevocable license with the right to use, duplicate and edit Documentation, created by TSI Contractor or TSI Contractor Parties and furnished pursuant to the Contract Documents. TSI Contractor shall obtain fully paid up, perpetual and irrevocable licenses in SRTA's name with the right to use, duplicate and edit Documentation, for Documentation created by third parties.

6.3 SRTA Reviews and Approvals. Notwithstanding any other provision to the contrary, any drawing, report, manual, design document, test plan or other data or Documentation submitted for SRTA's review shall be approved or disapproved within the timeframe set out in **Section 4 of the RFP** and if no timeframe is specified, then SRTA shall respond to TSI Contractor as set forth in **Section 10.2 (Time Periods)** of this Contract. If the item is disapproved then SRTA will provide comments that define the nature and extent of the deficiency. Any approval by SRTA shall not be deemed to relieve or otherwise waive any

of the TSI Contractors obligations or requirements under the Contract Documents, unless the same is the subject matter of an Amendment, and in no case shall such approval or Amendment be deemed a waiver of any applicable rule, regulation or Law.

- 6.4 **TSI Contractor Responses.** TSI Contractor shall incorporate SRТА’s comments and revise Documentation accordingly. TSI Contractor shall provide the revised Documentation to SRТА within the timeframe set out in **Section 4 of the RFP** and if no timeframe is specified, then TSI Contractor shall furnish the revised Documentation no later than five Business Days after receiving SRТА’s comments.
7. **GDOT RFPs.** GDOT issued a Request for Proposals to Develop, Design, Construct and Finance the Northwest Corridor Project through a Design Build Finance Agreement, Project Number CSNHS-0008-00(256), P.I. No. 0008256 (as subsequently amended) (collectively, the “GDOT NWC RFP”). GDOT also issued a Request for Proposals for the I-75 Express Lanes Project, Project Numbers CSNHS-0009-00(156), CSNHS-0009-00(157), P.I. No. 0009156, 0009157 (as may be subsequently amended) (collectively, the “GDOT I-75S RFP”). The GDOT NWC RFP and the GDOT I-75S RFP may be individually referred to as a “GDOT RFP” and collectively referred to as “GDOT RFPs.” The GDOT RFPs are hereby incorporated into the Contract Documents by reference. The TSI Contractor is required to comply with those sections of the GDOT RFPs as those sections are specified in the RFP, as well as those sections of the applicable GDOT RFP that provide requirements for engineering design submittals, review times, Civil Contractor and TSI Contractor coordination, maintenance of traffic, and design and installation requirements that relate to any aspect of the Work. To the extent any provisions of the applicable GDOT RFP conflict with the provisions of the Contract Documents, the provisions of the Contract Documents shall take precedence.
8. **TSI Contractor Personnel.**
- 8.1 **General.** The TSI Contractor shall provide sufficient professional personnel and staffing to provide the Work and so as not to delay any aspect of the Work. TSI Contractor warrants and represents that all Persons assigned to perform under this Contract shall be employees or authorized subcontractors of TSI Contractor, shall be licensed in the State of Georgia (if required by Law) and shall be fully qualified to perform the Work. TSI Contractor shall include a similar provision in any agreement with any subcontractor and/or supplier selected to perform and/or to provide any Work. Personnel commitments, if any, made in TSI Contractor’s Proposal shall not be changed unless approved by SRТА. TSI Contractor’s failure to continuously provide adequate staffing to prosecute the Work competently and according to the Master Project Schedule may result in the termination of this Contract for TSI Contractor default. All of TSI Contractor’s and TSI Contractor Parties’ personnel shall comply with SRТА’s confidentiality and security requirements while on SRТА’s premises or otherwise performing the Work, including but not limited to obtaining criminal background checks and the execution of confidentiality agreements. All of TSI Contractor’s and the TSI Contractor Parties’ personnel shall comply with GDOT’s requirements (security, lane closure, etc.) while performing Work in, near or about the roadway. TSI Contractor shall refer to the applicable GDOT RFP, each of which is incorporated herein by reference, for a more detailed description of the special provisions, rules and regulations with which TSI Contractor must comply when performing

Work in, on or near the roadway.

- 8.2 SRTA's Right to Remove. SRTA shall have the right to require the TSI Contractor to remove an employee from performing under this Contract based on cause or other reasonable standard. In the event of such removal, TSI Contractor will replace the employee with the appropriate skilled personnel within the time reasonably specified by SRTA.
- 8.3 TSI Contractor's Project Manager. TSI Contractor shall at all times provide a Project Manager approved by SRTA who (a) will have full responsibility for the prosecution of the Work, including design and construction of the Work, (b) will act as agent and be a single point of contact on all daily Project decisions and Project-related matters on behalf of TSI Contractor, (c) will be present or available at the Site at all times that Work is performed, and (d) will be available to respond to SRTA upon SRTA's request. Notwithstanding the above, the Project Manager may appoint a designee from time to time, with SRTA's approval, to be available or otherwise present whenever Work is performed. TSI Contractor agrees that TSI Contractor's Project Manager shall have the authority to make decisions and to bind TSI Contractor to decisions made by the TSI Contractor's Project Manager and to documents signed by the TSI Contractor's Project Manager in furtherance of the Project and/or the Work, provided however, that the TSI Contractor's Project Manager shall have no authority to bind the TSI Contractor to pricing or other Change Orders unless the same have been executed by TSI Contractor's _____. TSI Contractor may change the designated Project Manager as set forth in **Section 8.4 (Key Personnel) of the Contract**. TSI Contractor shall cause its Project Manager to cooperate and coordinate with SRTA and SRTA-designated Representatives in the administration of this Contract.
- 8.4 Key Personnel. TSI Contractor shall not substitute key personnel included in the organization chart(s) as required under **Section 4.1.1 (Project Management Plan)** of the RFP and assigned to this Contract without the prior written approval of SRTA. Any desired substitution shall be noticed to SRTA, accompanied by the names, experience and references of TSI Contractor's recommend substitute personnel. In addition to the information required to be included in the Project Management Plan pursuant to **Section 4.1.1 (Project Management Plan)**, the Project Management Plan shall also specify the on-site availability of Key Personnel. Notwithstanding any provision in the Contract Documents to the contrary, the TSI Contractor's Project Manager shall be considered one of the Key Personnel.
- 8.5 Prevailing Wages. TSI Contractor shall pay or cause to be paid to all workers employed by it or its subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts. TSI Contractor shall comply and cause its subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). It is TSI Contractor's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Contract is in effect, TSI Contractor shall bear the cost of such changes and shall have no claim against SRTA on account of such changes.

- 8.6 Immigration Act. TSI Contractor and its subcontractors shall comply with the Georgia Immigration & Compliance Act (“Immigration Act”), O.C.G.A. § 13-10-90, *et seq.* TSI Contractor must certify compliance with the Immigration Act using the form attached as **Appendix R to the RFP**. The required certificates and affidavits must be filed with SRTA and copies maintained by TSI Contractor and each of the TSI Contractor Parties as of the Effective Date, recertified as of July 15 of each year and upon final completion of the Work for each Project. State officials, including officials of the Georgia Department of Labor and SRTA, retain the right to inspect and audit the Project and employment records of TSI Contractor and its subcontractors without notice during normal working hours until the Work under the applicable Project is complete, and as otherwise specified by Law.
- 8.7 No Discrimination. TSI Contractor shall not, and shall cause any subcontractor to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the services under this Contract. TSI Contractor shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by TSI Contractor to carry out these requirements is a material breach of this Contract, which may result in termination hereof or such other remedy permitted hereunder as SRTA deems appropriate. TSI Contractor shall include this provision in every subcontract (including purchase orders) pertaining to the Work under this Contract.
- 8.8 Equal Employment. TSI Contractor confirms for itself and its subcontractors providing Work under this Contract that TSI Contractor and each such subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap and that TSI Contractor and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. TSI Contractor shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions of the Law, and shall require the TSI Contractor Parties to comply with such Laws.

9 **Site Conditions.**

- 9.1 Site Investigation. TSI Contractor has carefully and thoroughly reviewed the site conditions where the Northwest Corridor Project and the 75 South Express Lanes Project will be located. For all other Projects, TSI Contractor will carefully and thoroughly review the site conditions of each such Project prior to executing an Amendment adding such Work to this Contract. For each such Project site, TSI Contractor is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work, unless otherwise set forth in the applicable Amendment. TSI Contractor agrees that the conditions at the Northwest Corridor Project and the 75 South Express Lanes Project are sufficient and no changes need to be made for TSI Contractor to perform completely and fully the Work as set forth in the Contract Documents. TSI Contractor agrees that the conditions of any other Project added to this Contract by way of Amendment are at the time such Amendment is signed sufficient and no changes need to be made for TSI Contractor to perform completely and fully the Work as set forth in the Contract Documents unless otherwise set forth in the applicable Amendment. The apparent silence of any specification as to any detail, or the apparent omission of detailed description

concerning any point, shall be interpreted to mean that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon receipt of any notice of noncompliance issued by SRTA, TSI Contractor shall supply written proof of compliance within ten (10) Days.

- 9.2 Differing Site Conditions. TSI Contractor shall not proceed with performing Work or otherwise shall halt affected Work in progress upon discovering (a) subsurface or latent physical conditions at the Project site which differ materially from those indicated in the Contract Documents, (b) unknown physical conditions at the Project site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, or (c) improper, incorrect or incomplete work performed by or being performed by the Civil Contractor or other contractors performing work on the Project to the extent that such work may impact, interfere with or otherwise hinder TSI Contractor's performance or quality of the Work. Immediately upon discovering any of the conditions described in this **Section 9.2**, but no later than two (2) Business Days after such discovery, TSI Contractor shall immediately and in writing notify SRTA's Project Manager. SRTA shall investigate the site conditions promptly after receiving TSI Contractor's notice. If the conditions do materially differ and as a direct result such materially changed conditions cause an increase or decrease in the TSI Contractor's cost of, or the time required for, performing any part of the Work, an equitable adjustment shall be made pursuant to this **Section 9.2** and the Contract shall be modified in writing accordingly.

No request by the TSI Contractor for an adjustment to the Contract price or for an extension of time under this clause shall be allowed, unless the TSI Contractor had given the written notice required in this **Section 9.2**.

10 **Review and Oversight/Approvals.**

- 10.1 Submittal, Review and Approval Terms and Procedures. This **Section 10** sets forth terms and procedures that shall govern the submission, review and approval of applicable Deliverables and any other document, plan, schematic, drawing or otherwise that the TSI Contractor will furnish to SRTA for SRTA's review and/or approval pursuant to the Contract Documents or the Project Management Plan and component plans thereunder (individually, "Submittal" and collectively, "Submittals"). In the event there are no provisions in the Contract Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section shall govern and control.
- 10.2 Time Periods. Except as expressly set forth in **Section 4 of the RFP** or as provided below in **Sections 10.2.1 and 10.2.2** below or elsewhere in this Contract, whenever SRTA is entitled to review and comment or otherwise approve a Submittal, SRTA shall promptly respond and/or act upon such Submittal generally within twenty-one (21) Days from the date it receives an accurate and complete Submittal, together with a completed transmittal form acceptable to SRTA and all necessary information and documentation concerning the subject matter of the Submittal. Any period of review by SRTA in excess of thirty (30) Days, except where **Section 4 of the RFP** provides for a longer time period, may give rise

to an extension of time as set forth in **Section 17.3 (Delay and Extensions of Time) of this Contract**. If any item is disapproved then SRTA will provide comments that define the nature and extent of the deficiency.

10.2.1 *Time Periods*. The time periods set forth in the RFP for SRTA's review and approval of Submittals, as and to the extent required, shall apply to and restart with all re-Submittals which TSI Contractor may be required to provide.

10.2.2 *Extension of Time Periods*. All time periods for SRTA to act upon Submittals shall be extended by the period of any delay caused by (a) a Force Majeure Event, (b) change in Law, (c) issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any material portion of the Work, and (d) to the extent of any delay of the TSI Contractor or any TSI Contractor Parties.

10.3 Resolution of SRTA's Comments/Objections. SRTA's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

10.3.1 *Comply with Requirements*. The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term or provision of the Contract Documents or Project Management Plan and component plans thereunder;

10.3.2 *Good Industry Practice*. The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

10.3.3 *Incomplete*. TSI Contractor has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that SRTA assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval;

10.3.4 *Law*. Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval,

10.3.5 *Not a Typical SRTA Arrangement*. In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not arrangements that SRTA offers or accepts for addressing similar circumstances affecting its own projects; or

10.3.6 *Unprofessional*. The submittal contains a multitude of grammatical errors, or otherwise contains incorrect references, or is generally unprofessional.

10.4 TSI Contractor Review and Comments. TSI Contractor shall timely and promptly respond to all of SRTA's comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this **Section 10.4**. TSI Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this **Section 10**. If TSI Contractor prefers not accommodate or otherwise resolve any comment or objection, TSI Contractor shall deliver to SRTA within a reasonable time period, not to exceed five (5) Business Days after receipt of SRTA's comments or objections, a written explanation why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion. The TSI Contractor's Project Manager and SRTA's Project Manager shall, subject to **Section 31 (Dispute Resolution) of this Contract**, resolve any conflict.

10.4.1 *Good Industry Practice.* The foregoing shall in no way be deemed to obligate TSI Contractor to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a SRTA Change.

10.4.2 *Failure to Notify.* If TSI Contractor fails to notify SRTA within such time period, SRTA may deliver to TSI Contractor a written notice stating the date by which TSI Contractor was to have addressed SRTA's comments and that if TSI Contractor does not address those comments within five (5) Business Days after receipt of this notice, then that failure shall constitute TSI Contractor's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a Relief Event, Compensation Event or other Claim.

10.5 Limitations on TSI Contractor's Right to Rely. No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of acceptance and Project Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of SRTA or GDOT or their representatives or agents, and no lack thereof by SRTA or GDOT, or their representatives or agents, shall constitute acceptance of materials or Work or waiver of any legal or equitable right under the RFP, at Law, or in equity. SRTA shall be entitled to remedies for unapproved deviations and nonconforming Work and to identify additional Work which must be done to bring the Work and Project into compliance with requirements of the RFP, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by SRTA, the Civil Contractor, GDOT or other GDOT contractors, or their representatives or agents. Regardless of any such activity or failure to conduct any such activity by SRTA, the Civil Contractor, GDOT or other GDOT contractors, or their representatives or agents, TSI Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the RFP. Any approval by SRTA shall not be deemed to relieve or otherwise waive any of the TSI Contractors

obligations or requirements under the Contract Documents, unless the same is the subject matter of an Amendment, and in no case shall such approval or Amendment be deemed a waiver of any applicable rule, regulation or Law. TSI Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by SRTA, or SRTA-designated representatives:

- 10.5.1 is solely for the benefit and protection of SRTA;
- 10.5.2 does not relieve TSI Contractor of its responsibility for the selection and the competent performance of all TSI Contractor-Related Entities;
- 10.5.3 does not create or impose upon SRTA or GDOT any duty or obligation toward TSI Contractor to cause it to fulfill the requirements of the RFP;
- 10.5.4 shall not be deemed or construed as any kind of warranty, express or implied, by SRTA;
- 10.5.5 may not be relied upon by TSI Contractor or used as evidence in determining whether TSI Contractor has fulfilled the requirements of the Contract Documents; and
- 10.5.6 may not be asserted by TSI Contractor against SRTA as a defense, legal or equitable, to, or as a waiver of or relief from, TSI Contractor's obligation to fulfill the requirements of the Contract Documents.

10.6 TSI Contractor Not Relieved of Obligations. TSI Contractor shall not be relieved or entitled to reduction of its obligations to perform the Work in strict accordance with the RFP, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in **Section 10.5 above** or the failure to conduct any such activity. Such activity by SRTA shall not relieve TSI Contractor from liability for, and responsibility to cure and correct, any unapproved deviations, nonconforming Work or TSI Contractor Events of Default.

11 **Testing.** In addition to the requirements set forth in **Section 4 of the RFP**, SRTA shall have the rights set forth in this **Section 11**.

11.1 Inspection and Testing; Limitations. At all times during the Term of this Contract, SRTA shall have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the Contract Documents, including without limitation:

11.1.1 conducting field monitoring and inspections on an audit basis as indicated in the RFP;

11.1.2 attending and witnessing TSI Contractor's tests and inspections; and

11.1.3 SRTA shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable Management Plans. TSI Contractor shall provide to SRTA all applicable test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within ten (10) Days after TSI Contractor receives them.

11.2 Failure to Pass any Testing. If TSI Contractor fails in whole or in part any test required by **Section 4 of the RFP**, as such applicable provision in the RFP defines such failure, then:

11.2.1 SRTA shall withhold approval and any associated payments due until the completion of any and all corrective action and the successful completion of any and all retests; and

11.2.2 in the event of any re-testing, TSI Contractor shall pay for (a) the costs of SRTA employees to participate in and to attend each re-testing, including travel, meals and lodging (but not the cost of any SRTA employee salary), (b) the consulting fees and the costs of SRTA consultants to participate in and to attend, including travel, meals and lodging, and (c) all of TSI Contractor's costs and fees. SRTA employees and SRTA consultants shall comply with the State and SRTA travel policies. TSI Contractor shall make payment to SRTA for these expenses within thirty (30) Days of TSI Contractor's receipt of an invoice from SRTA listing such expenses.

12 **Integration with Work Performed by Other GDOT TSI Contractors.** The Work includes interfacing the Electronic Toll Collection System with GDOT's ITS systems. TSI Contractor will coordinate with the Civil Contractor and GDOT's TMC Contractor, as needed, to define and implement the interface (see **Section 3.5.5.3 of the RFP** for more details). Each Civil Contractor will perform all work associated with the design and construction of the applicable Project, to include all roadways and associated infrastructure necessary to construct the Project in accordance with the Civil Contractor's design schematic of the Project. Each Civil Contractor must coordinate with GDOT, SRTA, adjacent Governmental Entities and the TSI Contractor in the design of their respective Project. The TSI Contractor will be required to work closely with each Civil Contractor. The TSI Contractor shall also coordinate and work closely with SRTA, GDOT and the GDOT's TMC Contractor in the design and integration the SRTA TOC work area(s).

