

**RETAIL PURCHASING AGREEMENT TO  
PURCHASE, DISTRIBUTE AND RESELL**

**FASTRAK® TOLL TAGS**

**THIS RETAIL PURCHASING AGREEMENT** (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“Effective Date”), by and between ACS State & Local Solutions, Inc., a New York corporation, located at 12410 Milestone Center Drive, 4<sup>th</sup> Floor, Germantown, MD 20876 (hereinafter “ACS”), and \_\_\_\_\_ (hereinafter “RETAILER”). ACS and RETAILER may be referred to individually as “Party” and collectively as “Parties.”

**RECITALS**

**WHEREAS**, ACS has entered into an agreement with the Bay Area Toll Authority (hereinafter, “BATA”) to provide various services associated with the Bay Area FasTrak Electronic Toll Collection System; and

**WHEREAS**, BATA has requested that ACS establish a program to sell FasTrak Toll Tags (the “Program”) to selected authorized Bay Area retail organizations on a retail sale basis; and

**WHEREAS**, BATA has directed ACS to contract with retailers as BATA’s agent to implement the retail sales program through various agreements with retailers; and

**WHEREAS**, ACS desires to contract with RETAILER, as an authorized commercial sales entity, to purchase FasTrak Toll Tags from BATA and resell them to retail customers in certain retail stores in the San Francisco Bay Area; and

**WHEREAS**, RETAILER has the capability and desires to purchase said FasTrak Toll Tags in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, ACS and RETAILER agree as follows:

**1. RECITALS AND DEFINITIONS**

The foregoing recitals and the Definitions herein are hereby incorporated by this reference and made a substantive part hereof. The following capitalized terms have the meanings set forth in this Section 1.0.

1.1 “BATA Marks” means the trademarks, service marks, trade names and logos used by BATA or ACS on or in connection with FasTrak Toll Tags, including without limitation the following: “BATA” and the FasTrak® logo.

1.2 “Affiliate” means any person, firm, corporation, or other entity that now or in the future, directly controls, is controlled with or by, or is under common control with a Party.

1.3 “Applicable Law” means federal, state or local laws, rules, regulations, or ordinances applicable to a Party, in light of that Party’s role with respect to FasTrak Toll Tags sold under this Agreement; provided, however, that transportation laws, rules, regulations, and ordinances are excluded from such definition with respect to RETAILER only.

1.4 “End Customer” means a natural person who is a holder and licensee of a FasTrak Toll Tag.

1.5 “FasTrak Toll Tags” means every type of toll tag now in existence or which later comes to exist during the Term of this Agreement for electronic payment of tolls within California.

1.6 “Toll Tag Terms and Conditions” means those terms and conditions applicable to the license by the End Customer of the FasTrak Toll Tags as set forth within the packaging (or located as otherwise allowed or required by Applicable Law).

1.7 “Sale” or “Resale” of the FasTrak Toll Tags means the transaction between RETAILER and the End Customer by which the End Customer licenses use of the FasTrak Toll Tag according to the Toll Tag Terms and Conditions.

## **2. GRANT OF RIGHT**

ACS grants to RETAILER, and RETAILER accepts from ACS, the non-exclusive right to purchase and resell FasTrak Toll Tags during the Term of this Agreement at RETAILER’s participating stores.

## **3. SCOPE**

Pursuant to the provisions of this Agreement, RETAILER, in its sole discretion, shall purchase FasTrak Toll Tags and each Party shall perform such services (hereinafter “SCOPE”) as set forth in **Exhibit 1 (Statement of Work)**.

## **4. PERSONNEL**

4.1 Each Party shall be solely liable and responsible for providing to, or on behalf of, all persons performing work for such Party pursuant to this Agreement, all employee compensation and benefits. Neither Party shall have any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, and local taxes, or other compensation, benefits, or taxes, for any personnel employed on behalf of the other Party.

4.2 Both Parties understand and agree that all persons performing work under this Agreement are, for purposes of workers' compensation liability, the sole employees of their organization or its subcontractors, agents or suppliers who are not employees of their organization. Each Party shall be solely liable and responsible or require its subcontractors, agents or suppliers to be responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the responsible Party pursuant to this Agreement.

