

Draft Service Level Agreement

**AGREEMENT FOR PROCUREMENT AND SUPPLY OF RFID TAGS FOR
SBI FASTags**

BETWEEN

**STATE BANK OF INDIA, TRANSACTION BANKING- SOLUTIONS AND
SPECIAL PROJECTS DEPARTMENT**

AND

Date of Commencement : _____

Date of Expiry : _____

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AGREEMENT

This agreement (“Agreement”) is made on _____ day of _____20__.

Between

State Bank of India, constituted under the State Bank of India Act, 1955 having its Corporate Centre and Central Office at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai-21 and its Global IT Centre at Sector-11, CBD Belapur, Navi Mumbai- 400614 through its Transaction Banking-S& SP Department, 2nd Floor, Mafatlal Centre, State Bank of India, Nariman Point, Mumbai-400021 hereinafter referred to as “**the Bank**” which expression shall unless repugnant to the context or meaning thereof shall include its successors & assigns of the First Part

And

_____, a private/public limited company/LLP/Firm ~~whichever is not applicable~~ incorporated under the provisions of the Companies Act, 1956/ Limited Liability Partnership Act 2008/ Indian Partnership Act 1932 ~~whichever is not applicable~~ having its registered office at _____ hereinafter referred to as “**Service Provider/ Vendor**” which expression shall unless repugnant to the context or meaning thereof shall include its successor, executor & permitted assigns of the Second Part.

The Bank and Service Provider are sometimes individually referred to as a “**Party**” and collectively as “**Parties**” throughout this Agreement, and the words Party and Parties shall be construed accordingly.

RECITALS

WHEREAS

- (i) The Bank is carrying on business in banking in India and overseas and is desirous of availing services for procurement and supply of RFID TAGS for SBI FASTag;

and

- (ii) Service Provider is in the business of manufacturing/supplying RFID Tags and is also in the NPCI's approved list of Tag Suppliers/manufacturers for National Electronic Toll Collection project and has agreed to provide the services as may be required by the Bank mentioned in the Request of Proposal (RFP) No. _____ dated _____ issued by the Bank along with its clarifications/corrigenda, referred hereinafter as a "RFP" and same shall be part of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, and for other valid consideration the acceptability and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1 DEFINITIONS & INTERPRETATIONS

1.1 **Capitalised Terms** : The following capitalized terms, unless the context otherwise requires, shall have the meaning set forth below for all purposes of this Agreement:

1.1.1 **"The Bank"** shall mean the State Bank of India (including domestic branches and foreign offices), Subsidiaries and Joint Ventures, where the Bank has ownership of more than 50% of voting securities or the power to direct the management and policies of such Subsidiaries and Joint Ventures.

1.1.2 **"Confidential Information"** shall have the meaning set forth in Clause 7.

1.1.3 **"Deficiencies"** shall mean defects arising from non-conformity with the mutually agreed specifications and/or failure or non-conformity in the Scope of the Services.

1.1.4 **"Intellectual Property Rights"** shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights & moral rights; (b) Trade Marks; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations,

divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

- 1.1.5 **“Project Cost”** means the price payable to Service Provider over the entire period of Agreement (*i.e.* Rs. _____ <*in words*>) for the full and proper performance of its contractual obligations.
- 1.1.6 **“Request for Proposal (RFP)”** shall mean RFP NO. _____ dated _____ along with its clarifications/ corrigenda issued by the Bank time to time.
- 1.1.7 **“Service”** means services to be provided as per the requirements specified in the Agreement and any other incidental services and other obligations of Service Provider covered under the Agreement.

1.2 **Interpretations:**

- 1.2.1 Reference to a person includes any individual, firm, body corporate, association (whether incorporated or not) and authority or agency (whether government, semi government or local).
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Reference to any gender includes each other gender.
- 1.2.4 The provisions of the contents table, headings, clause numbers, italics, bold print and underlining is for ease of reference only and shall not affect the interpretation of this Agreement.
- 1.2.5 The Schedules, Annexures and Appendices to this Agreement shall form part of this Agreement.
- 1.2.6 A reference to any documents or agreements (and, where applicable, any of their respective provisions) means those documents or agreements as amended, supplemented or replaced from time to time provided they are amended, supplemented or replaced in the manner envisaged in the relevant documents or agreements.
- 1.2.7 A reference to any statute, regulation, rule or other legislative provision includes any amendment to the statutory modification or re-enactment or, legislative provisions substituted for, and any statutory instrument issued under that statute, regulation, rule or other legislative provision.
- 1.2.8 Any agreement, notice, consent, approval, disclosure or communication under or pursuant to this Agreement is to be in writing.