12.1 Minimize Disruption. Without limiting the foregoing, TSI Contractor shall cooperate and coordinate with SRTA, GDOT and any third party that owns, constructs, manages, operates or maintains a Related Transportation Project with regard to the construction, maintenance and repair programs and schedules for such Related Transportation Facilities, in order to minimize disruption to the operation thereof.

12.2 TSI Contractor Access to Plans. To assist TSI Contractor, SRTA shall provide to TSI Contractor during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of SRTA, GDOT or their contractors and consultants pertaining to Related Transportation Facilities. TSI Contractor, at its expense, shall have the right to make copies of the same. TSI Contractor, at its expense, shall conduct such other inspections,

investigations, document searches, surveys and other work as may be necessary to achieve compatibility, integration and transition with those Related Transportation Facilities identified in the RFP.

- 12.3 Notice of Conflict or Potential Conflict. In the event TSI Contractor believes that the Civil Contractor, its subcontractors or other GDOT Contractors are not cooperating with or otherwise coordinating with TSI Contractor, TSI Contractor shall immediately advise SRТА but no later than two (2) Business Days after the TSI Contractor alleges that Civil Contractor is not cooperating with the TSI Contractor, detailing with specificity the nature of failure or lack of cooperation. Failure of TSI Contractor to furnish such notice within the specified time period shall result in the TSI Contractor's waiver of any delay claim resulting from such lack of cooperation.

13 Subcontracting and Assignment.

- 13.1 Assignment. TSI Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of SRТА, which may be withheld for any reason, provided however corporate restructure shall not be deemed an assignment hereunder.

- 13.2 Subcontracting. Nothing contained herein shall prevent TSI Contractor from employing independent professional associates, subcontractors and suppliers as TSI Contractor may deem appropriate to assist in the performance of Work hereunder. However, TSI Contractor shall not subcontract Work to subcontractors and/or suppliers that are different from those subcontractors and/or suppliers listed in TSI Contractor's Proposal, without obtaining SRТА's prior written approval, which approval is within SRТА's sole discretion. SRТА shall have the right to require the TSI Contractor to remove a subcontractor and/or supplier of TSI Contractor from performing under this Contract, if in SRТА's reasonable opinion, such subcontractor and/or supplier:

13.2.1 is not performing its portion of the Work satisfactorily;

13.2.2 is failing to cooperate as required in the Contract Documents;

13.2.3 is posing a security risk to the Project or to SRТА's business;

13.2.4 is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Work being performed by the subcontractor and/or supplier; or

13.2.5 presence on the Project is not in the best interest of SRТА.

In the event of such removal, TSI Contractor will replace the subcontractor and/or supplier with a suitable replacement within a reasonable time specified by SRТА.

- 13.3 TSI Contractor Remains Responsible. If TSI Contractor subcontracts any of the Work to be performed under this Contract, TSI Contractor shall be as fully responsible to SRТА for the acts, errors, or omissions of TSI Contractor's subcontractor and/or supplier and of the

persons employed by them as TSI Contractor is for the acts and omissions of persons directly employed by TSI Contractor. TSI Contractor shall be obligated to assist SRTA in the enforcement of any rights that SRTA has against subcontractor. Notwithstanding any subcontract or agreement with any subcontractor, TSI Contractor shall be fully responsible for all of the Work on this Project. Notwithstanding any provision to the contrary, TSI Contractor shall be responsible to SRTA for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether TSI Contractor or its subcontractors, suppliers, independent contractors, agents or assigns perform any aspect of the Work.

13.4 Mandatory Terms in Subcontracts. Nothing contained in this Contract shall create any contractual relationship between any subcontractor of TSI Contractor and SRTA. Any subcontract entered into as a result of this Contract, except those exclusively regarding third-party materials, suppliers, and COTS hardware and software supplied by the TSI Contractor under the Contract, shall contain all applicable provisions of this Contract that in any way relate to a Deliverable or item of Work that the applicable TSI Contractor Party will perform and/or furnish, as well as provisions pertaining to, records, and payment methods. The TSI Contractor shall further ensure that all subcontracts entered into by TSI Contractor for any Work to be performed or Equipment or materials supplied grant SRTA all of the rights and privileges of such subcontract, including but not limited to (so long as SRTA is not in default of its obligations under this Contract) SRTA's right to secure materials, Equipment or services from the subcontractor that might be a part of the subcontractor's Work.

13.5 Timely Payments to Subcontractors/Violation of this Section. TSI Contractor warrants that it shall make timely payments for Work performed to any subcontractor or supplier hereunder and TSI Contractor shall indemnify and hold harmless SRTA and the State for any breach of this warranty.

13.6 Failure to Comply. Any assignments or subcontracts made in violation of **Sections 13.1 (Assignment) and/or 13.2 (Subcontracting)** shall be null and void.

14 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 TSI Contractor is an independent TSI 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. TSI 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.

- 14.1 Joint Venture/Partnership. If TSI Contractor is a joint venture or partnership then each member of the joint venture or partnership shall be jointly and severally liable to SRTA and to the State for any and all obligations, responsibilities, liabilities, damages, liquidated damages, warranties or otherwise arising under the Contract Documents.
- 15 **Safety Precautions.** The TSI Contractor shall be solely and completely responsible for the safety of all persons and property in any way related to the Work and comply with the rules and regulations of OSHA, GDOT and any other Governmental Entity responsible for safety of labor, the Work performed in, on or about the lanes, and/or Work performed at any other work site related to the Project. The TSI Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from their improper construction, maintenance, or operations. The TSI Contractor shall erect and properly maintain at all times as required by the conditions and progress of the work proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by TSI Contractor's operations. TSI Contractor shall designate a responsible member of its organization whose duty shall be the prevention of accidents. In the absence of notice to the contrary, filed with SRTA in writing, this person shall be the superintendent of the TSI Contractor. TSI Contractor shall furnish any and all Material Safety Data Sheets applicable to TSI Contractor's work to SRTA prior to commencing work under this Contract.
- 16 **Payment Terms.** Rates on the pricing sheets include taxes, benefits, ancillary costs, overhead, profit and any other monetary component.
- 16.1 General. For satisfactory performance of the Work, SRTA hereby agrees to compensate the TSI Contractor in accordance with the prices set forth in **Exhibit E (Pricing Schedules)**.
- 16.2 Retention. Work to be performed shall be subject to a retainage of ten percent (10%) of the invoiced and paid amount associated with any aspect of the Work. The retainage shall be paid upon Final Invoice (defined below in **Section 16.13 (Final Payment)**), less any amounts due SRTA pursuant to other sections of the Contract Documents.
- 16.3 Trust Funds. All payments made by SRTA to TSI Contractor for the Work under the Contract Documents shall be held in trust by the TSI Contractor for the purpose of paying its employees and TSI Contractor Parties who provided any part of the Work.
- 16.4 Overpayment. In the event an overpayment is made to TSI Contractor under this Contract, TSI Contractor shall immediately refund to SRTA the full amount of any such erroneous payment or overpayment following TSI Contractor's written notice of such erroneous payment or overpayment, as issued by SRTA. Except in the case of a good faith dispute, if TSI Contractor fails to refund the erroneous payment or overpayment within a 30-Day period, SRTA shall be entitled to interest at one percent (1%) per month on the amount not repaid from the date of overpayment. The provisions in this Section shall survive the expiration or termination of this Contract.
- 16.5 Reduction of Payment for Non-conforming Services. If any defined action, duty or service or part required by the Contract is not performed by the TSI Contractor in

accordance with the requirements of the Contract, the value of such action, duty or service or part thereof will be determined by SRTA and deducted from any invoice claiming such items for payment. If the action, duty or service or part thereof has been completed and is not in conformance with the Contract Documents, the TSI Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the non-conforming work) will be withheld by SRTA from any invoice until such time as the Work is corrected in accordance with the Contract Documents.

- 16.6 Withholding Payments. SRTA reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for Work not completed or not completed in accordance with the Contract Documents. Any and all such payment previously withheld shall be released and paid to TSI Contractor promptly when the Work is subsequently performed in accordance with the Contract Documents.
- 16.7 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 nor shall payment waive any preceding or then-existing breach or default by the TSI Contractor of any term, covenant or condition of the Contract Documents. Additionally, payment shall not extend or affect (a) the service of any notice, any dispute resolution procedures; (b) any time within which the TSI Contractor is required to perform any obligation; or (c) any other notice or demand.
- 16.8 Net 30 Days. SRTA agrees to pay TSI Contractor in accordance with its normal processes and procedures for all undisputed amounts within thirty (30) Days of receipt of a valid invoice, provided SRTA or SRTA-designated Representatives, as applicable, received, approved and/or issued an Acceptance for the particular component of Work or phase of Work and/or TSI Contractor successfully completed the Project Acceptance Testing set forth in the RFP.
- 16.9 Invoicing. The TSI Contractor shall deliver to SRTA an invoice on a monthly basis. Each invoice shall only include a request for payment for a Deliverable that was completed, tested and accepted, as those requirements are set forth in the Contract Documents for such Deliverable, the previous month. The TSI Contractor will submit an itemized billing, identifying the date and a description of the Equipment delivered, the address to where the Equipment was delivered, the documentation furnished or the labor and services rendered the previous month, the status of any on-going Work (i.e., the percent to completion of task or milestone), a detailed account or description of the Work performed during the time period to further or complete a component of Work, and notification if a component of the Work or milestone has been completed. Along with each invoice, the TSI Contractor will provide any necessary backup documentation, certifications and test results, as required in the Contract Documents.
- 16.10 No Disruption of Work. Except as specifically set forth in **Section 17.3 (Delay and Extensions of Time)**, under no circumstances whatsoever, shall Work to be provided by the TSI Contractor be withheld, disrupted or delayed due to non-payment by SRTA pursuant to any provision of **Section 16 (Payment Terms)** or for any other reason. TSI

Contractor's failure to comply with this **Section 16.10** shall be considered an Event of Default as set forth in **Section 32 (Default; Damages/Remedies)**.

- 16.11 Right of Set Off. SRTA may retain or set off any amount owed to it by TSI Contractor.
- 16.12 Full Compensation. All Work performed by the TSI Contractor in meeting the requirements of the Contract Documents shall be paid as set forth above, which shall constitute full compensation for the Work, including but not limited to (a) the cost of all insurance and bond premiums, taxes, home office, job site and other overhead, and profit relating to TSI Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Work (including all costs of all Work provided by subcontractors and suppliers); (c) the cost of obtaining all Governmental Approvals and all costs of compliance with and maintenance of such Governmental Approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the progress payment schedule for the Work as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any Equipment, materials, supplies, documentation, labor or services included therein.
- 16.13 Final Payment. Final payment and retainage shall not be due to TSI Contractor until Project Acceptance and each and every component of the Work is delivered to and accepted by SRTA and there are no outstanding claims against TSI Contractor. TSI Contractor shall submit a final invoice to SRTA within thirty (30) Days of the Project Acceptance ("Proposed Final Invoice"). All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. SRTA will review TSI Contractor's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within sixty (60) Days of SRTA's receipt, accompanied by any claims, if applicable. Based on SRTA's response, TSI Contractor shall submit a final invoice ("Final Invoice") incorporating any changes or corrections made by SRTA, together with any additional requested information or documentation. If SRTA agrees with all requests for compensation in the Final Invoice, SRTA will pay the entire sum found due within thirty (30) Days of its receipt. If SRTA disputes any amounts submitted for compensation, SRTA shall notify TSI Contractor within a thirty (30) Day period, identifying those items in the Final Invoice that SRTA disputes, along with a written explanation of the basis of the dispute. If SRTA fails or refuses to act on a Final Invoice within the required time period, the amount submitted for compensation shall be deemed to have been accepted by SRTA on the last day of the period within which SRTA was required to respond. The provisions of **Section 16.8 (Net 30 Days)** shall not apply to the provisions of this **Section 16.13** and the Final Invoice.
- 16.14 Firm Price Period. The prices for each Project, as set forth in **Exhibit E (Pricing Schedules)**, shall be firm until the TSI Contractor performs five years of maintenance for each Project independent of the other Project. If the Contractor wishes to increase the price of any line item listed in **Exhibit E** (with the exception of warranty and maintenance pricing as that pricing is detailed in **Exhibit E Tabs 4, 5, and 6 of the Contract** which pricing shall remain firm as set forth in the first sentence of this **Section**

16.14) then no later than twelve months prior to conclusion of the Initial Term, Contractor shall notify SRTA of such intent and the new pricing proposed by Contractor.

17 **Contract Changes.**

17.1 **Allowable Changes.** Contract changes will only be allowed to address (1) variances in the original quantities tabulated pursuant to the RFP, provided however, the variances are due to a change in the scope of Work (by way of example and not by limitation, if the quantity increases because TSI Contractor's solution as set forth in the Proposal does not meet the requirements of the Contract Documents, then any increase in quantity may not be subject to a Change Order), (2) variances in the scope of Work where there is a different functionality beyond that contained in the Contract Documents and for which there is no appropriate pay item or category (the Parties understanding that such additional work may be subject to a new competitive procurement if deemed by SRTA to be in its best interest), (3) a decrease in the scope of Work, regardless of whether there is an appropriate pay item or category, (4) additional or reduction in tolling projects, (5) the decision by the State to cancel or otherwise reduce the scope of a Project, and (6) an extension of time to the extent a delay is caused by events listed in **Section 17.3 (Delay and Extensions of Time)**. No change in or modification, termination or discharge of the Work or any component thereof, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by SRTA's Project Manager and an authorized representative of the TSI Contractor. Failure to comply with the terms of **Section 5.5.2 (With the Civil Contractor) of this Contract** will result in a denial of the claim to the extent such claim was allowed under items 1-4 of this **Section 17.1**.

17.2 **Change Order.** A Change Order shall consist of only such additions, deletions or other revisions to the Work which represent a change from the scope of Work and do not arise from the actions or inactions of the TSI Contractor, as determined by SRTA. The TSI Contractor shall perform at no additional cost to SRTA, all such additions, deletions and other revisions, the need for which arises from the actions or inactions of the TSI Contractor or TSI Contractor Parties. An increase or a decrease in the amount due to TSI Contractor pursuant to the Contract Documents as set forth in the Total System Price for the applicable Project **on Tab 4 or Tab 5, as applicable, of Exhibit E of the Contract** of TSI Contractor's Proposal (each the "Contract Sum") for the Work included in a Change Order shall be as set forth in the Change Order. A Change Order may result in acceleration or deceleration of the Project Schedule for performance of both the Change Order and any other Work directly affected by the Change Order, as agreed upon in writing by the TSI Contractor and SRTA, and included in the applicable Change Order.

17.2.1 ***Change Order Proposal.*** SRTA may initiate the Change Order procedure by a notice to the TSI Contractor setting forth the proposed Change Order. Within ten (10) Business Days thereafter, the TSI Contractor shall provide a detailed proposal which includes proposed prices and a proposed schedule for performance ("Change Order Proposal"). SRTA may extend the time within which TSI Contractor shall provide the detailed Change Order Proposal. Granting any such extension shall be in SRTA's reasonable discretion and must

be in writing signed by SRTA's Project Manager. The Change Order Proposal may be accepted by SRTA or modified by negotiations between the TSI Contractor and SRTA, whereupon a written Change Order, governed by the terms and conditions of this Contract, shall be executed by both Parties.

17.2.2 *Disputed Work.* If the Parties fail to reach agreement with respect to the Change Order Proposal, SRTA may nevertheless direct the TSI Contractor to proceed with the Work included in the Change Order Proposal (which for purposes of **Section 17 (Contract Changes)** shall be hereinafter defined as "Disputed Work"). In the event of such Disputed Work, the TSI Contractor shall be obligated to proceed immediately upon notice from SRTA to perform the Disputed Work and shall be compensated by SRTA in accordance with time and Equipment rates in **Exhibit E (Pricing Schedules)** of this Contract. If there are no applicable Equipment rates in **Exhibit E (Pricing Schedules)**, then SRTA shall pay TSI Contractor for the actual cost to obtain such Equipment and/or labor at the rate charged TSI Contractor plus a 9% markup. The TSI Contractor shall furnish weekly status reports regarding Disputed Work, including such documentation as SRTA may require in order to support all costs of the Disputed Work. The TSI Contractor agrees to maintain and furnish SRTA with time and materials records that will substantiate the TSI Contractor's costs for Disputed Work.

17.3 Delay and Extensions of Time. Subject to any limitations, claims submission requirements and other conditions set forth in the Contract Documents, and provided that no relief will be available to the extent that (i) the events are within TSI Contractor's or TSI Contractor Parties' control, or are due to any wrongful act, wrongful omission, negligent act or negligent omission, recklessness, willful misconduct, breach of Contract or Law or violation of a Governmental Approval of TSI Contractor or any of the TSI Contractor Parties; or (ii) the events (or the effects of such events) could have been avoided by the exercise of reasonable caution, due diligence, or other reasonable efforts by TSI Contractor or TSI Contractor Parties, SRTA will only grant an extension of time if the TSI Contractor is delayed in the progress of the Work and the delay is the direct result of (1) a negligent act of SRTA, (2) the performance of work by the Civil Contractor (or GDOT's other contractors) within the Right of Way that directly disrupts TSI Contractor's on-site Work, or (3) an event listed in **Section 44.3 (Time of the Essence/Force Majeure)**. If and when such event occurs, then the time of completion set forth in the TSI Contractor's Schedule shall, unless otherwise agreed to in writing by the Parties, be extended equal to the time lost as a result of the delay. The TSI Contractor expressly agrees that the TSI Contractor's sole and exclusive remedy for delay shall be an extension of Contract time and that the TSI Contractor shall not be entitled to any damages and shall make no demand for any damages. No such extension shall be made for delay occurring more than ten (10) Days before claim thereof is made in writing to SRTA. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the TSI Contractor, within ten Days from the cessation of the delay, shall have given notice in writing to SRTA, with copy to SRTA, as to the amount of additional time claimed.