## 5. PAYMENTS

All payments by the Parties to one another under this Agreement shall be paid as set forth in **Exhibit 2 (Payment Provisions)**.

## 6. TERM

This Agreement shall begin on the Effective Date and shall remain in full force and effect for a period of one year unless earlier terminated or extended pursuant to the terms of this Agreement (the "Term").

## 7. TERMINATION

7.1 The Parties shall have the right to terminate this Agreement as follows:

- (a) either Party for a material breach or default by the other Party of the terms and conditions of this Agreement or the attachments thereto; provided, however, that the non-defaulting Party shall first have notified the other Party in writing of the proposed default, and the specific grounds therefore, and given the other Party a thirty (30) day period to cure;
- (b) a Party immediately upon notice to the other Party, in the event of insolvency, or the institution of any insolvency, assignment for the benefit of creditors, bankruptcy or similar proceedings by or against the other Party;
- (c) ACS upon thirty (30) days notice to RETAILER in the event that ACS is required by a change in Applicable Law (or by a new interpretation or enforcement policy with respect to existing Applicable Law, which ACS cannot comply with in a commercially reasonable manner) to discontinue its role in the retail sale of FasTrak Toll Tags, or the termination or expiration of any agreement between ACS and BATA necessary for the fulfillment of ACS' obligations under this Agreement;
- (d) RETAILER or ACS for either party's convenience upon one hundred and eighty (180) days notice; and
- (g) In the event of termination of this Agreement, all FasTrak Toll Tags capable of reselling may be returned to ACS for issuance of refunds by BATA, as provided in Section 3 of Exhibit 2 (Payment Provisions)

7.2 Remedies provided for by this Agreement are cumulative and supplemental to any other available remedies at law or in equity.

7.3 Except as otherwise specifically provided herein, termination or expiration of this Agreement shall not relieve the Parties of any obligation accruing with respect to this Agreement

prior to such termination. Termination or expiration shall not affect usage of the FasTrak Toll Tags by End Customers.

7.4 Upon the termination or expiration of this Agreement for any reason, each Party's license to utilize the other Party's marks shall terminate (except with respect to FasTrak Toll Tags that have been re-sold by RETAILER) and each Party shall desist from using the other Party's marks immediately.

## 8. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

This Agreement or any interest therein, shall not be assigned by either ACS or RETAILER, without the prior written consent of the other Party. Any such un-approved assignment shall be null and void. However, either Party's assignment to an Affiliate shall not require prior written consent; provided, however, that the proposed assignee is not a direct competitor of the other Party.

## 9. INDEMNIFICATION AND LIMITATION OF LIABILITY

### 9.1 Indemnification.

- (a) ACS has contracted with BATA so that BATA shall indemnify RETAILER, and its Affiliates, officers, directors, agents and employees from and against any and all claims brought by an End Customer with regard to the use, license or operation of the FasTrak Toll Tag;
- (b) ACS has contracted with BATA so that BATA shall defend, indemnify and hold harmless RETAILER and its Affiliates, officers, directors, agents, and employees from and against any and all third party claims and damages arising out of or related to the infringement of the rights of any person or entity related to the permitted use of the BATA Marks.
- (c) RETAILER shall indemnify ACS and its Affiliates, officers, directors, agents and employees from and against any and all claims brought by a third-party arising from the actions or inactions of RETAILER or its Affiliates, officers, directors, agents, and employees.