1.2.9 The terms not defined in this Agreement shall be given the same meaning as given to them in the RFP. If no such meaning is given technical words shall be understood in technical sense in accordance with the industry practices.

2 COMMENCEMENT & TERM

2.1 This Agreement shall commence from its date of execution mentioned above/ be deemed to have commenced from _____ (**Effective Date**).

2.2 This Agreement shall be in force for a period of 3 year(s) from Effective Date, unless terminated by the Bank by notice in writing in accordance with the termination clauses of this Agreement.

2.3 The Bank shall have the right at its discretion to renew this Agreement in writing, for a further term of 2 years on the same terms and conditions.

2.4 Unless terminated earlier in accordance with this Agreement, the Agreement shall come to an end on completion of the term specified in the Agreement or on expiration of the renewed term.

3 SCOPE OF SERVICES

3.1 The scope and nature of the work which Service Provider has to provide to the Bank (Services) is as follows:

Sl No	Particulars	Requirements/ Remarks
1	Description of Services	<p>Supply of SBI FASTags at various service points/offices of the Bank and Bank's identified partners, etc. during the Contract (SLA) period. To provide all necessary requirements to make the Tags operational as per technical specifications issued during the Contract (SLA) by NPCI/ Govt of India/other regulatory bodies. The specifications provided by NPCI are the minimum. Bidder can quote equivalent or higher technical specifications to meet the Bank's requirements. However, no weightage will be given for higher configurations. In case there is change in any specifications due to regulatory or statutory guidelines, the Bidder has to mandatorily implement such changes without any change in the finalized price through this RFP. The FASTags should be dispatched/packaged in such a manner so while in transit before delivery to the desired location, they should not be read by any toll plaza reader (penalty clauses are defined for the same).</p> <p>Procurement of tags is sole discretion of Bank and quantity required will be advised to successful bidder at the time of placing purchase order. There is no minimum commitment of procurement during the entire contract period.</p>
2	Description of Deliverables	<p>Delivery of the SBI FASTags shall be made by the vendor in accordance with the approved system. The details of the documents to be furnished by the vendor shall be as under:-</p> <ul style="list-style-type: none"> • 2 copies of Vendor's Invoice showing Contract (SLA) number, Products description, quantity, unit price and Total amount. • Delivery Note or acknowledgement of receipt of products from the consignee or in case of products from abroad original and two copies of the negotiable clean Airway Bill. • 2 copies of packing list identifying contents of each package. • Insurance Certificate. • Manufacturer's / Vendor's warranty certificate.

3	Third-Party Components	N/A
4	Term of the Project - Project Schedule; Milestones and delivery locations	Supply and delivery of the SBI FASTags shall be made by the vendor to different locations of Bank offices/channel partners and agent locations, etc. in accordance with the order(s) made from time to time. The vendor shall maintain sufficient stock to cater to the requirements of the Bank at all times with provision to supply at short notice under extraordinary circumstances.
5	Annual Maintenance (AMC) Term	N/A
6	Integration / Migration Requirements with existing systems	The vendor should be in a position to migrate/integrate existing details provided by Bank, from existing vendor to their system for execution of the order and placing different class Tag orders. The vendor shall fulfill the migration requirements if there is any change in the specifications, requirements etc. due to change in the policy/specifications by the regulator/Govt of India / Bank /NPCI / NHAI/ IHMCL/RBI, etc.
8	Performance Requirements	SBI FASTags shall perform in conformity with the standards laid down by NPCI, IHMCL, and NHAI etc. during the Contract (SLA) period.
9	Scalability Requirements	Keeping in mind the business trends, Bank in future can ask vendor to increase supply of FASTags by one lakh per month in addition to existing monthly supply quantity being done by the vendor.
10	Regulatory / Compliance Requirements	SBI FASTags shall conform to all the technical specifications and the regulatory and compliance requirements as mandated by NPCI/IHML/RBI/Government etc. during the Contract (SLA) period.
11	Security Requirements	Security Guidelines released as part of NETC product by NPCI/IHMCL/NHAI/Bank.
12	Limited Trial / Pilot Requirements	Before going with full-fledged production movement, Bank will be conducting testing with limited group on the tags provided by vendor, for time period of 15 days.