17.4 Delays Caused by Other Contractors. TSI Contractor shall not be entitled to any impact costs for delay for the first one hundred and twenty (120) cumulative Business Days of delay due to interference or work of separate contractors engaged by GDOT, SRTA or any other Governmental Entity with respect to the Project.

18 **Hardware/Equipment/Materials/Supplies.**

18.1 Equipment. TSI Contractor shall obtain in SRTA's name and SRTA shall own all of the Equipment as required by the Contract Documents. In particular, TSI Contractor shall purchase on behalf of SRTA all in lane and roadside equipment and hardware that will be deployed for each Project, including the controller cabinets and hub equipment. If the TSI Contractor offers a hosted solution, then anything on the roadside (e.g., network and tolling Equipment) will be owned by SRTA and all Equipment and hardware at the hosted site (e.g., servers, storage, etc.) will be owned by SRTA. For clarification purposes, the data remains at all times the sole property of SRTA and the software shall be licensed to SRTA as set forth in **Section 24.3 (License) of the Contract**. SRTA shall pay for these items as more specifically set forth on **Exhibit E (Pricing Schedules)**. The Equipment shall in all ways during the Term, conform to the requirements for each item of Equipment as set forth in the Contract Documents regardless of the fact that SRTA shall maintain ownership.

18.1.1 *Bill of Sale.* Any invoices furnished by TSI Contractor to SRTA for Equipment and Spares shall have an original and signed Bill of Sale in SRTA's name on a form substantially similar to that on **Exhibit H (Bill of Sale)** or other document reasonably acceptable to SRTA that fully evidences SRTA's ownership as required in the Contract Documents.

18.1.2 *FOB Destination.* Transportation of all software, Equipment, supplies and any other item that must be transported so that TSI Contractor may furnish the Work, shall be FOB Destination. Freight, handling, hazardous material charges, taxes, and distribution and installation charges shall be included in the total price of each item as set forth in **Exhibit E (Pricing Schedules)**. Any additional charges will not be honored for payment unless authorized in writing by SRTA. If a party other than TSI Contractor ships materials against this Contract, the shipper shall be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment. A complete packing list shall accompany each shipment.

18.1.3 *Maintenance.* TSI Contractor shall maintain in good working order throughout the Term of the Contract, the Electronic Toll Collection System and all of its subsystems as set forth in **Section 6 and Appendix D of the RFP** and the approved Maintenance Plan.

19 **Warranties.**

19.1 Express Warranties. In addition to any express or implied warranties provided by Law and in the RFP, TSI Contractor hereby expressly represents and warrants the following:

- 19.1.1 *Accuracy of Responses.* All of TSI Contractor's responses included in the Proposal and the TSI Contractor's Qualification Statement as set forth in **Exhibits C and D** are true and correct in each and every instance as of the time each document, respectively, was submitted to SRTA for review.
- 19.1.2 *Licenses.* The TSI Contractor has and will maintain and keep in full force and effect during the Term of the Contract all required authority, licenses, certifications and permits, professional ability, skills and capacity necessary to perform the Work.
- 19.1.3 *Organization.* The TSI Contractor is a _____ duly organized and validly existing under the Laws of the State of _____, and has the requisite power and all required licenses to carry on its present and proposed activities in the State, and has full power, right and authority to execute and deliver this Contract and to perform each and all of the obligations of TSI Contractor provided for herein. TSI Contractor is duly qualified to do business, and is in good standing, in the State of Georgia.
- 19.1.3.1 TSI Contractor covenants and agrees that it will maintain its existence and will remain in good standing in the State of Georgia throughout the during the Term of the Contract and will maintain its existence for as long thereafter as any obligations remain outstanding under this Contract. The provisions of this **Section 19.1.3.1** shall survive the expiration or earlier termination of this Contract.
- 19.1.4 *Authorization by TSI Contractor.* The execution, delivery and performance of the Contract has been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of TSI Contractor; each person executing this Contract on behalf of TSI Contractor has been duly authorized to execute and deliver it on behalf of TSI Contractor; and this Contract has been duly executed and delivered by TSI Contractor.
- 19.1.5 *Authorization of Signer.* The person signing this Contract on behalf of the TSI Contractor has been duly authorized by TSI Contractor to execute and deliver same.
- 19.1.6 *Valid Contract.* This Contract constitutes the legal, valid and binding obligation of TSI Contractor, enforceable against TSI Contractor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar Laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- 19.1.7 *No Default.* Neither the execution and delivery by TSI Contractor of this Contract, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of TSI Contractor, any approvals or Laws applicable to TSI Contractor or any other material agreement to which TSI Contractor is a party.
- 19.1.8 *No Proceeding.* There is no action, suit, proceeding, investigation or litigation

pending and served on TSI Contractor which challenges TSI Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract or which challenges the authority of the TSI Contractor official executing this Contract; and TSI Contractor has disclosed to SRTA any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TSI Contractor is aware.

19.1.9 *No Breach of Law.* TSI Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of any Project or TSI Contractor's ability to perform its obligations under this Contract.

19.1.10 *Real Party in Interest.* TSI Contractor is the legal and valid holder of the interest attributed to TSI Contractor under the Contract.

19.1.11 *Equipment, Hardware, Supplies and Materials.* TSI Contractor represents and warrants that during the Term of the Contract all hardware, Equipment, supplies and other material, including but not limited to Spares, 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 RFP, (2) have a minimum service life as set forth in the RFP, (3) shall be new, off the shelf, field proven and meet applicable ISO, IEEE and ANSI defined standards, as applicable, and (4) with regard to Equipment and hardware that will either be installed in the Project or otherwise purchased by SRTA pursuant to the Contract Documents, TSI Contractor will convey good and marketable title, and that all such Equipment and supplies shall be delivered to SRTA and remain free from all security interests or other liens or encumbrances. TSI Contractor also agrees to defend SRTA's title against all persons claiming ownership or other interest in the whole or part of any such Equipment or supplies furnished to SRTA under this Contract.

19.1.12 *Software.* TSI Contractor represents and warrants that during the Term of the Contract (1) with the exception of COTS, all Software that TSI Contractor will use to perform the Work shall be provided pursuant to the Contract Documents and free from defects 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, (2) TSI 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 the Contract Documents, 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 or the like.

19.1.13 *Work/Labor.* TSI Contractor represents and warrants that during the Term of the Contract all documentation, services and labor shall (1) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the RFP, (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.

19.1.14 *Documentation.* TSI Contractor represents and warrants that during the Term of the Contract all documentation, services and labor shall conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the RFP.

19.1.15 *Cooperation.* TSI Contractor represents and warrants that during the Term of the Contract TSI Contractor shall fully cooperate with SRTA, SRTA-Designated Representatives, GDOT, the Civil Contractor, GDOT's contractors and any other governing authority, in furnishing all the Work required by the Contract.

19.1.16 *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 foregoing, whether or not registered as of the Effective Date or at any later date. Intellectual Property shall also mean software design submittals and related documentation required as set forth in the RFP. TSI Contractor represents and warrants that during the Term of the Contract (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) TSI 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 TSI Contractor has the right to permit SRTA access to, or use of, such software, hardware, methods, methodologies and Intellectual Property. The warranty set forth in this Section 19.1.16 shall be void to the extent a breach of warranty is caused solely by SRTA's use of the Intellectual Property for purposes not set forth in the Contract Documents or if the Intellectual Property has been modified by any entity other than TSI Contractor, TSI Contractor Parties, or any other entity not approved by TSI Contractor.

19.1.17 *Post-completion Warranty.* In addition to the warranties set forth in **Section 19 (Warranties)**, the post-completion warranty phase for each Project shall commence upon Open to Tolling of each Project and shall include all maintenance and production support for the Electronic Toll Collection System. The post-completion warranty phase will conclude either twelve (12) months after Open to Tolling occurs or upon successful completion of the System Acceptance Test as described in **Section 4.6.11 of the RFP**, whichever occurs later. The maintenance period for each Project shall begin upon the completion of the post-completion warranty period.

19.1.18 *Compliance with Laws, Rules and Regulations.* TSI Contractor represents and warrants that during the Initial Term and each Renewal Term of the Contract (1) TSI Contractor shall comply with **Section 4.5.3.1 (Traffic Control and Lane Closures) of the RFP** when performing installation, maintenance or any other type of Work in, on or about the lanes, (2) the Work will not be in violation of any applicable Law, rule or regulation, and TSI Contractor will obtain all permits and licenses required to comply with such Laws and regulations, (3) TSI Contractor is registered with the Secretary of State and authorized to perform the Work in the State of Georgia, and (4) TSI 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 Project. Any changes to applicable Laws, rules, or regulations that are enacted after the Effective Date may be the subject of a Change Order only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to TSI Contractor. In such an event, the increased cost shall reflect the unit prices set forth in **Exhibit E (Pricing Schedules) of this Contract**, and if the labor or material is not included in **Exhibit E (Pricing Schedules) of this Contract**, then the Change Order shall reflect an increase in price of TSI Contractor's actual cost plus 9% markup.

- 19.2 Third Party Warranties. TSI Contractor shall assign to SRTA the manufacturers' or other third party warranties for any and all items of Work furnished to SRTA.
- 19.3 Hosting Location. Both facility host locations must be located within the Continental United States.
- 19.4 Survival. The representations and covenants of TSI Contractor contained in **Section 19.1 (Express Warranties) of this Contract** shall survive from for a period of two (2) years following the expiration or earlier termination of this Contract.
- 19.5 No-waiver. Neither any provision of this Contract nor any decision of SRTA shall relieve the TSI Contractor of responsibility for faulty materials, faulty workmanship, or omission of any Work. Any deviation in the Contract Documents that is evidenced by a Change Order signed by SRTA 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.
- 19.6 TSI Contractor duty to Remedy. TSI 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, including but not limited to shipping costs. If the RFP does not specify a warranty, then TSI Contractor shall replace any defective item of Work, including Deliverables, furnished in breach of the Contract Documents, no later than five (5) Business Days after the date of SRTA's written notification thereof.
- 19.7 SRTA Cure. If the TSI Contractor does not remove, make good the deficiency, correct, or remedy defective Work, or supply any omitted Work within the time periods set forth under the Contract Documents, and if no time is set in the RFP then unless otherwise agreed to in writing by the Parties, within ten (10) Days, then SRTA may, after five (5)

Days written notice to the TSI Contractor, remove the Work, correct the Work, remedy the Work or supply omitted Work at the expense of the TSI Contractor. If SRTA has not yet made payment to TSI Contractor, then SRTA may deduct the cost thereof from any payment then or thereafter due and owing the TSI Contractor. If final payment has been made to TSI Contractor, then TSI Contractor shall reimburse the cost to SRTA within thirty (30) Days of written demand therefore by SRTA. In case of emergency involving health, safety of property or safety of life, SRTA may proceed at once and without notice to TSI Contractor and TSI Contractor shall remain responsible for the cost thereof.

19.7.1 *Extension of Time to Cure.* If SRTA believes TSI Contractor is using its best efforts to make good the deficiency, correct, or remedy defective Work, or supply any omitted Work, then SRTA, in its discretion and taking into consideration SRTA's general business concerns and the need to ensure that there are no delays to the Master Project Schedule, Milestone Schedule and any other contractor's schedules (including the Civil Contractor), may extend the respective cure period set forth in its notice sent to TSI Contractor pursuant to **Section 19.7.**

19.8 Defective Work TSI Contractor Responsibility. Correction of defective Work or supplying of omitted Work whether or not covered by warranty of a manufacturer, TSI Contractor Party, remains the primary, direct responsibility of the TSI Contractor.

19.9 Warranty Process. During the applicable warranty period or thereafter during maintenance obligations, TSI Contractor will replace defective Work. Upon discovery of defective Work, TSI Contractor shall be responsible to replace the defective Work at no additional cost to SRTA.

19.10 Excessive Failure. In addition to the costs above, in the event of an Excessive Failure of any of the Work delivered to SRTA, the TSI Contractor shall be liable for all costs incurred by SRTA, including but not limited to labor, materials, costs involved with lane closures, and administrative costs. For purposes of the Contract Documents, "**Excessive Failure**" is defined as a defect in function, labor or materials that is present in ten percent (10%) or more of any line item, listed in **Tab 9 or Tab 10, as applicable, of Exhibit E (Pricing Schedules)**, which is placed into production.

19.11 Other Remedies. The remedies stated in **Section 19 (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 at law or in equity.

20 Order Processing. All orders for Equipment will be placed according to the terms herein. TSI Contractor shall forward a written email request to SRTA's Project Manager. This request shall include the name and quantity for each item of Equipment being ordered, price per item, and the address to which the items shall be delivered. This request must be received by SRTA's Project Manager at least 75 Days prior to the desired delivery date, unless otherwise agreed to in writing by SRTA's Project Manager. TSI Contractor shall also notify SRTA's Project Manager upon TSI Contractor's receipt of any Equipment. Such notification shall be in writing and detail

the Equipment delivered, the location where the RFID Equipment is being stored and the quantity received. Upon receipt of the equipment, the TSI Contractor will be responsible for the inventory process including the placement of asset ID labels on the equipment and providing information to SRTA from the MOMs system to include vendor, date purchased, detailed description, picture, cost, make, model, serial number and estimated useful life in years.

21 **Spare Parts.**

21.1 **Spare Parts Inventory.** The TSI Contractor will be solely responsible for maintaining an adequate inventory of Equipment, spares and consumables as set forth in the RFP (individually, "Spare" and collectively, "Spares"). SRTA shall own each Spare upon payment by SRTA to TSI Contractor (except in the event the TSI Contractor elects to utilize the initial Spares inventory during the warranty period set forth in **Section 6.2 of the RFP**, in which case the TSI Contractor is responsible for funding the replenishment of the inventory levels to their original quantities at no additional cost to SRTA), although TSI Contractor shall bear the risk of loss pursuant to **Section 22 (Risk of Loss) of the Contract**. The TSI Contractor will turn over to SRTA upon termination of the Contract the remaining inventory of Spares.

21.2 **Quality Control.** The TSI Contractor must ensure that all parts, components Equipment, materials, and other items purchased for use in the System are new. All Spares must be new, of good quality and designed to reliably carry out their functions within the System and meet the requirements of the Contract.

22 **Risk of Loss.** TSI Contractor shall have sole responsibility for risk of loss to TSI Contractor and TSI Contractor Party-owned facilities, Equipment and other goods. TSI Contractor shall have sole responsibility for risk of loss to the hardware, Equipment, material and supplies set forth in **Section 18.1 (Equipment) of this Contract** and **21.1 (Spare Parts Inventory)**. TSI Contractor shall assume the risk of loss for all Equipment and materials, until SRTA's Acceptance of the applicable Work, unless damage is the sole result of SRTA's gross negligence or willful misconduct. TSI Contractor assumes all risk of loss for Spares until a particular Spare is properly placed into the System and Accepted by SRTA. TSI Contractor shall maintain adequate insurance for the risk of loss assumed in this **Section 22**. Notwithstanding the above, if Equipment is installed in the lane and the road is open to tolling, if through no fault of TSI Contractor a third party motorist damages the Equipment, then TSI Contractor will not be responsible for the cost of repairs to the damaged Equipment or replacement of the damaged Equipment.

23 **Inspection of Work.** If the RFP or the Laws, ordinances, rules or regulations, or any Governmental Entity require any component of the Work to be tested or approved, the TSI Contractor shall give SRTA timely notice in writing of its readiness for inspection and testing, and if the inspection is by any authority other than SRTA, of the date fixed for such inspection. The TSI Contractor assumes the responsibility of furnishing all Work in accordance with this Contract. No provisions of this **Section 23** nor any inspection of the Work by SRTA, representatives of SRTA, or any other third party shall in any way diminish, relieve, or alter the responsibility and undertaking of the TSI Contractor; nor shall the omission of any of the foregoing to discover or to bring to the attention of the TSI Contractor the existence of any Work that is not in accordance with the Contract Documents in any way diminishes, relieves, or

alters the obligations of the TSI Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of SRTA as set forth in this Contract.

24 **Intellectual Property.**

24.1 **General.** TSI Contractor shall provide SRTA with the Intellectual Property as set forth in the Contract Documents. Intellectual Property that will be delivered to SRTA shall include all documentation along with all licenses required by this **Section 24**. It is understood that in order to meet SRTA's requirements under the Contract Documents, modifications to the Intellectual Property may be necessary. SRTA shall have a license set forth below in **Section 24.3 (License)** to use the Intellectual Property provided under the Contract Documents and as modified to meet the particular requirements of the Contract Documents.

24.2 **Source Code.** TSI Contractor agrees to deposit the Source Code and Source Code documentation for TSI Contractor's Intellectual Property with a third-party escrow agent. TSI Contractor shall be responsible to pay all fees and expenses associated with any such Escrow Agreement. Such Source Code will be released to SRTA in accordance with the terms of an escrow agreement in substantially the same form as is attached in **Exhibit J (Escrow Agreement)**.

The license to use the Source Code and Source Code Documentation received pursuant to this **Section 24.2** and **Exhibit J (Escrow Agreement)**, shall be according to the terms set forth in **Section 24.3 (License)** for TSI Contractor's Intellectual Property.

24.3 **License.** TSI Contractor hereby grants to SRTA for the purposes set forth in the Contract Documents, an irrevocable, perpetual, non-exclusive, royalty free, non-transferrable (except as provided below), fully paid up right and license to use, reproduce (for back-up purposes), modify, adapt and disclose, and sublicense others to use, reproduce (for back-up purposes), modify, and adapt, the TSI Contractor Intellectual Property in object code only, including with respect to Technology Enhancements, except for COTS software and firmware that will be subject to their respective license agreements ("License"). SRTA shall have no right to disassemble, reverse engineer or decompile the Software. 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 these License terms. This License includes the right to make and have made copies of any and all software (for back-up purposes), firmware and documentation and to use any and all such copies, reproductions, modifications, adaptations, improvements or derivative works for the purposes set forth in the Contract Documents. Source Code and Source Code Documentation shall be licensed to SRTA pursuant to the terms in this **Section 24.3** but only upon the occurrence of the events set forth in **Exhibit J (Escrow Agreement)**. There shall be no right to modify or adapt the source code except to maintain, enhance and operate the system. Such right shall not include the ability to create derivative works. The TSI Contractor shall secure all required Licenses from TSI Contractor Parties, 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 TSI Contractor shall furnish SRTA with original License agreements it obtains from such TSI Contractor Parties upon request but no later than within five (5) Days after Project Acceptance. The TSI Contractor shall also provide to SRTA the computer programs, disks and documentation for all software and firmware it obtains from third parties.