9.2 Limitation of Liability. **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY PARTY TO THIS AGREEMENT OR ANY OF THE AFFILIATES OF ANY PARTY, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, FOR (1) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THIS AGREEMENT; OR (2) ANY DIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT TO THE EXTENT THAT THE AGGREGATE AMOUNT OF SUCH DAMAGES EXCEEDS THE AGGREGATE AMOUNT ACTUALLY EARNED BY RETAILER HEREUNDER AS GROSS PROFITS ON RETAILER'S RESALE OF FASTRAK TOLL TAGS IN THE TWELVE (12) MONTHS BEFORE THE DATE SUCH CLAIM AROSE.**

## **10. PROPRIETARY CONSIDERATIONS AND CONFIDENTIALITY**

ACS, on behalf of BATA and with BATA's express permission, grants to RETAILER a non-exclusive, royalty-free license to use the BATA Marks for the limited purpose of promoting, selling and distributing the FasTrak Toll Tags pursuant to this Agreement for the term of this Agreement; provided, however, that such use of the BATA Marks by RETAILER may be subject to trademark usage guidelines provided to Retailer by ACS on behalf of BATA. Title to and ownership of the BATA Marks shall remain with BATA. RETAILER, in turn, grants to ACS or BATA permission to use RETAILER's name and logo in an advertisement for the sale and promotion of FasTrak Toll Tags provided the sole purpose is to identify RETAILER as a source for the product. Except as provided herein, neither Party shall use the names, trademarks or logos, nor any adaptation or variation thereof, of the other Party or BATA (or the other Party's Affiliate(s)) in any manner whatsoever (including, but not limited to, press releases, advertising, promotion or sales literature), without the prior written consent of the other Party in each instance. Except as expressly stated above, no right, title or interest in and to any trademarks of either Party or their respective Affiliates is conveyed or intended to be conveyed by this Agreement.

## **11. WARRANTIES**

Each Party represents and warrants throughout the Term of this Agreement that: (a) it has the right, power, and authority to enter into this Agreement, to grant the rights granted herein, and to perform its obligations hereunder; (b) its grant of rights or performance of its obligations hereunder does not violate any other agreement to which it is a party or any Applicable Law; and (c) the FasTrak Toll Tags, upon delivery to RETAILER, shall function properly and shall be available for immediate use by End Customers, subject to the FasTrak Toll Tag registration requirements.

## **12. COMPLIANCE WITH APPLICABLE LAW**

Both Parties shall comply with all Applicable Law, including without limitation federal, state and local laws, rules, regulations, or ordinances related to employment, non-discrimination in employment, and wages.

## **13. TRANSFER OF TITLE AND RISK OF LOSS**

13.1 Title to the individual FasTrak Toll Tags in each shipment to RETAILER shall transfer to RETAILER upon receipt by FasTrak of full payment for each such shipment.

13.2 As between ACS and RETAILER, the Parties acknowledge that liability for losses, including damage or destruction, with respect to FasTrak Toll Tags is as follows:

- (a) any losses occurring while the FasTrak Toll Tags are in transit from ACS to RETAILER shall not be the responsibility of RETAILER;
- (b) any losses occurring after the FasTrak Toll Tags have been delivered to the RETAILER will be the sole responsibility of RETAILER; and

- (c) with respect to returns of FasTrak Toll Tags by RETAILER to ACS (which may only occur in the event that this Agreement is terminated), any losses occurring prior to confirmed receipt of the FasTrak Toll Tags by ACS shall be the sole responsibility of RETAILER;

13.3 Provision of refunds or credits relating to, and offered in connection with, the FasTrak Toll Tags are governed by the FasTrak Toll Tag Terms and Conditions and shall be the responsibility of ACS and/or BATA according to such Toll Tag Terms and Conditions, and in accordance with any separate agreement between ACS and BATA. RETAILER shall not accept any returns of FasTrak Toll Tags from End Customers.

#### **14. CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

#### **15. WAIVER**

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of any Party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law not inconsistent therewith.

#### **16. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to the choice of law principles thereof.

#### **17. SEVERABILITY**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **18. AUTHORIZATION**

Both Parties represent and warrant that the person executing this Agreement for that Party is an authorized agent who has actual authority to bind that Party to each and every term, condition, and obligation of this Agreement and that all corporate requirements have been fulfilled to provide such actual authority.

#### **19. NOTICES**

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the Parties at the following addresses, respectively. Addresses may be changed by either Party giving ten (10) days prior written notice thereof to the other Party.