13	Training	Training at time of onboarding the vendor and during any major changes in the product/process, should be provided by the vendor.
14	Payment schedule	The successful bidder will supply the SBI FASTags to the location/Office(s) as directed by the Bank/Bank's Authorized Partner(s). On receipt of the SBI FASTags, the receiving Office/Bank's Authorized Partner will issue acknowledgement. The successful bidder will raise invoices on monthly basis along with copies of the acknowledgements of receipts of the SBI FASTags by various Offices/Bank's Authorized Partners. If any discrepancies are reported by Bank, then successful bidder needs to correct the discrepancies within 7 days. The payment will be made within 30 days of receipt of correct monthly invoices after due verification.

4 REPRESENTATIONS AND WARRANTIES

- 4.1 Each of the Parties represents and warrants in relation to itself to the other that:
- 4.1.1 It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and has been fully authorized through applicable corporate process to do so.
- 4.1.2 The person(s) signing this agreement on behalf of the Parties have the necessary authority and approval for execution of this document and to bind his/their respective organization for due performance as set out in this Agreement. It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its business.
- 4.1.3 It has full right, title and interest in and to all software, copyrights, trade names, trademarks, service marks, logos symbols and other proprietary marks (collectively 'IPR') (including appropriate limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the other Party, for use related to the services to be provided under this Agreement.

- 4.1.4 It will provide such cooperation as the other Party reasonably requests in order to give full effect to the provisions of this Agreement.
- 4.1.5 The execution and performance of this Agreement by either of the Parties does not and shall not violate any provision of any of the existing Agreement with any of the party and any other third party.

4.2 Additional Representation and Warranties by Service Provider

- 4.2.1 Service Provider shall perform the Services and carry out its obligations under the Agreement with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional standards recognized by international professional bodies and shall observe sound management practices. It shall employ appropriate advanced technology and safe and effective equipment, machinery, material and methods.
- 4.2.2 Service Provider has the requisite technical and other competence, sufficient, suitable, qualified and experienced manpower/personnel and expertise in providing the Services to the Bank.
- 4.2.3 Service Provider shall duly intimate to the Bank immediately, the changes, if any in the constitution of Service Provider.
- 4.2.4 Service Provider warrants that to the best of its knowledge, as on the Effective Date of this Agreement, the products and services provided by Service Provider to the Bank do not violate or infringe any patent, copyright, trademarks, trade secrets or other Intellectual Property Rights of any third party.
- 4.2.5 Service provider shall ensure that all persons, employees, workers and other individuals engaged by or sub-contracted (if allowed) by Service Provider in rendering the Services under this Agreement have undergone proper background check, police verification and other necessary due diligence checks to examine their antecedence and ensure their suitability for such engagement. No person shall be engaged by Service provider unless such person is found to be suitable in such verification and Service Provider shall retain the records of such verification and shall produce the same to the Bank as when requested.

4.2.6 Service Provider warrants that it shall be solely liable and responsible for compliance of applicable Labour Laws in respect of its employee, agents, representatives and sub-contractors (if allowed) and in particular laws relating to terminal benefits such as pension, gratuity, provided fund, bonus or other benefits to which they may be entitled and the laws relating to contract labour, minimum wages, etc., and the Bank shall have no liability in this regard.

5 RESPONSIBILITIES OF THE BANK

5.1 Processing and authorising invoices

5.2 Approval of information

6 RESPONSIBILITIES OF SERVICE PROVIDER

6.1 Service Provider agrees and declares that it shall be the sole responsibility of Service Provider to comply with the provisions of all the applicable laws, concerning or in relation to rendering of Services by Service Provider as envisaged under this Agreement.