The License shall include all updates, enhancements, modifications, upgrades, revisions, replacements, upgrades made to or in the place of software or any related documentation that corrects errors or safety hazards or support new models of computer hardware or Equipment with which the software is designed to operate or other changes that are logical improvements or extensions of the TSI Contractor's Intellectual Property provided herein, and all error corrections, patches and bug fixes and any other derivative works created by TSI Contractor or Contracting Parties during the Term as a result of this License ("Enhancements"). The fees for Enhancements after the applicable warranty period are included in TSI Contractor's maintenance services set forth in **Exhibit E (Pricing Schedules)**.

The License allows an unlimited number of end users to use TSI Contractor's Intellectual Property. Source Code and Source Code Documentation shall be used solely for the purposes of supporting and maintaining the TSI Contractor's Intellectual Property.

- 24.4 **Exclusions.** Subject to the License and rights granted to SRTA pursuant to **Section 24.3 of the Contract**, SRTA shall not at any time (a) sell any TSI Contractor's Intellectual Property or use, reproduce, modify, adapt and disclose, or permit any party to use, reproduce, modify, adapt and disclose, any such Intellectual Property for any other purpose not consistent with the Contract Documents, (b) except as expressly permitted by the Contract Documents, create derivative works based on the TSI Contractor's Intellectual Property; (c) reverse engineer, disassemble, or decompile the TSI Contractor Intellectual Property or Third Party Intellectual Property; (d) remove any identification or notices contained on the TSI Contractor's Intellectual Property.
- 24.5 **Ownership.** Title to the Equipment and other Work shall remain with the TSI Contractor until SRTA makes payment for such applicable Equipment and/or other Work. TSI Contractor's Intellectual Property, including Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of TSI Contractor or TSI Contractor Parties, as applicable, notwithstanding any delivery of copies thereof to SRTA and instead shall be furnished to SRTA pursuant to the license terms set forth in **Section 24.3 of this Contract**.
- 24.6 **Work Product.** All Work Product shall be owned by TSI Contractor, or its suppliers, unless it is identified by SRTA as Work for Hire Product prior to the commencement of such work by the TSI Contractor, with SRTA receiving an unlimited, non-exclusive, transferable, sub-licensable, perpetual, fully-paid and royalty-free license to use such Work Product for SRTA's legitimate business purposes, to include by way of example and not limitation, creating derivative works and decompiling. Work for Hire Product produced under the Contract Documents will be owned by SRTA with TSI Contractor receiving an unlimited non-exclusive, transferable, sub-licensable perpetual, fully-paid and royalty-free license to use such Work for Hire Product for TSI Contractor's legitimate

business purposes, to include by way of example and not limitation, creating derivative works and decompiling. Except with regard to any good faith unresolved dispute between the parties, in the event that any such Work for Hire Product are deemed not to be works made for hire for SRTA, the TSI Contractor hereby irrevocably assigns to SRTA all right, title and interest in all such Work for Hire Product, including, without limitation, all intellectual property rights with respect thereto, and further agrees to execute and deliver such other and further assignments, certificates of originality and other documents and instruments as reasonably requested by SRTA in order for SRTA to evidence and perfect its ownership of all rights with respect thereto. The TSI Contractor acknowledges and agrees that the provisions of this Contract apply regardless of any disputes, payment issues or other claims that may exist between the Parties, and that SRTA's ownership of all rights with respect to such Work for Hire Product is unconditional. Such Work for Hire Product shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any Work for Hire Product initiated during the Term, including any of the foregoing that is conceived, discovered, invented, created, developed or made by TSI Contractor or TSI Contractor Parties. None of the TSI Contractor Parties shall have any proprietary interest in such Work for Hire Product. The TSI Contractor Parties shall not assert any ownership interest or conditions to executing assignments and other documents to evidence and perfect SRTA's ownership of all rights in and to same, and any claims that the TSI Contractor Parties may have against SRTA shall exclude claims challenging SRTA's ownership of same. All Work for Hire Product becomes the property of SRTA, whether the work for which they are made is completed or not. In the event this Contract is terminated, all Work for Hire Product whether completed or not shall be delivered within ten (10) Days from the date of termination to SRTA. All drawings, technical manuals, other technical data and other material created pursuant to the Contract Documents either by the TSI Contractor or its subcontractors that is eligible for copyright shall be deemed to be a work for hire, and the title to and exclusive ownership of all such items shall be in SRTA to the extent not based on TSI Contractor's Intellectual Property.

- 25 **Intellectual Property Escrow.** SRTA and TSI Contractor acknowledge that TSI Contractor and the TSI Contractor Parties that supply software, Source Code, or other Intellectual Property may not wish to deliver the Intellectual Property directly to SRTA, and that TSI Contractor and/or TSI Contractor Parties desire to implement measures to protect such information from public disclosure to the extent permitted under applicable Law. Developer further acknowledges that SRTA nevertheless must be ensured access to such Intellectual Property at any time, and must be assured that the Intellectual Property is released and delivered to SRTA immediately. Therefore

TSI Contractor shall deposit the Intellectual Property with a neutral trustee. TSI Contractor shall (a) select, subject to SRTA's prior approval, an escrow company or other neutral custodian ("Escrow Agent") engaged in the business of receiving and maintaining escrows in the metropolitan Atlanta area, or in another location the Parties agree to in writing, of Source Code or other Intellectual Property, and (b) establish an escrow ("Intellectual Property Escrow") with the Escrow Agent in such location on terms

and conditions substantially similar to the ones attached hereto as **Exhibit J (Escrow Agreement)** for the deposit, retention and upkeep of Source Code, Source Code Documentation and/or other Intellectual Property and related documentation. Intellectual Property Escrow also may include TSI Contractor Parties as parties and may include deposit of their Intellectual Property. TSI Contractor shall be responsible for the fees and costs of the Escrow Agent. Notwithstanding the provisions of this Section, the Escrow Agent shall be subject to applicable Law related to public records pursuant to O.C.G.A. § 50-18-70.

- 25.1 Delivery to Escrow Agent. TSI Contractor shall make such delivery to the Escrow Agent not later than:
- 25.1.1 for pre-existing Source Code and Source Code Documentation, immediately upon execution of this Contract or, if provided by a TSI Contractor, execution of the relevant Contract;
 - 25.1.2 for Source Code and Source Code Documentation incorporated into or used on or for the Project, prior to the applicable project being Open to Tolling;
 - 25.1.3 for any Technology Enhancement, update, upgrade or correction of Source Code and Source Code Documentation incorporated into or used on or for the Project or any portion thereof, not later than fifteen (15) Days after the end of the calendar quarter in which it is first incorporated or used in any Project; and
 - 25.1.4 for any other Intellectual Property, on the Effective Date if it exists as of such date, and otherwise within fifteen (15) Days after the end of the calendar quarter in which it is first incorporated or used in connection with the Project or the Work.
- 25.2 SRTA as Signatory. SRTA shall be a signatory the escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against TSI Contractor and the Escrow Agent. Each escrow agreement shall provide that any amendment or supplement to such escrow agreement shall be subject to SRTA's prior written approval in its sole discretion.
- 25.3 Access and Inspection. Intellectual Property Escrows shall provide rights of access and inspection to SRTA at any time, subject to terms and conditions reasonably necessary to protect the confidentiality and proprietary nature of the contents of the Intellectual Property Escrows.
- 25.4 Survival of Escrow Agreement. The Intellectual Property Escrows shall survive expiration or earlier termination of this Contract regardless of the reason, until such time as both Parties agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Project.
- 25.5 Intellectual Property Escrow Agreement. In accordance with **Sections 25.1 through 25.5**, TSI Contractor has elected to enter into an Intellectual Property Escrow Agreement,

dated as of the Effective Date, for escrowing TSI Contractor's Intellectual Property and Third Party Intellectual Property, in the form attached hereto as **Exhibit J (Escrow Agreement)**, or such modified form as has been approved in writing by SRTA.

26 **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"). TSI Contractor's Intellectual Property shall also be deemed 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 TSI Contractor to perform the Work, and who, in the case of third parties, have executed a nondisclosure agreement consistent with the provisions hereof.

26.1 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.

26.2 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.

26.3 Use of Confidential Information. Receiving Party 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 disclosing Party.

26.4 Return of Confidential Information. Except as otherwise provided in the Contract or by Law, the receiving Party shall return to disclosing Party any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.

27 **Defective Work.** A Deliverable may be unacceptable because it fails applicable Testing, it fails to perform as required under the Contract Documents, it fails to conform to the specifications of the RFP, or is furnished in breach of the Contract Documents. Deliverables that are defective may be rejected upon inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications of the Contract Document were not ascertainable upon inspection. SRTA may provide written notice to the TSI Contractor of any item of Work that is not acceptable. If the TSI Contractor fails to cure the defect or replace the item of Work within the time set forth in any written notice then, in addition to SRTA's other rights and

remedies under the Contract and by Law, SRTA may cancel the Contract or applicable Change Order, contract with a different contractor and invoice TSI Contractor for any differential in price over the original Contract price. Such time frame set forth in the notice by SRTA to TSI Contractor shall be as reasonable as possible, taking into consideration SRTA's general business concerns and the need to ensure that the Master Project Schedule, Milestone Schedule and any other contractor's schedules (including the Civil Contractor) are not delayed. Rejected items may be regarded as abandoned if not removed by TSI Contractor as set forth in SRTA's written notice.

27.1 Temporary Work Around. If TSI Contractor or SRTA incorporate a work around in order to allow a function to perform, such work around will be considered temporary and such defect not cured until a fix is provided by TSI Contractor.

28 **Liquidated Damages.**

28.1 Time of the Essence. Time is an essential element of the Contract. SRTA will assess liquidated damages for TSI Contractor's failure to meet Project milestones according to **Table 28.2** below, failure to reopen the lanes as set forth in **Section 28.3 (Closure of Lanes; Failure to Reopen)**, or failure to meet service levels as set forth in **Appendix D (Performance Requirements and SLAs) of the RFP.**

28.2 Difficulty of Ascertaining Certain Damages. The amount of liquidated damages as set forth in **Table 28.2** below, in **Section 28.3 (Closure of Lanes; Failure to Reopen)** and in **Appendix D (Performance Requirements and SLAs) of the RFP** is fixed and agreed to by and between the TSI Contractor and SRTA because both Parties agree and acknowledge the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which SRTA will sustain by failure of the TSI Contractor to failure to meet Project milestones, failure to reopen the lanes as set forth in **Section 28.3 (Closure of Lanes; Failure to Reopen)**, and/or failure to meet the service levels set forth in **Appendix D of the RFP**, such as loss of revenue, service charges, interest charges, harm and inconvenience to the public, delays caused to other activities of SRTA by failure to perform this Contract, increase of inspection and administrative costs, and other damages, some of which are indefinite and not susceptible of easy proof, said amounts were actively negotiated between the Parties, and are in each instance agreed by both Parties to be a reasonable estimate of the amount of damages which SRTA will sustain in each instance and said amount shall be deducted from any monies due or that may become due to the TSI Contractor. Both Parties hereto acknowledge that any Liquidated Damages assessed by SRTA and paid by TSI Contractor to SRTA shall limit and constitute TSI Contractor's sole liability and SRTA's sole remedy with respect to the milestones and the service levels for which liquidated damages are assessed as enumerated in **Table 28.2 below** and in **Appendix D (Performance Requirements and SLAs).**

Liquidated damages as specified in Table 28.2 and in **Appendix D (Performance Requirements and SLAs)** that are assessed by SRTA will be deducted from any money due the TSI Contractor, not as a penalty, but as a reasonable estimate of SRTA's damages; provided however, that due consideration shall be taken of any adjustment of

the time for performance granted under the provisions of **Section 17.3 (Delay and Extensions of Time)**.

28.2.1 *Cap on Liquidated Damages.* For any given calendar month in which liquidated damages were incurred, TSI Contractor shall not be responsible to make payment or otherwise be liable for liquidated damages in an amount greater than the Monthly Maintenance Fee for the month following the month in which liquidated damages were incurred. In the event liquidated damages are assessed in the last month of the Term of the Contract, then TSI Contractor shall not be responsible to make payment to SRTA for liquidated damages in an amount greater than the Monthly Maintenance Fee for the month in which liquidated damages were incurred.

28.2.2 *Unenforceability of Liquidated Damages.* If any liquidated damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle SRTA from claiming all or part of the liquidated damages, then SRTA is entitled to claim against the TSI Contractor damages at law or in equity for the TSI Contractor's failure to complete or otherwise perform the Work as set forth in **Section 27 (Defective Work) of the Contract** or in **Appendix D of the RFP**.

Each milestone in Table 28.2 references a section of the RFP or the Contract that provides more details and a precise description of the specific milestone and associated liquidated damages. The terms and conditions of the referenced section of the RFP or Contract shall control over the terms and conditions of Table 28.7 in the event of any conflict.

Table 28.2*

General Description of Milestone	Milestone Deadline** Days Prior to Substantial Completion	Liquidated Damages Amount
Factory Acceptance Test (FAT) Completed	75S – No Later Than 360 NWC - No Later Than 420	\$1,000 a day
First Site Installation Test (Toll Site Approved)	75S - No Later Than 163 NWC - No Later Than 219	\$5,000 a day
100% of Toll and ITS Sites Integrated with Network	75S - No Later Than 70 NWC - No Later Than 70	\$5,000 a day
System Integration Test Completed	75S - No Later Than 0 NWC - No Later Than 0	\$10,000 a day

**** See Sections 4.5.3.4 and 4.5.3.5 of the RFP.**

*** See referenced section of RFP or Contract for more details and a precise description of each milestone contained in Table 28.2.**

- 28.3 Closure of Lanes; Failure to Reopen. Should the TSI Contractor fail to reopen lane(s) at the times specified in **Section 4.5.3.1 (Traffic Control and Lane Closures) of the RFP** or as otherwise directed in writing by GDOT, TSI Contractor shall pay liquidated damages in the amount of \$5,000.00 per hour or any portion thereof.
- 28.4 No Waiver. Permitting the TSI Contractor to continue and finish the Work or any part of the Work after the expiration of the time allowed for completion or after any extension of time, shall not operate as a waiver of the rights of SRTA under this Section or any of section of the Contract.
- 28.5 TSI Contractor and Surety Jointly and Severally Liable. Notwithstanding any other provision to the contrary, the TSI Contractor's and the TSI Contractor's surety shall be jointly and severally liable for the liquidated damages assessed by SRTA pursuant to **Section 28 (Liquidated Damages)**. In the event the TSI Contractor and/or the TSI Contractor's surety litigates the validity of these liquidated damages provisions, the TSI Contractor and the TSI Contractor's surety, jointly and severally, shall also be liable for including, without limitation, legal fees, expert fees, professional fees, costs, other expenses and/or damages incurred by SRTA. In the event the TSI Contractor and/or the TSI Contractor's surety litigates the assessment of any liquidated damages by SRTA, the TSI Contractor and the TSI Contractor's surety, jointly and severally, shall also be liable for including, without limitation, legal fees, expert fees, professional fees, costs, other expenses and/or damages incurred by SRTA if the imposition of any liquidated damages are upheld.

29 Indemnification.

- 29.1 TSI Contractor Liability for TSI Contractor Parties, etc. The TSI Contractor shall be responsible to SRTA from the time of the signing of the agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind to person or to property resulting from any negligent act or omission to act, or breach, failure or other default by the TSI Contractor, or any of its subcontractors, agents, employees or others working at the direction of the TSI Contractor or on its behalf.
- 29.2 Indemnification. TSI Contractor hereby agrees to indemnify and hold harmless 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 TSI Contractor, its agents, employees or others working at the direction of TSI Contractor or on its behalf, or due to any breach of this Contract by the TSI 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 TSI Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by Law, the bankruptcy of the TSI 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 TSI Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

- 29.3 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 TSI Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.
- 29.4 Intellectual Property Indemnification. TSI Contractor represents and warrants that it will have at all times while performing the work and labor needed for the Work and SRTA will have, upon completion of the Work, all necessary patent, copyright, and any other necessary intellectual property rights to all Work furnished by TSI Contractor under the Contract and that all Work, as a whole and each of its components shall not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right. In case any component of the Work is held to constitute an infringement of the United States patent rights or copyrights or other intellectual property rights of a third party and its use is enjoined, the TSI Contractor at the TSI Contractor's sole cost and expense, shall promptly (a) secure for SRTA, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license(s) to reproduce, publish, or otherwise use for SRTA's direct purposes; or (b) replace the infringing item with a non-infringing substitute that meets the requirements of the Contract Documents; or (c) modify the infringing item so that it becomes non-infringing provided the resulting Work meets the requirements of the Contract Documents. If the amount of time necessary to proceed with one of these options is deemed excessive by SRTA, SRTA may direct the TSI Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition SRTA's rights otherwise set forth in the Contract, including termination. TSI 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 TSI Contractor. The TSI Contractor's obligations under this Section are in addition to TSI Contractor's Insurance obligations.

29.5 Obligations not Mutually Exclusive. The TSI Contractor's obligations under this Section are in addition to TSI Contractor's obligations under **Section 34 (Insurance) of the Contract.**

30 **Limitation of Liability.**

30.1 SRTA. Except for a breach of **Section 24 (Intellectual Property)** or **Section 26 (Confidentiality) of the Contract**, 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 TSI 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 TSI Contractor under this Contract for the twelve months immediately preceding TSI Contractor's claim.