A. If to ACS State & Local Solutions, Inc.:

ACS State & Local Solutions, Inc.  
455 The Embarcadero, Suite 103  
San Francisco, CA 94111  
Attn: Karen Caruso, Vice President

B. If to RETAILER:

With a copy to:

## **20. CHANGES AND AMENDMENTS OF TERMS**

This Agreement shall not be changed, modified or amended except in writing, signed by both Parties.

## **21. NO JOINT VENTURE**

Each of the Parties shall be independent contractors and shall have no power or authority to bind the other Party or to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. Nothing in this Agreement shall be construed to define the Parties as agents, partners, joint venturers, co-owners or otherwise as partners in a joint or common undertaking or venture. Neither Party may make binding commitments on the part of the other, except as otherwise specifically agreed hereunder.

## **22. FORCE MAJEURE**

If any Party is prevented from complying, either totally or in material part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, riot, war, rebellion, accident, strike, lockout or other labor trouble, or other act of God, then, upon written notice to the other Party, the affected provisions and/or requirements of this Agreement shall be suspended during the period of such disability. The Parties shall make reasonable efforts to remove such disability within thirty (30) days of such disability. If the disability continues for more than ten (10) days after the cessation of the reason for such disability, the non-disabled Party or Parties shall have the right to terminate this Agreement (with no adjustments relating to fees which have then been paid), and no Party shall thereafter have any further rights or obligations hereunder, except as expressly set forth herein.

## **23. SURVIVAL**

Those provisions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement, shall survive, including without limitation applicable provisions in the following sections and exhibits: 5, 7.2, 7.3, 7.4, and 9 and Exhibit 2 (sections 1.5 and 3).

## **24. ENTIRE AGREEMENT**

This Agreement, together with its exhibits, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their duly authorized officers as of the day, month and year first set forth above.

**ACS STATE & LOCAL SOLUTIONS, INC.**

**RETAILER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**EXHIBIT 1  
TO FASTRAK® TOLL TAG  
RETAIL PURCHASING AGREEMENT  
BY AND BETWEEN ACS STATE & LOCAL SOLUTIONS  
AND [RETAILER]  
STATEMENT OF WORK**

**1. DESCRIPTION OF GOODS**

ACS, at its expense, will provide RETAILER with the FasTrak Toll Tags ordered herein (the “Product(s)”) and packaged for retail re-sale. RETAILER shall order Products by submitting a purchase order to ACS specifying the number of Products purchased.

ACS shall use identification codes on all packaging of the Products, from which the production date, production batch, and other relevant data can be identified, and shall maintain proper records of all Products produced and packed. Packaging in general shall also be of sufficient quality and durability to withstand normal wear and tear in connection with shipping and handling. Within the package (the “FasTrak Toll Tag Package”) will be the following:

1 FasTrak Toll Tag  
Mylar bag  
Registration instructions, FasTrak Terms and Conditions, FAQs, and  
Customer Return Policy

**2. PRODUCT PLACEMENT**

RETAILER will make commercially reasonable efforts to place FasTrak Toll Tag packages at locations within its retail locations that are easily visible to customers for the Term of this Agreement.

**3. ADVERTISING**

RETAILER agrees to use commercially reasonable efforts to advertise FasTrak Toll Tags within its retail locations at no cost to ACS.

**4. CUSTOMER SERVICE**

Once a FasTrak Toll Tag is re-sold to an End Customer, RETAILER shall have no responsibility for providing any customer services related to the FasTrak Toll Tag. Customer service issues shall be the responsibility of ACS and/or BATA according to the FasTrak Toll Tag Terms and Conditions, and in accordance with any separate agreement between ACS and BATA. ACS shall provide to RETAILER the toll-free number to the FasTrak Customer Service Center so that RETAILER can provide such customer service number to any End Customers that request customer service or assistance with their FasTrak Toll Tag or FasTrak account.