6.2 Service Provider shall procure and maintain all necessary licenses, permissions, approvals from the relevant authorities under the applicable laws throughout the currency of this Agreement, require for performing the Services under this Agreement.

6.3 Service Provider shall ensure that Service Provider's personnel and its sub-contractors (if allowed) will abide by all reasonable directives issued by the Bank, including those set forth in the Bank's then-current standards, policies and procedures (to the extent applicable), all on-site rules of behaviour, work schedules, security procedures and other standards, policies and procedures as established by the Bank from time to time.

6.4 Service Provider shall report the incidents, including cyber incidents and those resulting in disruption of service and data loss/ leakage immediately but not later than one hour of detection.

6.5 Service Provider/ Vendor shall abide by the provisions of the DPDP Act, 2023 - 11th August, 2023; CG-DL-E-12082023-248045 as and when the relevant rules and guidelines come into force.

7 CONFIDENTIALITY

- 7.1 For the purpose of this Agreement, Confidential Information shall mean (i) information of all kinds, whether oral, written or otherwise recorded including, without limitation, any analyses, compilations, forecasts, data, studies or other documents, regarding the past, current or future affairs, business, plans or operations of a Party to which the other Party will have access, (ii) the existence of the contemplated terms and the fact that discussions or negotiations are taking place or have taken place between the Parties concerning the contemplated terms, (iii) any and all information regarding the contemplated terms and any agreements that may be entered into in relation thereto and (iv) any customer details or other data received by a Party from the other Party or its customer(s) or otherwise shared between the Parties in connection with the Service.
- 7.2 In consideration of each Party providing the other Party or its' representatives with the Confidential Information, the Parties agree as follows:
- 7.2.1 Each Party shall keep confidential and shall not, directly or indirectly, disclose, except as provided in sub-clauses below, in any manner whatsoever, in whole or in part, the Confidential Information without the other Party's prior written consent.
- 7.2.2 Each Party shall hold the Confidential Information in confidence and shall exercise all reasonable diligence in ensuring that the Confidential Information is not disclosed to third parties and will refrain from using the Confidential Information for any purpose whatsoever other than for the purposes of this Agreement or for the purpose for which such information is supplied.
- 7.2.3 Notwithstanding the above, each Party may reveal the Confidential Information to those of its representatives, those of its' holding company and those of its subsidiaries who are involved in the negotiation or evaluation of the project, and shall procure and ensure that each of them complies with the obligation to keep the Confidential Information secret, private and confidential and strictly observes the terms of this Agreement.
- 7.2.4 The confidentiality obligation shall not apply to such portions of the Confidential Information which one of the Parties can demonstrate (i) are or become generally available to the public other than as a result of any breach of this Agreement; (ii) were in its possession on a non-confidential basis prior to

the date hereof; (iii) have been rightfully received from a third party after the date hereof without restriction on disclosure and without breach of this Agreement, said third party being under no obligation of confidentiality to the other Party with respect to such Confidential Information; or (iv) Where Confidential Information is independently developed by receiving party without any reference to or use of disclosing party's Confidential Information.

7.2.5 In the event that a Party becomes legally compelled pursuant to any statutory or regulatory provision, court or arbitral decision, governmental order, or stock exchange requirements to disclose any of the Confidential Information, the compelled Party, as far as possible will provide the other Party with prompt written notice to the extent not prohibited by law. In any case, the compelled Party will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information.

7.2.6 In the event of termination or expiry of this Agreement, each Party shall either (i) promptly destroy all copies of the written (including information in electronic form) Confidential Information in its possession or that of its representatives; or (ii) promptly deliver to the other Party at its own expense all copies of the written Confidential Information in its possession or that of its representatives, provided, however, each Party shall be permitted to retain one copy of the Confidential Information for the purposes of dispute resolution, compliance with regulatory agency or authority and internal compliance procedures, provided such copies being held and kept confidential.

7.2.7 By furnishing the Confidential Information, no Party makes an express or implied representation or warranty as to the accuracy or completeness of the Confidential Information that it has disclosed and each Party expressly disclaims any liability that may be based on the Confidential Information, errors therein or omissions there from, save in the case of fraud or willful default.