30.2 TSI Contractor. Except for a breach of **Section 29.4(Intellectual Property Indemnification), Section 26 (Confidentiality)** or claims made against SRTA by third parties to the extent such claims are resulting from the negligent acts or omissions to act of TSI Contractor or TSI Contractor Parties, TSI Contractor's liability to SRTA shall be limited to direct damages and in no other event shall TSI Contractor be liable for any incidental, consequential, special, punitive, exemplary or indirect damages arising out of this Contract, even if TSI Contractor is informed of the possibility of such damages. Notwithstanding the preceding sentence limiting TSI Contractor's liability to SRTA, TSI Contractor shall nevertheless remain liable for lost business revenue (gross revenue) and lost data, and all other damages not specifically excluded in the first sentence of this **Section 30.2**, including but not limited to direct damages unless such loss is covered by liquidated damages as set forth in **Section 28 (Liquidated Damages)**. TSI Contractor's total liability to SRTA under this Contract, if any, shall not exceed three times the Contract Sum.

31 **Dispute Resolution.** In the event of any dispute whatsoever arising out of or relating to the Contract Documents, the Work or the Project, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to the other Party's Project Manager. Within five (5) Days after the receipt of the notice by the receiving Project Manager, the two Project Managers shall meet in SRTA's offices to attempt to resolve the dispute. If the Project Managers cannot resolve the dispute then, within fourteen (14) Days after the date of written notice by either Project Manager to the Executive Director of SRTA and the Managing Director of the TSI Contractor, the Executive Director of SRTA and the Managing Director shall meet in SRTA's offices to attempt to resolve the dispute. If the Executive Director of SRTA and the Managing Director cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either Party may pursue those remedies as allowed under this Contract.

32 **Default; Damages/Remedies.**

32.1 Event of Default. Subject to relief from its performance obligations pursuant to **Section 17.3 (Delay and Extensions of Time) of this Contract**, TSI Contractor shall be in breach

under this Contract upon the occurrence of any one or more of the following events or conditions:

- 32.1.1 the TSI Contractor (a) fails to begin the applicable Work within thirty (30) Days following issuance of NTP, (b) fails to satisfy all conditions to commencement of the applicable Work (site RFP section dealing with site inspections and other preconditions) or (c) fails to commence such Work with diligence and continuity, by each deadline set forth in **Sections 4, 5, 6 and Appendix C of the RFP**;
- 32.1.2 the TSI Contractor has withheld, disrupted or delayed Work or any Deliverable due to non-payment by SRTA;
- 32.1.3 the TSI Contractor incurs liquidated damages in the same category for more than three (3) consecutive months or incurs liquidated damages in any category more than six (6) times in any rolling twelve (12) month period;
- 32.1.4 the TSI Contractor has failed to deliver the Work or a component thereof on a timely basis except to the extent of an excusable delay in accordance with **Section 17.3 (Delay and Extensions of Time) of this Contract**;
- 32.1.5 the TSI Contractor has assigned its rights and obligations under this Contract in violation of this Contract;
- 32.1.6 the Work or any component thereof has failed to meet the functional and/or performance criteria set forth in the Contract Documents;
- 32.1.7 the TSI Contractor has failed to provide "adequate assurances" within five (5) Days of SRTA's notice, when, in the opinion of SRTA, reasonable grounds for uncertainty exist with respect to the TSI Contractor's ability to perform any of its obligations under this Contract;
- 32.1.8 the TSI Contractor has failed to remedy defective work in accordance with **Sections 19 (Warranties), 27 (Defective Work) of this Contract** or the Maintenance requirements set forth in **Section 6 of the RFP and Exhibit G (Maintenance Terms) of the Contract**;
- 32.1.9 the TSI Contractor has failed to maintain bonds and insurance policies and coverages or fails to provide proof of bonds and insurance or copies of bonds and insurance policies, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same as required by **Sections 34 (Insurance) and 35 (Bonds) of this Contract**;
- 32.1.10 the TSI Contractor becomes insolvent or the TSI Contractor has taken advantage of any insolvency statute or debtor/creditor Law or the TSI Contractor's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the TSI Contractor was commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any

bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or Law of any jurisdiction;

32.1.11 the TSI Contractor has failed to fully comply with the schedule or specific elements of, or actions required under any approved remedial plan furnished to SRTA pursuant to **Section 32.1.8 of this Contract** or otherwise;

32.1.12 the suspension or revocation of any license, permit, or registration necessary for the performance of the TSI Contractor's obligations under this Contract;

32.1.13 the TSI Contractor has suspended or failed to proceed with any properly authorized part of the Work;

32.1.14 the default in the performance or observance of any of the TSI Contractor's other obligations under the Contract Documents;

32.1.15 any representation or covenant in the Contract Documents made by TSI Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of TSI Contractor to SRTA pursuant to the Contract Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made; or

32.1.16 after exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) TSI Contractor, (b) any member of TSI Contractor with a material financial obligation owing to TSI Contractor for equity or shareholder loan contributions, (c) any affiliate of TSI Contractor for whom transfer of ownership would constitute a Change of Control, or (d) any Key TSI Contractor whose work is not completed.

32.2 Cure Periods. For the purpose of SRTA's exercise of other remedies and subject to remedies that this **Section 32.2** expressly states may be exercised before lapse of a cure period, TSI Contractor shall have the following cure periods with respect to the following Events of Default:

32.2.1 respecting an Event of Default under **Sections 32.1.2, 32.1.3, 32.1.8, 32.1.10, or 32.1.12**, a period of five (5) Days after SRTA delivers to TSI Contractor written notice of such Event of Default.

32.2.2 respecting an Event of Default under **Sections 32.1.1, 32.1.5, 32.1.6, 32.1.9, 32.1.13 or 32.1.15**, a period of fifteen (15) Days after SRTA delivers to TSI Contractor written notice of the Event of Default.

32.2.3 respecting an Event of Default under **Sections 32.1.7, 32.1.14, 32.1.16 or 32.1.17** a period of thirty (30) Days after SRTA delivers to TSI Contractor written

notice of the Event of Default; (b) as to **Section 32.1.16**, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to **Section 32.1.17**, if the debarred or suspended Person is a managing member, general partner or controlling investor of TSI Contractor, cure will be regarded as complete when TSI Contractor proves it has removed such Person from any position or ability to manage, direct or control the decisions of TSI Contractor or to perform Work, and if the debarred or suspended Person is a Key Personnel cure will be regarded as complete when TSI Contractor replaces the Key Personnel with SRTA's prior written approval in its good faith discretion as provided in **Section 8.4 (Key Personnel)**.

32.2.4 respecting an Event of Default under **Sections 32.1.4** and **32.1.11**, no cure period, and there shall be no right to notice of an Event of Default under **Sections 32.1.4** and **32.1.11**.

32.3 SRTA Damages/Remedies. With the exception of those instances where liquidated damages have been assessed, upon the occurrence of an Event of Default, SRTA may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at Law or in equity, proceed to take any or all of the following actions:

32.3.1 withhold any money then due and/or thereafter due to TSI Contractor;

32.3.2 perform or cause to be performed for the account of TSI Contractor any contractual covenant in the performance of which the TSI Contractor is in default or make any payment for which the TSI Contractor is in default. The TSI Contractor shall pay to SRTA upon demand any amount paid or incurred by SRTA in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the TSI Contractor to comply with any covenant or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five percent (5%), but in no case higher than the highest rate permitted by Law, from the date of payment by SRTA until paid by the TSI Contractor. Upon request, SRTA will provide reasonable documentation substantiating any claim for payment under this Subsection;

32.3.3 SRTA or SRTA-Designated Representatives shall have the right to immediately take possession of any or all of the materials, tools, technical specifications, drawings, Equipment, supplies and property of every kind, provided, purchased, maintained, leased, owned, or rented by the TSI Contractor, including but not limited to the Source Code, and the Equipment and hardware either paid for by SRTA, used by TSI Contractor to perform Work or otherwise stored by SRTA or at the Project site; make available any or all of the foregoing items to a third party provider and/or procure other materials, plant, tools, Equipment, and supplies and charge the TSI Contractor therefor and the TSI Contractor shall be liable to SRTA for the expense of said labor, materials, plant, tools, Equipment, supplies and property;

- 32.3.4 collect lost revenue and other direct damages that were the result of the Event of Default. In the event that SRTA is unable to determine lost business revenue because data is lost or otherwise unavailable, then the Parties agree that lost business revenue shall be based on historical figures (traffic) maintained by SRTA;
 - 32.3.5 obtain the Work, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from TSI Contractor all additional costs and expenses paid or incurred by SRTA as a result of the Event of Default, plus all additional costs paid or incurred by SRTA to obtain the replacement Work as set forth in **Section 32.3 (SRTA Damages/Remedies) of this Contract**;
 - 32.3.6 terminate the Contract, in whole or in part; and
 - 32.3.7 reduce the scope of Work.
- 32.4 **SRTA Default.** Subject to SRTA's exercise of its withholding rights and other remedies and rights under the Contract, if SRTA fails to pay TSI Contractor undisputed invoices when due under the Contract and fails to make such payments within ninety (90) Days of receipt of written notice from TSI Contractor of the failure to make such payments, TSI Contractor may, by giving written notice to SRTA, terminate this Contract as of a date specified in the notice of termination. TSI Contractor shall not have the right to terminate the Contract for SRTA's breach of the Contract except as specifically provided in this **Section 32.4**. In the event of termination of this Contract by TSI Contractor for a SRTA default as provided in this **Section 32.4**, SRTA shall be liable only for payments required by the terms of this Contract for Work which has been performed satisfactorily according to the Contract Documents, any restocking fees actually and reasonably incurred by TSI Contractor for any Work ordered but not used on the Project, and reasonable and actual wind down costs. SRTA prior to the effective date of termination, subject to SRTA's exercise of its rights and remedies under the Contract.

33 **Termination.**

- 33.1 **Termination for Cause.** 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 TSI Contractor, which shall be no less than ten (10) Days after the date of such notice. Upon such termination SRTA shall not be required to pay TSI Contractor any amounts for Work performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event SRTA's expenses incurred or anticipated to be incurred as a result of TSI Contractor's breach are less than the Remaining Payment, SRTA shall remit such differential to the TSI Contractor. In the event SRTA's expenses incurred or anticipated to be incurred as a result of TSI Contractor's breach exceed the Remaining Payment, then TSI Contractor shall within thirty (30) Days of written notice from SRTA, make payment of the differential to SRTA. In addition to the rights and remedies in this **Section 33.1**, SRTA shall have all other rights and remedies against TSI Contractor which are available at Law or in equity.

- 33.2 Termination for Convenience. SRTA may terminate this Contract, in whole or in part, for convenience upon 30 Days written notice, which shall commence upon the date included in the notice. All Work, including Deliverables, shall at SRTA's option become the property of SRTA upon receipt of payment by TSI Contractor for the amount owed for such item of Work. In the event of a termination for convenience, SRTA shall only pay the TSI Contractor for Work performed through the termination date, any restocking fees actually and reasonably incurred by TSI Contractor for any Work ordered but not used on the Project, and reasonable and actual wind down costs. SRTA shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The TSI Contractor acknowledges that the remedy set forth in this **Section 33.2** is the TSI Contractor's sole and exclusive remedy against SRTA for termination for convenience and TSI Contractor hereby waives all other rights and remedies it may have against SRTA for termination for convenience.
- 33.3 Pre-existing Liability. No termination of this Contract shall excuse either Party from any liability arising out of any default as provided in this Contract that occurred prior to termination.
- 33.4 Compliance with Contract. Both Parties shall comply with all of the terms and conditions of the Contract Documents, including but not limited to the provisions of **Section 37 (Cooperation, Transition of Deliverables, End of Contract Responsibilities) of this Contract**, in the event SRTA exercises any of its rights under this **Section 33**.
- 33.5 Termination Procedures and Duties. Upon expiration of the Term or any earlier termination of this Contract for any reason, the provisions of this **Section 33.5** shall apply. TSI Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due TSI Contractor or SRTA on account of such termination.
- 33.5.1 Within three (3) Business Days after receipt of a notice of termination, TSI Contractor shall meet and confer with SRTA for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project control to SRTA. The Parties shall use diligent efforts to complete preparation of the interim transition plan within a reasonable timeframe, taking into consideration SRTA's business needs. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) Days after such date. The transition plan shall be in form and substance acceptable to SRTA in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this **Section 33.5**, all of which procedures TSI Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.
- 33.5.2 On the termination date, or as soon thereafter as is possible, TSI Contractor shall relinquish and surrender full control and possession of the Project to SRTA, and shall cause all persons and entities claiming under or through TSI Contractor

to do likewise, in at least the condition required by the termination turnover requirements set forth in the transition plan. On the later of the termination date or the date TSI Contractor relinquishes full control and possession, SRTA shall assume responsibility, at its expense, for the Project, subject to any rights to damages that SRTA has against TSI Contractor where the termination is due to an Event of Default.

- 33.5.3 Within thirty (30) Days after notice of termination is delivered, TSI Contractor shall provide SRTA with true and complete list of all materials, goods, machinery, Equipment, parts, supplies and other property in inventory or storage (whether held by TSI Contractor or any person or entity on behalf of or for the account of TSI Contractor) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from supplier(s) for use in or respecting the Work or the Project. In addition, on or about the termination date, TSI Contractor shall transfer title and deliver to SRTA or SRTA's designee, through bills of sale or other documents of title, as directed by SRTA, all such materials, goods, machinery, Equipment, parts, supplies and other property, provided SRTA assumes in writing all of TSI Contractor's obligations under any contracts relating to the foregoing that arise after the termination date.
- 33.5.4 TSI Contractor shall take all action that may be necessary, or that SRTA may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, Equipment, parts, supplies and other property.
- 33.5.5 On or about the Termination Date, TSI Contractor shall execute and deliver to SRTA the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to SRTA, acting reasonably, assigning and transferring to SRTA all of TSI Contractor's right, title and interest in and to the following:
 - 33.5.5.1 all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;
 - 33.5.5.2 all books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project;
 - 33.5.5.3 all data and information relating to the use of the Project, including all studies, reports, and other information provided that the transfer of any Intellectual Property shall be subject to **Sections 24.3(License) and 25 (Intellectual Property Escrow) of this Contract;** and
 - 33.5.5.4 all other work product and Intellectual Property used or owned by TSI Contractor or any Affiliate relating to the Work, the Project,

provided that the transfer of any Intellectual Property shall be subject to **Sections 24.3 (License) and 25 (Intellectual Property Escrow) of this Contract.**

33.5.6

TSI Contractor shall otherwise assist SRTA in such manner as SRTA may require prior to and for a reasonable period following the termination date to ensure the orderly transition of the Project and its management to SRTA, and shall, if appropriate and if requested by SRTA, take all steps as may be necessary to enforce the provisions of TSI Contractor's agreements with the TSI Contractor Parties pertaining to the surrender of the Project.

34 **Insurance.**

34.1 Insurance Certificates. The TSI Contractor shall procure the insurance coverages identified below at the TSI Contractor's expense and shall furnish SRTA an insurance certificate listing SRTA as the certificate holder and an endorsement listing SRTA as an additional insured for the negligent acts or omissions of TSI Contractor or the TSI Contractor Parties in relation to the commercial general liability and business automobile liability insurance. Such additional insured requirement may be met on a blanket additional insured basis. Evidence of insurance coverages shall be provided on the standard ACORD form acceptable to SRTA and the Georgia Office of the Insurance Commissioner. Should any of the policies described herein be cancelled before the expiration date thereof or revised in a material way, TSI Contractor shall notify SRTA within seven (7) Days of TSI Contractor's notice of such cancellation or change. The insurance certificate must provide the following:

- 34.1.1 name and address of authorized agent;
- 34.1.2 name and address of insured;
- 34.1.3 name of insurance company(ies);
- 34.1.4 description of policies;
- 34.1.5 policy number(s);
- 34.1.6 policy period(s);
- 34.1.7 limits of liability;
- 34.1.8 name and address of SRTA as certificate holder;
- 34.1.9 project Name and Number;
- 34.1.10 signature of authorized agent; and

34.1.11 telephone number of authorized agent.

34.2 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

34.2.1 TSI Contractor shall provide at least thirty (30) Days prior written notice of cancellation or nonrenewal to SRTA. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice. TSI Contractor shall provide written notice of any material changes to the policy to SRTA within three (3) Business Days of TSI Contractor's receipt of notice of any changes or proposed changes from the insurance company;

34.2.2 the policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds");

34.2.3 each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The TSI Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12;

34.2.4 all deductibles shall be paid for by the TSI Contractor; and

34.2.5 self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$50,000.00.

34.3 Required Insurance Coverages. The TSI Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the TSI Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. § 50-21-37. The minimum required coverages and liability limits are as follows:

34.3.1 *Workers' Compensation Insurance.* The TSI Contractor agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner

approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the TSI Contractor qualifies to pay its own workers' compensation claims. The TSI Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the TSI Contractor in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the TSI Contractor's workers' compensation insurance.

34.3.2 *Employers' Liability Insurance.* The TSI Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

34.3.2.1 Bodily Injury by Accident \$1,000,000 each accident; and

34.3.2.2 Bodily Injury by Disease \$1,000,000 each employee.

The TSI Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the TSI Contractor in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the TSI Contractor's Employers Liability Insurance Coverage.

34.3.3 *Commercial General Liability Insurance.* The TSI Contractor shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must provide at a minimum the following limits:

Coverage	Limit
1. Premises and Operations	\$ 1,000,000.00 per Occurrence
2. Products and Completed Operations	\$ 1,000,000.00 per Occurrence
3. Personal Injury	\$ 1,000,000.00 per Occurrence
4. Contractual	\$ 1,000,000.00 per Occurrence
5. General Aggregate	\$ 4,000,000.00

Additional Requirements for Commercial General Liability Insurance are shown below at **Section 34.3.6.**

34.3.4 *Commercial Business Automobile Liability Insurance.* The TSI Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

34.3.5 *Commercial Umbrella Liability Insurance.* The TSI Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

\$2,000,000 per Occurrence/\$10,000,000 Aggregate

34.3.6 *Additional Requirements.* The insurance provided in **Sections 34.3.3, 4, and 5** shall also meet the following additional requirements:

34.6.1 the policy shall name as additional insureds the officers, members, and employees of SRTA; and

34.6.2 the policy must be on an "occurrence" basis.