**EXHIBIT 2  
 TO FASTRAK® TOLL TAG  
 RETAIL PURCHASING AGREEMENT  
 BY AND BETWEEN ACS STATE & LOCAL SOLUTIONS  
 AND RETAILER  
 STATEMENT OF WORK  
 PAYMENT PROVISIONS**

**GENERAL**

The method of billing and payment for the purchase and delivery of FasTrak Toll Tag packages shall be made in accordance with the procedure set forth below:

**1. ORDERS AND PAYMENTS**

1.1 THIS AGREEMENT IS NOT A GUARANTY THAT ANY ORDER OF TOLL TAGS BY RETAILER WILL BE HONORED BY ACS AND ACS EXPRESSLY RESERVES THE RIGHT TO DECLINE ANY REQUEST BY RETAILER FOR PURCHASE OF FASTRAK TOLL TAGS. ACS shall contract with BATA so that (i) BATA will forward to ACS all FasTrak Toll Tags as its designated source for retail purchases, and (ii) BATA will engage in commercially reasonable efforts to fulfill all orders submitted by RETAILER in a timely manner. If ACS is informed by BATA that a RETAILER order cannot be fulfilled in a commercially reasonable and timely manner, then ACS shall notify RETAILER that such order cannot be processed in accordance with the normal course of business, and ACS shall also provide RETAILER an estimation of when such order can be fulfilled. In the event that ACS is not able to fulfill a RETAILER order due to BATA’s inability to deliver FasTrak Toll Tags to ACS, such event will not be deemed to give rise to any termination right by RETAILER under the provisions of Section 7 of this Agreement.

1.2 ACS shall deliver to RETAILER FasTrak Toll Tag Packages at the per unit cost shown (unless otherwise agreed in writing by the Parties) for resale by RETAILER and RETAILER shall make commercially reasonable efforts to facilitate sale of the same.

<u>Toll Tag Type</u>	<u>Quantity</u>	<u>RETAILER Cost/Unit</u>	<u>Suggested Retail Price</u>
FasTrak Toll Tag Package	1	\$24.00	\$25.00

1.3 RETAILER shall pay BATA the total cost for all FasTrak Toll Tag Packages ordered and received by RETAILER (based on the unit cost above multiplied by the number of units ordered), which payment shall be made within 30 days, plus a ten (10) day grace period, following RETAILER’s acceptance of the FasTrak Toll Tag Packages and receipt of an accurate invoice. ACS shall send a summarized invoice (with full supporting detail attached) to:

RETAILER  
Address Line 1  
Address Line 2  
Attention: Accounts Receivable

1.4 ACS shall contract with BATA to provide that any new model of FasTrak Toll Tag introduced by BATA shall not render any current FasTrak Toll Tag model obsolete for use within the Bay Area Counties.

1.5 If RETAILER is delinquent in its undisputed payment obligations to BATA following the period for cure specified in Section 7.1(a) of this Agreement, then ACS, at its discretion and in addition to any other right and remedies it may have under this Agreement or law, may suspend all pending shipments to RETAILER, if any, until such delinquency is corrected.

1.6 All RETAILER payments for FasTrak Toll Tags shall be made in full per FasTrak invoice, and shall be made payable to "FasTrak" and mailed to the following address:

Regional FasTrak Customer Service Center  
455 The Embarcadero, Suite 103  
San Francisco, CA 94111  
Attention: Janet Rabaino

All BATA payments hereunder shall be mailed to the address set forth in Section 1.3 herein.

## **2. SHIPPING COSTS**

All costs for shipping of FasTrak Toll Tags to RETAILER's delivery location shall be paid by BATA, pursuant to BATA-ACS agreement.

## **3. RETAILER'S RETURN OF MERCHANDISE**

If RETAILER, at any time, should elect in writing to discontinue sale of the FasTrak Toll Tags, or upon expiration or termination of this Agreement, RETAILER may, but shall not be obligated to, at its election and sole discretion, sell the FasTrak Toll Tags on hand for the period of three (3) months thereafter in accordance with the terms of this Agreement. At the time of such expiration or termination of this Agreement, or the end of such three (3) month "wind-up" period, as applicable, RETAILER shall return FasTrak Toll Tags which had not been previously sold, in exchange for return of the per unit cost paid by RETAILER to FasTrak.