7.3 Receiving party undertakes to promptly notify disclosing party in writing any breach of obligation of the Agreement by its employees or representatives including confidentiality obligation. Receiving party acknowledges that monetary damages may not be the only and / or a sufficient remedy for

unauthorized disclosure of Confidential Information and that disclosing party shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief as may be deemed proper by a Court of competent jurisdiction.

- 7.4 Service Provider shall not, without the Bank's prior written consent, disclose the Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Bank in connection therewith, to any person other than a person employed by Service Provider in the Performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary to purposes of such performance.
- 7.5 Service Provider shall not, without the Bank's prior written consent, make use of any document or information received from the Bank except for purposes of performing the services and obligations under this Agreement.
- 7.6 Any document received from the Bank shall remain the property of the Bank and subject to clause 7.2.6 shall be returned (in all copies) to the Bank on completion of Service Provider's performance under the Agreement.
- 7.7 The foregoing obligations (collectively referred to as "Confidentiality Obligations") set out in this Agreement shall survive the term of this Agreement and for a period of five (5) years thereafter provided Confidentiality Obligations with respect to individually identifiable information, customer's data of Parties or software in human-readable form (e.g., source code) shall survive in perpetuity.

8 RELATIONSHIP BETWEEN THE PARTIES

- 8.1 It is specifically agreed that Service Provider shall act as independent service provider and shall not be deemed to be the Agent of the Bank except in respect of the transactions/services which give rise to Principal-Agent relationship by express agreement between the Parties.
- 8.2 Neither Service Provider nor its employees, agents, representatives, Sub-Contractors shall hold out or represent as agents of the Bank.
- 8.3 None of the employees, representatives or agents of Service Provider shall be entitled to claim permanent absorption or any other claim or benefit against the Bank.

- 8.4 This Agreement shall not be construed as joint venture. Each Party shall be responsible for all its obligations towards its respective employees. No employee of any of the two Parties shall claim to be employee of other Party.
- 8.5 All the obligations towards the employee(s) of a Party on account of personal accidents while working in the premises of the other Party shall remain with the respective employer and not on the Party in whose premises the accident occurred unless such accident occurred due to gross negligent act of the Party in whose premises accident occurred.
- 8.6 For redressal of complaints of sexual harassment at workplace, Parties agree to comply with the policy framed by the Bank (including any amendment thereto) in pursuant to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 including any amendment thereto.

9 SUB-CONTRACTING

As per the scope of this Agreement sub-contracting is not permitted.

10 LIQUIDATED DAMAGES

If Service Provider fails to deliver product and/or perform any or all the Services within the stipulated time, schedule as specified in this Agreement, the Bank may, without prejudice to its other remedies under the Agreement, and unless otherwise extension of time is agreed upon without the application of liquidated damages, deduct from the Project Cost, as liquidated damages a sum equivalent to __% of total Project Cost for delay of each week or part thereof maximum up to __% of total Project Cost. Once the maximum deduction is reached, the Bank may consider termination of the Agreement.

11 BANK GUARANTEE & PENALTY

- 11.1 Service Provider shall furnish performance security in the form of Bank Guarantee for an amount of Rs. _____ valid for a period of ____year(s) ____month(s) from a Scheduled Commercial Bank other than State Bank of India in a format provided/ approved by the Bank.
- 11.2 The Bank Guarantee is required to protect the interest of the Bank against delay in supply/installation and/or the risk of non-performance of Service Provider in

respect of successful implementation of the project; or performance of the material or services sold; or breach of any terms and conditions of the Agreement, which may warrant invoking of Bank Guarantee.

- 11.3 Performance of the obligations under the Agreement shall be made by Service Provider in accordance with the time schedule specified in this Agreement.
- 11.4 Subject to clause 17 of this Agreement, any unexcused delay by Service Provider in the performance of its Contract obligations shall render this Agreement to be terminated.
- 11.5 If at any time during performance of the Contract, Service Provider should encounter unexpected conditions impeding timely completion of the Services under the Agreement and performance of the services, Service Provider shall promptly notify the Bank in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable, after receipt of Service Provider's notice, the Bank shall evaluate the situation and may at its discretion extend Service Provider's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Agreement.
- 11.6 Service Provider shall be liable to pay penalty at the rate mentioned below in Annexure 'A' in respect of any delay beyond the permitted period in providing the Services.
- 11.7 No penalty shall be levied in case of delay(s) in deliverables or performance of the Contract for the reasons solely and directly attributable to the Bank. On reaching the maximum of penalties specified the Bank reserves the right to terminate the Agreement.