34.3.7 *Disposition of Insurance Documents.* One original certificate of insurance with all endorsements attached must be deposited with SRTA for each insurance policy required.

34.4 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the expiration or other termination of the Contract.

34.5 Failure of Insurers. The TSI Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

34.6 Ongoing Coverage. TSI Contractor is responsible for tracking insurance coverages for itself and its subcontractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to SRTA ongoing compliance with this **Section 34.**

34.7 General. The TSI Contractor's obligations under this **Section 34** are in addition to TSI Contractor's obligations under **Section 29 (Indemnification) of this Contract.**

35 Bonds. The TSI Contractor shall furnish the bonds required in this **Section 35.**

- 35.1 Payment and Performance Bond. The TSI Contractor shall furnish both a performance bond and a payment bond in the exact form set forth in **Exhibit F (Bond Forms)**.
- 35.2 Required Qualifications for Surety. The surety and insurance companies must be acceptable to SRTA. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to SRTA. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.
- 35.3 Penal Amount of Bonds, State Law. The provisions of O.C.G.A. §§ 13-10-2, 13-10-40 and 13-10-60, shall be deemed to govern the requirements of the performance and payment bonds required under this Contract. Therefore pursuant to O.C.G.A. §§ 13-10-2, 13-10-20, 13-10-40 and 13-10-60, the bonds must be in a penal amount equal to at least 100% of the Contract Sum plus any Change Orders, less maintenance fees for the hardware, software and network services. Accordingly, the TSI Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent (5%) or more, it shall obtain a written amendment to each bond increasing the penal amount to 100% of the Contract Sum, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order.
- 35.4 Bond Duration/Term. Provided the Initial Term has not expired, the performance bond provided under **Section 35** shall be released and returned to the TSI Contractor one year after Open to Tolling or upon successful completion of the System Acceptance Test, whichever occurs later. If the Initial Term expired and the applicable Project has not been Open to Tolling for a period of one year or one year has not passed since a successful completion of the System Acceptance Test, whichever occurs later, then the TSI Contractor must, ten (10) Days prior to the expiration of the Initial Term, provide a new performance bond for the duration of the Renewal Term according to the terms of this Section. Provided the Initial Term has not expired, the payment bonds provided under this **Section 35** shall be released and returned to the TSI Contractor within one year after Open to Tolling or upon successful completion of the System Acceptance Test, whichever occurs later, provided all claims for payment by any of the TSI Contractor Parties are fully and finally resolved and TSI Contractor furnishes SRTA with an Affidavit from each and every one of the TSI Contractor Parties on the applicable Project, certifying that the TSI Contractor Party, as applicable, received payment in full and has no outstanding claims for payment against TSI Contractor for Work performed on the Project. If the Initial Term expired and the applicable Project has not been Open to Tolling for a period of one year or one year has not passed since a successful completion of the System Acceptance Test, whichever occurs later, then the TSI Contractor must ten (10) Days prior to the expiration of the Initial Term provide a new payment bond according to the terms of this Section. Thereafter, payment bonds shall be provided on an annual renewal basis for the maintenance services; with such annual renewal bonds being in the amount of 100% of the respective annual amount for the maintenance services.

36 **Records Retention and Audit Rights.** In addition to audit obligations as set forth in the RFP, TSI Contractor shall and shall cause each TSI Contractor Party to maintain accurate books, records, documents and other evidence concerning TSI Contractor's performance of Work under this Contract (hereinafter referred to as the "Records"). TSI Contractor agrees to make available, at all reasonable times during which this Contract is in effect the Records for inspection or audit by any authorized representative of SRTA or the Georgia State Auditor. Within no more than five (5) Days after the termination of this Contract for any reason, copies of all Records shall be given by the TSI Contractor to SRTA. Records that relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to which exception has been taken by the State Auditor or any of his or her duly authorized representatives, shall be retained by TSI Contractor until such appeals, litigation, claims or exceptions have been disposed. Notwithstanding anything to the contrary stated in this provision, nothing in this **Section 36** shall obligate the TSI Contractor to provide TSI Contractor's internal cost data for review or for audit. SRTA shall also at all times during the Term of this Contract have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the Contract Documents, including monitoring and auditing TSI Contractor and its books and records to determine compliance with requirements of the Contract Documents and the approved Project Management Plan, including audit review of Design Documents, Plans, Construction Documents and other Submittals.

37 **Cooperation, Transition, End of Contract Responsibilities.**

37.1 **Cooperation.** In the event that SRTA enters into any agreement at any time with any other vendor(s) as allowed pursuant to **Section 44.20 (No Exclusivity) of this Contract** or for additional work related to the Work, TSI Contractor agrees to cooperate fully with such other vendors in order to facilitate the performance of work by such other vendor(s) and/or provision of the Work by the TSI Contractor and to refrain from any activity which would interfere with performance of work by such other vendor(s) and/or provision of the Work by the TSI Contractor.

37.2 **Transition.** Upon expiration or earlier termination of this Contract, TSI Contractor shall accomplish a complete transition of the Work from TSI Contractor to SRTA, or to any replacement provider designated by SRTA, and not cause through any act or omission of the TSI Contractor or the TSI Contractor Parties any interruption of, or adverse impact on the Work any component thereof or any other work provided by third parties. TSI Contractor shall cooperate fully with SRTA or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All Work related to such transition shall be performed at no additional cost.

37.3 **End of Contract.** The TSI Contractor shall perform the end of Contract responsibilities as specified in the Contract Documents or as otherwise directed by SRTA.

37.4 **Failure to Comply.** The Parties acknowledge and understand that TSI Contractor's failure to comply with the terms and conditions as stated in this **Section 37** may adversely affect SRTA and result in monetary loss to SRTA. SRTA shall assess, audit, and certify to the TSI Contractor monetary losses resulting from the TSI Contractor's failure to comply with the provisions of this **Section 37**. SRTA's reasonable determination as to

the amount of the monetary loss suffered shall be conclusive and, unless an action is brought by TSI Contractor in a court of law pursuant to **Section 44.6 (Governing Law/Venue) of this Contract** within forty-five (45) Days of SRТА's determination of monetary loss and SRТА's determination is deemed unreasonable by such court, TSI Contractor shall compensate SRТА for any undisputed loss within thirty (30) Days of such a determination by SRТА or by the court of competent jurisdiction, as applicable.

38 **Conflicts of Interest.** The TSI 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 or the performance of Work in a manner that is free of appearance or fact of impropriety. The TSI Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops.

39 **Data Ownership/Access/Security.** All data, Transaction records, Trip records, system database and other logs, ITS Equipment output, including MVDS, CCTV, MOMs, or any data collected by the Electronic Toll Collection System, including all images, is the property of SRТА. If the data is organized and stored using COTS database or proprietary database software then the TSI Contractor must provide a secure network path and web service (often referred to as ETL) or direct ODBC connection to the database with appropriate permissions and credentials to extract data from the database. This includes, but not limited to, newly inserted or updated data in the database, database backups, and archives (offline backups). If it is preferred that extractions and queries not be done on the production database, then an active standby database will be provided at the Toll Facility Host or Toll Facility Host DR. In addition to TSI Contractor's obligations in **Section 26 (Confidentiality)**, TSI Contractor shall ensure that no unauthorized personnel will have access to individual facilities, cabinets, data and records, any personal information of existing or potential SRТА customers.

40 **Maintenance.** TSI Contractor shall perform the maintenance services and as those terms are more fully described in the RFP and **Exhibit G (Maintenance Terms)**.

40.1 **Stale Transactions.** Once the roadway associated with a Project is open to tolling and thereafter during TSI Contractor's performance of the maintenance services, if as a result of the acts or inactions of TSI Contractor or TSI Contractor Parties, the TSI Contractor fails to successfully transmit to SRТА's CSC a properly formed Trip and all of the information required by the Contract Documents for each such Trip in accordance with the RFP requirements within sixty (60) Days after the date the Trip occurred ("Stale Transactions"), then TSI Contractor shall be responsible to make payment to SRТА for the amount of lost tolls represented by each Stale Transaction. TSI Contractor shall make payment to SRТА of such loss of revenue within thirty (30) Days of SRТА's notice to TSI Contractor.

41 **Exhibits.** The following Exhibits are incorporated by reference into and made a part of the Contract Documents:

Exhibit B- RFP

Exhibit C- TSI Contractor's Proposal

Exhibit D- TSI Contractor's Qualification Statement

The following Exhibits are attached hereto and incorporated into the Contract Documents:

- Exhibit A-** Definitions
- Exhibit E-** Pricing Schedules
- Exhibit F-** Bond Forms
- Exhibit G-** Maintenance Terms
- Exhibit H-** Bill of Sale
- Exhibit I-** TSI Contractor’s Intellectual Property
- Exhibit J-** Escrow Agreement

42 **Incentive Payment.** If the TSI Contractor has successfully completed the Integration Test (see **Section 4.6.9 (Integration Test) of the RFP**) and is ready to perform the End to End Test at least fourteen (14) Days before the Substantial Completion Date, then the TSI Contractor is eligible for an incentive payment as set forth below in **Table 42**.

42.1 Bonus Payments Not Cumulative. The Incentive Payment Amounts below in Table 42 are not cumulative.

TABLE 42

Incentive Payment Schedule		
Days Completed Before the Scheduled Completion Date	Incentive Payment 75 South	Incentive Payment NWC
42 or more	\$101,500	\$175,000
41	\$97,500	\$168,000
40	\$93,500	\$161,000
39	\$89,500	\$154,000
38	\$85,500	\$147,000
37	\$81,500	\$140,000
36	\$77,500	\$133,000
35	\$73,500	\$126,000
34	\$69,500	\$119,000
33	\$65,500	\$112,000
32	\$61,500	\$105,000
31	\$57,500	\$98,000
30	\$53,500	\$91,000
29	\$49,500	\$84,000
28	\$45,500	\$77,000
27	\$43,250	\$73,500
26	\$41,000	\$70,000
25	\$38,750	\$66,500
24	\$36,500	\$63,000
23	\$34,250	\$59,500

22	\$32,000	\$56,000
21	\$29,750	\$52,500
20	\$27,500	\$49,000
19	\$25,250	\$45,500
18	\$23,000	\$42,000
17	\$20,750	\$38,500
16	\$18,500	\$35,000
15	\$16,250	\$31,500
14	\$14,000	\$28,000

42.2 Substantial Completion Date. For the purposes of calculating and determining eligibility for the incentive payment, the Substantial Completion date as defined in the applicable GDOT RFP shall be utilized as the date by which the TSI Contractor shall have successfully completed the Integration Test and is ready to perform End to End Testing. The Substantial Completion date that is **defined on the Civil Contractor’s GDOT-approved schedule** upon turnover of the Communication Hub(s) Fiber Network as applicable for each Project shall be utilized for the calculation of this incentive payment.

42.3 No Extension of Substantial Completion Date. For the purposes of calculating and determining eligibility for the incentive payment, the Substantial Completion Date shall not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, weather, Force Majeure, other entities, unless otherwise determined by SRTA in its sole and absolute discretion.

43 Loss of Revenue. If TSI Contractor meets an applicable SLA, but SRTA nevertheless incurs a loss of Gross Revenue as a result of the acts or inactions of the TSI Contractor or the TSI Contractor Parties, then for each event in which SRTA incurs a loss of Gross Revenue that exceeds \$5,000.00, the TSI Contractor shall be obligated to make SRTA whole and make payment to SRTA of all tolls associated with lost trips. In the event that SRTA is unable to determine lost Gross Revenue because data is lost or otherwise unavailable, then the Parties agree that lost Gross Revenue shall be based on historical figures (traffic) maintained by SRTA. SRTA, at its option, may either reduce the amount of the subsequent monthly maintenance fee or warranty fee, as applicable, by the amount of Gross Revenue due as set forth above or require TSI Contractor to make payment within thirty (30) Days of SRTA’s notice to TSI Contractor.

43.1 Potential Correction. TSI Contractor may present to SRTA remedies that will prevent similar future events. If SRTA agrees that such remedies will prevent future similar events, then approval of the implementation of such remedies will not be unreasonably withheld by SRTA, taking into consideration SRTA’s business needs and other general business considerations. By way of example and not by limitation, any correction that may result in a Stale Transaction as detailed in **Section 40.1 (Stale Transactions) of th Contract**, shall be deemed unreasonable. Agreed upon remedies will be executed at no cost to SRTA and not impact in any way any of SRTA’s other requirements under the Contract Documents.

44 Miscellaneous Provisions.

- 44.1 Compliance with Laws. The TSI Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, State, and local government Laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, anti-solicitation Laws, O.C.G.A. § 50-5-82, O.C.G.A. § 13-10-91, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by SRТА. Any changes to applicable Laws, rules, or regulations that are enacted after contract award may be the subject of a Change Order only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to TSI Contractor to comply with such changes. In such an event, the increased cost shall reflect the unit prices set forth in the TSI Contractor's Price Proposal included in the TSI Contractor's Proposal, and if the labor or material is not included in the TSI Contractor's Price Proposal, then the Change Order shall reflect an increase in price of TSI Contractor's actual cost plus 9% markup.
- 44.2 Parties Bound. This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.
- 44.3 Time of the Essence/Force Majeure. Time is of the Essence for this Contract. However, neither Party shall be liable to the other Party for any delay or failure of performance due to the occurrence of any of the following events that materially and adversely affects performance of TSI Contractor's or SRТА's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the affected Party (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or statewide (i.e., State of Georgia) strike that has a direct adverse impact on the TSI Contractor's ability to obtain materials, Equipment or labor for the Project. TSI Contractor's exclusive remedies for Force Majeure are set forth in **Section 17.3 (Delay and Extensions of Time) of this Contract.**
- 44.4 Trading with State Employees. The TSI Contractor warrants that the provisions of O.C.G.A. §§ 45-10-20 *et seq.* have not and will not be violated during the Term or any Renewal Term of this Contract.
- 44.5 Federal Intellectual Property Bankruptcy Protection Act. SRТА shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.
- 44.6 Governing Law and Venue.
- 44.6.1 *Governing Law.* 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.

44.6.2 Uniform Commercial Code. Except to the extent provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted by the State shall govern this Contract. To the extent the Contract entails both the supply of goods and services such shall be deemed goods within the meaning of the Uniform Commercial Code, except when deeming such services as goods would result in a clearly unreasonable interpretation.

44.6.3 Venue. Any action arising out of or 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. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Contract. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in **Section 44.7 (Notices) of this Contract**.

44.7 Notices. All notices, notifications, requests, approvals, or other communications (excluding Invoices) required by or otherwise related to the Contract Documents 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. Notices may also be sent by email or facsimile transmission provided that the recipient acknowledges receipt of the notice, notification, request, approval, or other communication, as applicable. Invoices shall be sent by U.S. Mail, postage prepaid, to the attention of Accounts Payable at SRTA's address set forth below. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. (local Atlanta time) and all other notices received after 5:00 p.m. (local Atlanta time) shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m. (local Atlanta time)). Any technical communications pertaining to the Work shall be conducted between TSI Contractor's Project Manager and SRTA's Project Manager.

For SRTA:

Att: Executive Director
47 Trinity Avenue, 4th Floor
Atlanta, Georgia 30334

For the TSI Contractor:

Att: _____

Phone: (404) 893-6111

Fax: (404) 893-6144

Email: ctomlinson@georgiatolls.com

With a copy to:

General Counsel

- 44.8 Taxes. The TSI Contractor will pay, prior to delinquency, all taxes lawfully imposed upon it that may arise with respect to this Contract.
- 44.9 Publicity. TSI 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.
- 44.10 Drug-Free Workplace. TSI Contractor hereby certifies that (a) a drug free workplace will be provided for the TSI Contractor's employees during the performance of this Contract, and (b) it will secure from any subcontractor hired to work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (TSI Contractor's Name), (Subcontractor's Name), certifies to the TSI Contractor that a drug free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3."
- 44.10.1 TSI Contractor may be suspended, terminated, or debarred if it is determined that (a) the TSI Contractor has made false certification hereinabove, or (b) the TSI Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
- 44.11 Remedies Cumulative. With the exception of liquidated damages, the rights and remedies of SRTA under this Contract are cumulative of one another and with those otherwise provided by Law or in equity.
- 44.12 Integration of the Contract Documents. SRTA and TSI Contractor agree and expressly intend that, subject to **Section 44.14 (Severability) of this Contract**, this Contract, and the other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.
- 44.13 Waiver. No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy as such right or remedy is specifically allowed under this Contract. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent

is required, regardless of whether similar to the act for which consent is given. Except as provided otherwise in the Contract Documents, no act, delay or omission done or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.

- 44.14 Severability. The invalidity or unenforceability of any clause, provision, section or part of the Contract Documents shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.
- 44.15 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 the Contract Documents.
- 44.16 Headings. The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.
- 44.17 Counterparts. The Parties may execute this Contract in counterparts.
- 44.18 Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction as set forth in **Section 44.6 (Governing Law and Venue)**, 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.
- 44.19 Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 6 (Documentation), 9 (Site Conditions), 13 (Subcontracting and Assignment), 16 (Payment Terms), 18 (Hardware/Equipment/Materials/Supplies), 19 (Warranties), 22 (Risk of Loss), 24 (Intellectual Property), 25 (Intellectual Property Escrow), 26 (Confidentiality), 27 (Defective Work), 28 (Liquidated Damages), 29 (Indemnification), 30 (Limitation of Liability), 31 (Dispute Resolution), 32 (Default; Damages/Remedies), 33 (Termination), 34 (Insurance), 35 (Bonds), 36 (Records Retention and Audit Rights), 37 (Cooperation, Transition, End of Contract Responsibilities), 39 (Data Ownership/Access/Security), 43 (Loss of Revenue) and 44 (Miscellaneous Provisions) of this Contract** shall survive the termination for whatever reason of this Contract.
- 44.20 No Exclusivity. This is a non-exclusive Contract. This Contract in no way precludes SRTA from obtaining like goods or services from other suppliers at any time. Such determination by SRTA shall be made at the sole discretion of SRTA, and shall be

conclusive. Such determination shall only be made when it is deemed to be in the best interest of SRTA or the State to do so.

44.21 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 TSI 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.

44.22 Registered Lobbyists. TSI Contractor represents and warrants that the TSI 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.

IN WITNESS WHEREOF, the Parties have caused this Contract to be signed, sealed and delivered as of the Effective Date.

State Road and Tollway Authority _____ (SEAL)

By: _____
Christopher S. Tomlinson
Executive Director

By: _____
Name
Title

Attest: _____
Bert Brantley
Deputy Executive Director

By: _____
Name
Title

EXHIBIT A

Definitions

Abandonment means that TSI Contractor abandons all or a material part of the Project, which abandonment shall have occurred if (a) TSI Contractor demonstrates through acts or omissions an intent not to continue, for any reason other than a time extension event that materially interferes with ability to continue, to construct or operate all or a material part of the Project and (b) no significant Work (taking into account the Master Project Schedule, if applicable, and any time extension) on the Project or a material part thereof is performed for a continuous period of more than ten (10) Business Days.

Acceptance shall have the meaning assigned to it in the RFP.

Amendment shall mean a document that is properly signed by both Parties that changes the terms and conditions of this Contract.

Back Office shall have the meaning assigned to it in the RFP.

Business Day means Monday through Friday excluding State-recognized holidays.

Change Order means a written approval by SRTA, counter-signed by TSI Contractor, which shall set forth any adjustments to the Contract Sum and/or the Contract time as more further described in **Section 17.2 (Change Order) of the Contract**.

Civil Contractor means each contractor to GDOT that will be responsible for the civil work on a particular Project.

Construction Documents mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the utility adjustments included in the Work, in accordance with the RFP.

Construction Maintenance Limits means the physical boundaries of TSI Contractor's maintenance responsibilities for the Construction Work.

Contract means this binding Toll Systems Integration Procurement Contract between SRTA and TSI Contractor.

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

Contract Sum shall have the meaning assigned to it in **Section 17.2 (Change Order) of the Contract**.

Critical Path means the sequence of activities that must be completed on schedule for the entire Project to be completed on in accordance with the Milestone Schedule Deadlines. This is the longest

duration path through the Work plan, in terms of time, of logically connected activities on the Master Project Schedule ending with the relative Milestone Schedule Deadlines in respect thereof.

CSC Host means the central computer system of SRTA or its contractor that supports Customer Service Center account management functions for the Project.

Customer Service Center (CSC) means the facility used to service users of the State's Toll Facilities, including a database system that enables registration and maintenance of customer accounts.

Day(s) shall mean calendar days unless otherwise specified in the Contract as a Business Day.

Deliverables means all Work and each deliverable set forth in **Appendix C (Deliverable Schedule) of the RFP**.

Disputed Work shall have the meaning assigned to it in **Section 17.2.2 (Disputed Work) of the Contract**.

End-to-End Test shall have the meaning assigned to it in the RFP.

Enhancements shall have the meaning assigned to it in **Section 24.3 (License) of the Contract**.

Equipment means any hardware, equipment, supplies, item listed on **Exhibit E (Pricing Schedules)** or other item that is needed for the TSI Contractor to perform all or part of the Work.

Event of Default shall have the meaning assigned to it in **Section 32 (Default; Damages/Remedies) of the Contract**.

Excessive Failure shall have the meaning assigned to it in **Section 19.10 (Excessive Failure) of the Contract**.

Express Lanes Toll Collection System. The complete system provided by the TSI Contractor to meet the requirements of the Contract Documents.

Facility Host means a Toll Facility system that contains software required to accept tolling transactions (TSI Contractor, ALPR and video) from the tolling zone controllers; builds trips from combination of transaction inputs; determines toll for a trip; interfaces with SRTA BOS to provide the completed Trip Transaction.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of TSI Contractor's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by TSI Contractor (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct

physical damage to the Project; or (f) national or statewide (i.e. State of Georgia) strike that has a direct adverse impact on the TSI Contractor's ability to obtain materials, Equipment or labor for the Project.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, or constructor, seeking in good faith to comply with its contractual obligations, complying with the RFP, all applicable Laws and Governmental Approvals, and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, special provision, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

Governmental Entity(ies) means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than SRTA and GDOT.

GDOT means the Georgia Department of Transportation.

GDOT Specifications, Special Provisions, and Standards shall mean a collection of construction-related information that outlines any GDOT-specific construction methods, manuals, references, materials sampling & testing, and other procedures and requirements that contractors doing business in the State of Georgia must adhere to.

Gross Revenue

Immigration Act means the Georgia Immigration & Compliance Act, O.C.G.A. § 13-10-90, *et seq.* as set forth in **Section 8.6 (Immigration Act) of the Contract**.

Incident means any unplanned event during the course of construction.

Incident Management Plan means TSI Contractor's plan for detection and response to Incidents or Emergencies, as part of the PMP.

Wherever the word **"including"** **"includes"** or **"include"** is used in this Contract, it shall be deemed to be followed by the words **"without limitation."**

Indemnified Parties means SRTA, GDOT, the State, the State Transportation Board, and their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees. Indemnified Party shall mean any of the aforementioned.

Integration Test means that testing as described in **Section 4.6.9 (Integration Test) of the RFP**.

Intellectual Property means all current and future legal and/or equitable rights and interests throughout the world in know-how, patents (including applications), copyrights (including moral rights), copyright registrations and applications, trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, author's rights, algorithms, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data as may exist now or hereafter come into existence, and all renewals and extensions thereof, including but not limited to toll-setting and traffic management algorithms, software used in connection with the Project (including but not limited to software used for management of traffic on the Project), firmware and Source Code. Intellectual Property is distinguished from physical construction and Equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow means the arrangement set forth in **Section 25 (Intellectual Property Escrow) of the Contract**.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental laws but excluding Governmental Approvals.

Liquidated Damages means such liquidated damages as may accrue and be due and payable by TSI Contractor to SRTA as set forth under **Section 28 (Liquidated Damages) of the Contract** and as set forth in **Appendix D of the RFP**.

Master Project Schedule shall mean the TSI's Project schedule, as more fully described in **Section 4 of the RFP**, as may be further adjusted pursuant to any Change Order, including on account of any permissible extensions of time pursuant to **Section 17.3 (Delay and Extensions of Time) of this Contract**.

Milestone Schedule means the schedule of deadlines set forth in **Appendix _ of the RFP**, as further adjusted pursuant to any Change Order or permitted extension of time pursuant to **Section 17.3 (Delay and Extensions of Time) of the Contract**.

Milestone Schedule Deadline means the critical milestones for commencement and/or completion of the Work as set forth in **Appendix _ of the RFP**, including without limitation the, all as may be adjusted upon approval of the Master Project Schedule.

Notice to Proceed shall have the meaning assigned to it in the RFP.

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

Open to Tolling means the first day of operation and toll revenue is collected.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, Governmental Entity, or SRTA.

Project shall have the meaning assigned to it in the RFP.

Project Acceptance means successful completion of all tests described in **Section 4 of the RFP**, closure of all punch-list items, completion and submission of all required documents and meeting of other conditions as specified in the Contract Documents as acknowledged by SRTA.

Project Management Plan means the document that describes the system of management, staff, and measurable controls that will be utilized to meet the specifications of this RFP and will enable SRTA to monitor the progress and quality of the work performed on the Project(s). The PMP will include all aspects of change management, communications management, configuration management, human resources management, requirements management and will incorporate the quality management plan, risk management plan, and cost, Master Project Schedule and scope baselines.

Punch List means an itemized list of Construction Work that remains to be completed following Open To Tolling but as a condition to Project Acceptance, provided that the nature of any such incomplete Work, and the correction and completion of same, will have no material or adverse effect on the normal and safe use and operation of the Project.

Related Transportation Facility(ies) means all existing and future highways, streets and roads, including upgrades and expansions thereof, that is/are or will be adjacent to, connecting with or crossing under or over the Project, as specifically identified in the RFP.

RFP means the Tolling Systems Integrator/ I-75 South Express Lanes Project and I-75 Northwest Corridor Express Lanes Project RFP No. 92700-13-100214 and any addenda thereto and any documents referenced therein.

Right of Way or ROW means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures of the Project, in which SRTA has a leasehold estate and interest pursuant to the Estate for Years or other property right or interest, and any proposed Right of Way, which SRTA at any time after the Effective Date, shall acquire a leasehold estate or other property interest. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Existing Right of Way.

SLA means Service Level Agreement as more specifically set forth in **Appendix D (Performance Requirements and SLAs) of the RFP**.

Source Code and **Source Code Documentation** means, with respect to any software, the full source language, human readable statement of such Software and complete source materials, user documentation and program maintenance documentation for such Software, including all available

flow charts, schematics and annotations which comprise the precoding detailed design specifications for such Software, together with all configurations, settings, compiler switches, library routines and files, data files, templates and the like necessary or desirable for creating the executable code form of such Software, all in a form suitable for reproduction by computer and photocopy Equipment, and all Software necessary to convert such source code into the executable code form of such Software. For purposes of this Contract, "open source software" shall also be considered Source Code. Source Code and Source Code Documentation also shall include all modifications, additions, substitutions, updates, updates and corrections made to the foregoing items.

SRTA-designated Representatives shall have the meaning assigned to it in the RFP.

SRTA's CSC means the central computer system of SRTA that supports customer service center account management functions for toll road facilities owned by SRTA.

State means the State of Georgia.

Submittal means any document, work product or other written or electronic end product or item required by the Contract Documents to be delivered or submitted to SRTA.

Substantial Completion Date shall have the meaning assigned to it in the GDOT RFP.

System Acceptance Testing shall have the meaning assigned to it in the RFP.

System Acceptance Testing Date shall have the meaning assigned to it in the RFP.

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

Toll Facility means a roadway or a managed lane(s) within a roadway, for which travelers who are not toll-exempt pay a specified fee for usage.

Transaction Record shall mean the record created in an Express Lane containing the data captured by the Zone Controller for a vehicle passage. These Transaction Records are transmitted to the Facility Host where they are processed to create Actual Transactions that are posted to customer accounts.

Trip shall be used to describe the passage of a vehicle through an Express Lane Corridor from the point where the vehicle enters the Express Lane at an authorized entry location until it exits the Express Lane at an authorized exit location. A Trip may include a single Tolling Segment or multiple Tolling Segments. Vehicles associated with a Toll Account will be charged a toll for each Tolling Segment travelled over the course of the Trip.

Trip Transaction shall be used to designate a transaction ready to be posted to a customer account at SRTA's existing CSC or a violation transaction processed by SRTA's existing VPC. All Transaction Records received from Express Lane Tolling Gantries for a given transponder or license plate number are assembled into a single Trip Transaction for that Tolloed Segment by the Facility Host System.

TSI Contractor shall have the meaning assigned to it in the Recitals.

TSI Contractor Parties means the TSI Contractor's agents, employees, independent contractors, assigns, contractors, subcontractors, suppliers, or any other entity or Person with whom TSI Contractor entered into an agreement to perform services or supply materials and/or Equipment or any other item of Work required of TSI Contractor under the Contract Documents.

TSI Contractor's Intellectual Property means Intellectual Property created by or on behalf of TSI Contractor or TSI Contractor Parties and used, applied or reduced to practice in connection with the Project or other Work that derives commercial value from its protection as a trade secret under State Law or from its protection under U.S. patent Law

TSI Contractor's Project Manager means the individual designated by TSI Contractor and approved in writing by SRTA in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of TSI Contractor as described in the approved Project Management Plan.

Work shall mean without limitation all plant, labor, materials, Equipment, systems, services, including administrative, software, firmware and other facilities, design, installation, construction, testing, operational and maintenance and other things necessary and proper for or incidental to the carrying out and completion of the terms of the Contract Documents.

EXHIBIT B

RFP

(Incorporated herein by reference)

EXHIBIT C

CONTRACTOR'S PROPOSAL
(Incorporated herein by reference)

EXHIBIT D

**CONTRACTOR'S QUALIFICATION STATEMENT
(Incorporated Herein by Reference)**

EXHIBIT E

PRICING SCHEDULES

METHOD OF COMPENSATION

TSI Contractor shall invoice for lump sum items in the month following the month in which such item was delivered, installed and received Acceptance, as determined by SRTA. Invoicing for Equipment that is priced on a unit price basis, will be made to the TSI Contractor for the units of Work completed, delivered, installed, tested and received Acceptance, as determined by SRTA, multiplied by the Contract unit price for the items. Partial payments may be made at designated points of the Equipment procurement process, but final payment will not be made until the System Acceptance Testing has been successfully completed and Project Acceptance occurred.

CONTRACTOR'S PRICING PROPOSAL BEGINS ON NEXT PAGE.

EXHIBIT F
BOND FORMS

PERFORMANCE BOND

Project No. and Name:

TSI Contractor:

Surety:

Name of State Entity: State Road and Tollway Authority

Bond Number:

KNOW ALL MEN BY THESE PRESENTS:

That _____ (Legal Name and Address of the TSI Contractor) as principal (hereinafter referred to as "Principal"), and _____ (Legal Title and Address of Surety) as surety (hereinafter referred to as "Surety"), are held and firmly bound unto the GEORGIA STATE ROAD AND TOLLWAY AUTHORITY as Obligee (hereinafter referred to as "SRTA"), in the amount of _____ DOLLARS (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with SRTA bearing date of _____ for: _____ (Insert Name of Project), which said contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform and comply with the terms and conditions of said contract; and shall indemnify and save harmless against and from all cost, expenses, damages, injury or loss to which said SRTA may be subjected by reason of any wrongdoing, including patent infringement, misconduct, want of care or skill, default or failure of performance on the part of said Principal, his agents, subcontractors or employees, in the execution or performance of said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the work to be performed thereunder, or the specifications or drawings accompanying same, or the exercise of SRTA's right to perform work with separate contractors or to correct work pursuant to the terms of the Contract, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work or to the specifications or drawings. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of Section 6 of the RFP referring to Penal Amounts of

Bonds, State Law for increases in the penal amount of this bond and waives notice from SRTA of any such changes.

2. If pursuant to the Contract Documents the Principal shall be declared in default by SRTA under the aforesaid Contract, the Surety shall promptly perform this bond agreement in accordance with its terms and conditions. It shall be the duty of the Surety to give an unequivocal notice in writing to SRTA, within twenty-five (25) days after receipt of a declaration of default, of the Surety's election to either remedy the default or defaults promptly or to perform the Contract promptly, time being of the essence. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to SRTA immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction or each item of condemned work, (c) the furnishing of each omitted item of work, and (d) the performance of the contract. The Surety shall not assert its Principal as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the Contract.
3. It is expressly agreed by the Principal and the Surety that SRTA, if it desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the work.
4. No right of action shall accrue on this bond to or for the use of any person or corporation other than SRTA named herein or the legal successors of SRTA.
5. For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

Name: Telephone:
Address:
City: State: Zip Code:

6. Further, this bond shall be the Performance Bond furnished under O.C.G.A. §§ 13-10-2, 13-10-20, 13-10-40 and 13-10-60 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and the provisions of the Contract.

SIGNED AND SEALED THIS _____ DAY OF _____, 2010.

ATTEST (Seal)

(Name of Principal)

Secretary (Note 1)

By _____
President

(Seal)

(Name of Surety) (Note 2)

By: _____
____ (Title)
Resident Georgia Agent *

Note 1. Please apply seal of Corporation over Secretary's Signature.

Note 2. Please apply seal of Surety and arrange for countersignature by a "Resident Georgia Agent" of Surety in order to comply with surety regulations of Georgia.

(*) Attach Power of Attorney

PAYMENT BOND

Project No. and Name:

TSI Contractor:

Surety:

Name of State Entity: State Road and Tollway Authority

Bond Number:

KNOW ALL MEN BY THESE PRESENTS:

That _____ (Legal Title and Address of the Construction Professional) as Principal (hereinafter referred to as the "Principal") and _____ (Legal Name and Address of the Surety) as Surety (hereinafter referred to as "Surety", are held and firmly bound unto the GEORGIA STATE ROAD AND TOLLWAY AUTHORITY. as Obligee (hereinafter referred to as "SRTA") for the use and benefit of claimants defined, hereinafter in the amount of: _____ DOLLARS (\$ _____) to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with SRTA dated _____ for _____ (Insert Name of Project), which contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials supplied in the prosecution of the work provided for in said Contract, then this obligation shall be void, otherwise it shall remain in full force and effect subject, however, to the following conditions:

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the work to be performed thereunder, or the exercise of SRTA's right to perform work with separate contractors or to correct work pursuant to the terms of the Contract, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of Section 6 of the RFP referring to Penal Amounts of Bonds, State Law for increases in the penal amount of this bond and waives notice from SRTA of any such changes.
- (2) A claimant is defined as any subcontractor and any person supplying labor, materials, machinery, or equipment in the prosecution of the work provided for in said contract.
- (3) Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the work referred to in said bond before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him, or materials or equipment or machinery was furnished or supplied by him for which claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him, provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal furnishing said payment bond shall have (a) given written notice to said Principal within ninety (90) days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was performed or done; and (b) if the Principal has filed a Notice of Commencement with the Clerk of the Superior Court in the county in which the Project is located pursuant to O.C.G.A. § 13-10-62, given to said contractor a written Notice to TSI Contractor within 30 days from the filing of the Notice of Commencement or 30 days following the first delivery of labor, materials, machinery or equipment, whichever is later, setting forth:
 - A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment; the name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;
 - B) The name and the location of the work; and
 - C) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

It is provided further that nothing contained herein shall limit the right of action to said 90-day period. Notice may be served by the depositing of a notice, registered mail, postage paid, duly addressed to the Principal at any place it maintains an office or conducts his business, or his residence, in any post office or branch post office or any letter box under the control of the Post Office Department or notice may be served in any manner in which the sheriffs of Georgia are

authorized by law to serve summons or process. Every suit instituted under this section shall be brought in the name of the claimant without SRTA being made a party thereof. The official who has custody of said bond is authorized and directed to furnish, to any person making application thereof who submits an affidavit that it has supplied labor or materials for such work and payment therefore has not been made, or that it is being sued on any such bond, a copy of such bond and the contract for which it was given, certified, by the official who has custody of said bond and contract shall be admitted in evidence without further proof. Applicants shall pay for such certified statements and such fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fixed fee exceed the fees that the clerks of the superior courts are permitted to charge for similar copies.