12 FORCE MAJEURE

- 12.1 Notwithstanding anything else contained in the Agreement, neither Party shall be liable for any delay in performing its obligations herein if and to the extent that such delay is the result of an event of Force Majeure.
- 12.2 For the purposes of this clause, 'Force Majeure' means and includes wars, insurrections, revolution, civil disturbance, riots, terrorist acts, public strikes, hartal, bundh, fires, floods, epidemic, quarantine restrictions, freight embargoes, declared general strikes in relevant industries, Vis Major, acts of Government in their sovereign capacity, impeding reasonable performance of the Contractor

and /or Sub-Contractor but does not include any foreseeable events, commercial considerations or those involving fault or negligence on the part of the party claiming Force Majeure.

- 12.3 If a Force Majeure situation arises, Service Provider shall promptly notify the Bank in writing of such conditions, the cause thereof and the likely duration of the delay. Unless otherwise directed by the Bank in writing, Service Provider shall continue to perform its obligations under the Agreement as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 12.4 If the event of Force Majeure continues beyond 30 (thirty) days, either Party shall have the right to terminate this Agreement by giving a notice to the other Party. Neither party shall have any penal liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure. However, Service Provider shall be entitled to receive payments for all services actually rendered up to the date of the termination of this Agreement.

13 INSPECTION AND AUDIT

- 13.1 It is agreed by and between the Parties that Service Provider be subject to annual audit by internal/external Auditors appointed by the Bank/ inspecting official from the Reserve Bank of India or any regulatory authority, covering the risk parameters finalized by the Bank/ such auditors in the areas of products (IT hardware/ software) and services etc. provided to the Bank and Service Provider shall submit such certification by such Auditors to the Bank. Service Provider and or his / their outsourced agents / sub – contractors (if allowed by the Bank) shall facilitate the same. The Bank can make its expert assessment on the efficiency and effectiveness of the security, control, risk management, governance system and process created by Service Provider. Service Provider shall, whenever required by such Auditors, furnish all relevant information, records/data to them. All costs for such audit shall be borne by the Bank. Except for the audit done by Reserve Bank of India or any statutory/regulatory authority, the Bank shall provide reasonable notice not less than 7 (seven) days to Service Provider before such audit and same shall be conducted during normal business hours.

- 13.2 Where any Deficiency has been observed during audit of Service Provider on the risk parameters finalized by the Bank or in the certification submitted by the Auditors, it is agreed upon by Service Provider that it shall correct/ resolve the same at the earliest and shall provide all necessary documents related to resolution thereof and the auditor shall further certify in respect of resolution of the Deficiencies. It is also agreed that Service Provider shall provide certification of the auditor to the Bank regarding compliance of the observations made by the auditors covering the respective risk parameters against which such Deficiencies observed.
- 13.3 Service Provider further agrees that whenever required by the Bank, it will furnish all relevant information, records/data to such auditors and/or inspecting officials of the Bank/ Reserve Bank of India and/or any regulatory authority (ies). The Bank reserves the right to call for and/or retain any relevant information/ audit reports on financial and security review with their findings undertaken by Service Provider. However, Service Provider shall not be obligated to provide records/data not related to Services under the Agreement (e.g. internal cost break-ups etc.).
- 13.4 Service Provider shall grants unrestricted and effective access to a) data related to the Services; b) the relevant business premises of the Service Provider; subject to appropriate security protocols, for the purpose of effective oversight use by the Bank, their auditors, regulators and other relevant Competent Authorities, as authorised under law.
- 13.5 Service Provider shall have obligation to comply with Bank's IS policy, Cyber Security Policy and IT Policy and regulatory requirements and implement all the recommendations/close all the vulnerabilities reported in the various information security reviews, IS audit, UAT etc. conducted by the Bank, bank appointed third party professionals, Regulators during the contact period without any additional cost to the Bank.