(4) Further, this bond shall be the Payment Bond furnished in compliance with O.C.G.A. §§ 13-10-2, 13-10-60, 13-10-40 and 13-10-60 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and the applicable provisions of the Contract.

(5) For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

Name: _____ Telephone: _____
Address: _____
City: _____ State: _____ Zip Code: _____

SIGNED AND SEALED THIS ____ DAY OF _____, 20____.

ATTEST (Seal) _____
(Name of Principal)

Secretary (Note 1) By _____
President

(Seal) _____
(Name of Surety) (Note 2)

By: _____

(Title)
Resident Georgia Agent *

Note 1. Please apply seal of Corporation over Secretary's Signature.

Note 2. Please apply seal of Surety and arrange for countersignature by a "Resident Georgia Agent" of Surety in order to comply with surety regulations of Georgia.

(*) Attach Power of Attorney

EXHIBIT G

MAINTENANCE TERMS

EXHIBIT H

Bill of Sale

BILL OF SALE

This Bill of Sale is made on this _____ day of 201__ by _____ (“Seller”).
Seller, in exchange for consideration of \$_____, the receipt of which funds is acknowledged,
hereby does grant, sell, transfer and deliver to the State Road and Tollway Authority, a body
corporate and politic and an instrumentality and public corporation of the State of Georgia
(“SRTA”), the following goods:

SRTA shall have full rights and title to the goods described above.

Seller is the lawful owner of the goods and the goods are free from all encumbrances. Seller has
good right to sell the goods and will warrant, indemnify and defend the right against the lawful
claims and demands of all persons.

This Bill of Sale is signed, sealed and delivered by Seller.

Name of Seller (SEAL)

By: _____

Its:

EXHIBIT I

TSI CONTRACTOR'S INTELLECTUAL PROPERTY

EXHIBIT J

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the "**Escrow Agreement**") is made and entered into this ___ day of _____ 2013 ("Effective Date"), by and among _____, ("**TSI Contractor**"), State Road and Tollway Authority ("**SRTA**"), and _____, ("**Escrow Agent**") (together with SRTA and TSI Contractor, collectively referred to as the "**Parties**," and each individually as a "**Party**") in connection with that certain Toll System Integration Procurement Contract, dated _____, 2013 and all documents incorporated by reference therein (collectively, the "**Contract Documents**").

1. Definitions. All capitalized terms and abbreviations used in this Agreement, but not expressly defined herein, have the respective meanings set forth in the Contract Documents.

2. Appointment of Escrow Agent.

2.1 Designation of Escrow Agent. TSI Contractor hereby nominates and appoints Escrow Agent as escrow agent for the uses and purposes hereinafter described, and Escrow Agent hereby accepts such appointment subject to the conditions and limitations of this Escrow Agreement. Unless a Release (as defined in Section 4 hereof) occurs, Escrow Agent shall continue to hold the Contractor's Intellectual Property and the Back Office Software (collectively and individually referred to throughout this Escrow Agreement as the "Contractor Deposited Software") until the termination or expiration of this Escrow Agreement.

2.2 Fee. Escrow Agent shall receive a fee for its services payable by TSI Contractor annually in accordance with the fee schedule attached hereto as Exhibit A (the "**Service Fees**"), due and payable on execution hereof and on each anniversary of such date so long as this Escrow Agreement is in effect. All Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Escrow Agent may update Service Fees with a ninety (90) calendar day written notice to TSI Contractor during the term of this Escrow Agreement; providing, however, in the event any such update results in a material increase in Services Fees, as determined in TSI Contractor's discretion, TSI Contractor and SRTA may upon written agreement replace Escrow Agent with another escrow agent. TSI Contractor is liable for any taxes related specifically to services purchased under this Escrow Agreement or shall present to Escrow Agent an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. TSI Contractor and SRTA agree that if this Escrow Agreement terminates during the term for any reason, other than for the fault of Escrow Agent, all prepaid fees shall be non-refundable, except to the extent termination results from a material increase in Service Fees as provided herein. Any Service Fees not collected by Escrow Agent when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of TSI Contractor to deliver the Contractor Deposited Software, Escrow Agent shall nevertheless be entitled to be paid all Service Fees that accrue while this Escrow Agreement is in effect.

2.3 Term. The term of this Escrow Agreement shall commence as of the Effective Date, and shall continue in effect until a Release occurs as provided in Section 4 hereof, or until this Escrow Agreement is otherwise terminated as provided herein. If the Effective Date is not specified above, then the last

date noted on the signature blocks of this Escrow Agreement shall be the Effective Date. Unless the Contractor Deposited Software held in escrow has been released to SRTA, upon termination of this Escrow Agreement, Escrow Agent shall return the Contractor Deposited Software to TSI Contractor. If reasonable attempts to return the Contractor Deposited Software to TSI Contractor are unsuccessful, Escrow Agent shall destroy the Contractor Deposited Software.

2.4 Termination for Nonpayment. In the event of the nonpayment of undisputed Service Fees owed to Escrow Agent, Escrow Agent shall provide all Parties written notice of Escrow Agent's intent to terminate this Escrow Agreement. Either SRTA or TSI Contractor shall have the right to pay any unpaid Service Fees to Escrow Agent to cure a payment default hereunder. If the past due payment is not received in full by Escrow Agent within thirty (30) calendar days of the date of such written notice, then Escrow Agent shall have the right to terminate this Escrow Agreement at any time thereafter by sending written notice to all Parties. Termination of this Escrow Agreement shall not relieve any Party of any payment obligation arising hereunder.

3. Conditions. The conditions of this escrow are as follows:

3.1 Deposit. TSI Contractor shall deposit the Contractor Deposited Software with an accurate and complete description of all Contractor Deposited Software sent to Escrow Agent for the use and benefit of SRTA. The Contractor Deposited Software delivered to Escrow Agent shall consist of technical data, including Source Code and Software Enhancements sufficient to allow SRTA to run and maintain Contractor Deposited Software Contractor Deposited Software and the Back Office Software itself or to retain a third party to do so on SRTA's behalf. Escrow Agent shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Contractor Deposited Software. Escrow Agent shall treat the Contractor Deposited Software as confidential and proprietary information, and shall not, except as expressly permitted in this Escrow Agreement or with written consent of the Parties hereto, at any time use or disclose the Contractor Deposited Software except to the extent necessary to carry out the intent of this Escrow Agreement. To the extent Escrow Agent is required by a court or other governmental body to disclose or provide the Contractor Deposited Software or any information relating thereto to any such third party, Escrow Agent will immediately notify TSI Contractor and SRTA of the same, unless prohibited by law. After notifying the Parties, Escrow Agent may comply in good faith with any such order. Escrow Agent shall be under no obligation to challenge any such order; provided, however, Escrow Agent does not waive its rights to challenge any such order. Escrow Agent will cooperate with TSI Contractor or SRTA, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any Party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

3.2 Representations. TSI Contractor represents that the Contractor Deposited Software is and shall at all times contain a duplicate of the Contractor Deposited Software described under the Contract Documents, as such may be updated or modified from time to time. TSI Contractor shall completely and accurately identify each item delivered to Escrow Agent using the form attached hereto as Exhibit B, and certify that the Contractor Deposited Software is the same as what is described under the Contract Documents and that the Contractor Deposited Software is not "copy protected" and can be copied onto magnetic media for use as permitted by this Escrow Agreement and the Contract Documents. TSI Contractor represents that it lawfully possesses all Contractor Deposited Software provided to Escrow Agent under this Escrow Agreement and that any Contractor Deposited Software liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Escrow Agent under this Escrow Agreement.

TSI Contractor warrants that to the best of its knowledge, with respect to the Contractor Deposited Software, Escrow Agent's proper administration of this Escrow Agreement will not violate the rights of any third parties. Escrow Agent will conduct a visual inspection upon receipt of any Contractor Deposited Software and associated Exhibit B. If Escrow Agent determines that the Contractor Deposited Software does not match the description provided by TSI Contractor represented in Exhibit B attached hereto, Escrow Agent will notify TSI Contractor of such discrepancies and notate such discrepancy on the Exhibit B. Within five (5) days after receipt of the Contractor Deposited Software, Escrow Agent shall give SRTA written notice of the acceptance of the Contractor Deposited Software into the account. Escrow Agent shall have no responsibility to test, investigate or authenticate such Contractor Deposited Software, its identity or condition, and is entitled to rely upon the foregoing representation of TSI Contractor;

3.3 Updates. TSI Contractor shall, promptly upon, but no later than one month after, development or the release thereof, deposit into escrow with Escrow Agent any and all updates, modifications, new releases and other changes and corrections to the Contractor Deposited Software, including, but not limited to, the most recent version of the Contractor Deposited Software, and those other materials as herein required.

3.4 Inspection. SRTA shall have the right to inspect the Contractor Deposited Software in escrow upon at least ten (10) Business Days' advance written notice to determine the accuracy, completeness, sufficiency and quality of the Contractor Deposited Software deposited in escrow. The inspection must be conducted during normal business hours with costs and expenses borne by the Party requesting the inspection. The information collected during the audit shall be considered Confidential Information. The scope of any such inspection shall be limited to records pertaining to the services being provided to TSI Contractor or SRTA. Neither TSI Contractor nor SRTA shall be granted access to the vault or other secure areas of the Escrow Agent's facility. If TSI Contractor or SRTA elects to have its authorized representative perform such inspection, the authorized representative, shall be required to enter into a confidentiality agreement in form and substance similar to the terms of Section 26 (Confidentiality) of the Contract Documents. However, Escrow Agent reserves the right to refuse such access to anyone who is a competitor of Escrow Agent. While a Party and/or its authorized representatives are on Escrow Agent's premises, they agree to comply with Escrow Agent's safety and security policies. To the extent the deposit is incomplete or unsatisfactory as determined by SRTA, SRTA shall notify TSI Contractor of such deficiencies or incompleteness, and TSI Contractor shall promptly cure such deficiencies and/or inaccuracies.

4. Release and Delivery.

4.1 Release of the Contractor Deposited Software by Escrow Agent upon Demand. A copy of the Contractor Deposited Software shall be delivered by Escrow Agent to SRTA (the "*Release*") upon the occurrence of the following:

- a) TSI Contractor notifies Escrow Agent in writing to effect such Release to SRTA;
- b) Escrow Agent receives from SRTA an affidavit from SRTA that one of the following has occurred: (1) the dissolution, liquidation, cessation of business operations or insolvency of TSI Contractor, or the commencement of any action seeking the same, which action is acquiesced in by TSI Contractor or which is not dismissed within 120 days of the date upon which it was instituted; (2) the

appointment of a receiver, trustee, interim trustee or other custodian for TSI Contractor or for all or substantially all of TSI Contractor's assets; (3) the commencement of a case by TSI Contractor under the Federal Bankruptcy Code, or the bringing of an action or petition by TSI Contractor seeking relief under the Federal Bankruptcy Code or seeking similar relief or alleging that TSI Contractor is insolvent or unable to pay its debts as they mature; or (4) the commencement of a case against TSI Contractor under the Federal Bankruptcy Code, or an action or petition against TSI Contractor is brought under the Federal Bankruptcy Code, or any action is brought seeking similar relief or alleging that TSI Contractor is insolvent or unable to pay its debts as they mature, in each case which is consented to or acquiesced in by TSI Contractor or is not dismissed within 120 days of the date upon which it was instituted; or (5) the this Contract is terminated for material breach of Contract by the TSI Contractor.

For the avoidance of doubt, the Parties hereby acknowledge that Escrow Agent shall release Contractor Deposited Software within five (5) Business Days of receipt of SRTA's request for a Release, and in no event be required to evaluate the validity or accuracy of any such affidavit, statement, or notice.

4.2 TSI Contractor's Right to Object.

a) Within four (4) Business Days of receiving notice of any of the events described in Section 4.1 above, Escrow Agent shall send to TSI Contractor by certified mail, return receipt requested, a copy of such notice (to the extent possible). TSI Contractor shall have ten (10) days from the date it receives such notice to notify Escrow Agent and SRTA in writing of its objection, if any, to the Release. Such notice shall be on company letterhead and signed by an authorized TSI Contractor representative, and shall specify in detail TSI Contractor's objections to the Release.

b) If TSI Contractor sends such written notice of objection to Escrow Agent within such ten (10) day period, Escrow Agent shall notify both TSI Contractor's and SRTA's Authorized Person(s) (as set forth on the table attached hereto) that there is a dispute to be resolved pursuant to the Dispute Resolution Section (Section 31) of the Contract Documents

c) Notwithstanding TSI Contractor's objection, Escrow Agent shall deliver the Contractor Deposited Software to SRTA in accordance with SRTA's instructions, and SRTA shall be entitled to use and enjoy the Contractor Deposited Software for the purposes permitted herein and in the License Agreement, subject to the provisions and limitations thereof.

d) This Escrow Agreement shall terminate upon a Release, unless there is an ongoing dispute pursuant to Section 4.2(b). If there is an ongoing dispute after a Release, this Escrow Agreement shall remain active, pending (i) notice to Escrow Agent of agreement by the Parties of formal resolution of the dispute between SRTA and TSI Contractor, or (ii) re-deposit of the Contractor Deposited Software with Escrow Agent, provided all Service Fees continue to be paid to Escrow Agent.

e) If it is agreed or finally determined that SRTA did not have the right to receive the Contractor Deposited Software from Escrow Agent, SRTA shall return the Contractor Deposited Software to Escrow Agent along with a new Exhibit B, provided all Service Fees are paid to Escrow Agent, and SRTA and TSI Contractor shall continue to have any and all rights then available under the License Agreement.

f) In the event of re-deposit of the Contractor Deposited Software by SRTA after Release, SRTA agrees to be subject to the same procedures and representations which apply to TSI Contractor, as set forth in Section 3.1 of this Escrow Agreement.

g) In the event the Contractor Deposited Software is returned to Escrow Agent in accordance with the terms of this Escrow Agreement, then TSI Contractor and SRTA acknowledge and agree that Escrow Agent shall have no liability for any claim in connection with the Contractor Deposited Software arising after release of the Contractor Deposited Software by Escrow Agent to SRTA and prior to return of the Contractor Deposited Software to Escrow Agent to the extent such Release was not a result of a breach of this Escrow Agreement or violation of applicable laws. Escrow Agent shall have no liability in connection with any alteration, modification, loss, damage, destruction or disclosure of the Contractor Deposited Software that occurs after Escrow Agent releases the Contractor Deposited Software to SRTA to the extent such release was not a result of a breach of this Escrow Agreement or violation of applicable laws.

5. Escrow Agent Action. In the event of any dispute between TSI Contractor and SRTA regarding the rights provided hereunder, Escrow Agent shall have no responsibility to become a party to such dispute. In any such instance, Escrow Agent shall not be responsible for any alleged damage suffered or claimed either by TSI Contractor or SRTA as a result of their dispute or as a result of Escrow Agent delivering the Contractor Deposited Software to SRTA.

6. Notices. All notices and requests in connection with this Escrow Agreement shall be provided in accordance with, and upon those terms and conditions as described in, the applicable provisions of the Contract Documents. Notwithstanding the above, TSI Contractor and SRTA acknowledge that Escrow Agent has no knowledge of the terms and conditions contained in the Contract Documents and that Escrow Agent's only obligations shall be as set forth herein or in any other writing signed by Escrow Agent.

7. Limitations and Warranties.

7.1 Liability of Escrow Agent – Consequential Damages Waiver. IN NO EVENT SHALL ESCROW AGENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

7.2 Warranties. ESCROW AGENT WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY ESCROW AGENT PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

7.3 Indemnification. With the exception of gross negligence, willful misconduct or intentional misrepresentation on behalf of Escrow Agent, TSI Contractor and SRTA shall, jointly and severally,

indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members and stockholders ("Escrow Agent Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted against any Escrow Agent Indemnitee in connection with this Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitee hereunder.

8. Miscellaneous

8.1 The relationship of TSI Contractor and SRTA established by this Escrow Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any partnership, joint venture, agency or other similar relationship between TSI Contractor and SRTA. Neither party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

8.2 No failure or delay of either party to exercise any rights or remedies under this Escrow Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies.

8.3 If any provision of this Escrow Agreement is held invalid or unenforceable in any circumstance by a court of competent jurisdiction, the remainder of this Escrow Agreement, and the application of such provision in any other circumstances and in any other jurisdiction shall not be affected thereby.

8.4 This Escrow Agreement 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 agreement in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia.

8.5 This Escrow Agreement may be executed in one or more counterparts.

8.6 This Agreement is Exhibit J of the Contract Documents and incorporates by reference the terms of the Contract Documents which constitutes the entire agreement of the parties regarding the subject matter herein, superseding any and all previous agreements and understandings whether oral or written. No modification or waiver of the provisions of this Escrow Agreement shall be valid or binding on either party unless in writing and signed by both parties.

Signatures begin on following page.

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement as of the day and year first above written.

<p>_____</p> <p>By _____</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>Address:</p> <p>Facsimile:</p>	<p>_____</p> <p>By _____</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>Address:</p> <p>Facsimile:</p>
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	<p>_____</p> <p>By _____</p> <p>Name:</p> <p>Title:</p> <p>Date:</p> <p>Address:</p> <p>Facsimile:</p>
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