14 **FEES, TAXES DUTIES & PAYMENTS**

- 14.1 Service Provider shall be paid fees and charges in the manner detailed in hereunder, the same shall be subject to deduction of income tax thereon wherever required under the provisions of the Income Tax Act by the Bank. The remittance of amounts so deducted and issuance of certificate for such

deductions shall be made by the Bank as per the laws and regulations for the time being in force. Nothing in the Agreement shall relieve Service Provider from his responsibility to pay any tax that may be levied in India on income and profits made by Service Provider in respect of this Agreement.

14.1.1 The successful bidder will supply the SBI FASTags to the location/Office(s) as directed by the bank/bank's authorized partner(s). On receipt of the SBI FASTags, the receiving office/bank's authorized partner will issue acknowledgement. The successful bidder will raise invoices on monthly basis along with copies of the acknowledgements of receipts of the SBI FASTags by various offices/bank's authorized partners. If any discrepancies are reported by bank, then successful bidder need to correct the discrepancies within 7 days. The payment will be made within 30 days of receipt of correct monthly invoices after due verification.

14.2 All duties and taxes, if any, which may be levied, shall be borne by Service Provider and Bank shall not be liable for the same. All expenses, stamp duty and other charges/ expenses in connection with execution of this Agreement shall be borne by Service Provider. Any other tax imposed by the Government in lieu of same shall be borne by the Bank on actual upon production of original receipt wherever required.

14.3 Payments

14.3.1 The Bank will pay properly submitted valid invoices within reasonable period but not exceeding 30 (thirty) days after its receipt thereof. All payments shall be made in Indian Rupees.

14.3.2 The Bank may withhold payment of any product/services that it disputes in good faith, and may set-off penalty amount or any other amount which Service provider owes to the Bank against amount payable to Service provider under this Agreement. However, before levying penalty or recovery of any damages, the Bank shall provide a written notice to Service Provider indicating the reasons for such penalty or recovery of damages. Service Provider shall have the liberty to present its case in writing together with documentary evidences, if any, within 21 (twenty one) days. Penalty or damages, if any, recoverable from Service Provider shall be recovered by the Bank through a credit note or revised invoices. In case Service Provider fails to issue credit note/ revised

invoice, the Bank shall have right to withhold the payment or set-off penal amount from current invoices.

15 GENERAL INDEMNITY

15.1 Service Provider agrees and hereby keeps the Bank indemnified against all claims, actions, loss, damages, costs, expenses, charges, including legal expenses (Attorney, Advocates fees included) which the Bank may suffer or incur on account of (i) Services Provider's breach of its warranties, covenants, responsibilities or obligations; or (ii) breach of confidentiality obligations mentioned in this Agreement; or (iii) any willful misconduct and gross negligent acts on the part of employees, agents, representatives or sub-contractors (if allowed) of Service Provider. Service Provider agrees to make good the loss suffered by the Bank.

15.2 Subject to clause 15.2.1 and 15.2.2 of this Agreement, Service Provider, at its own expenses without any limitation, indemnify and keep fully and effectively indemnified the Bank against all costs, claims, damages, demands, expenses and liabilities of whatsoever nature arising out of or in connection with all claims of infringement of Intellectual Property Rights, including patent, trade mark, copyright, trade secrets or industrial design rights of any third party arising from the Services or use of software/product under this Agreement.

15.2.1 The Bank will give (a) notice to Service Provider of any such claim without delay/provide reasonable assistance to Service Provider in disposing of the claim; (b) sole authority to defend and settle such claim and; (c) will at no time admit to any liability for or express any intent to settle the claim provided that (i) Service Provider shall not partially settle any such claim without the written consent of the Bank, unless such settlement releases the Bank fully from such claim; (ii) Service Provider shall promptly provide the Bank with copies of all pleadings or similar documents relating to any such claim; (iii) Service Provider shall consult with the Bank with respect to the defense and settlement of any such claim; and (iv) in any litigation to which the Bank is also a party, the Bank shall be entitled to be separately represented at its own expenses by counsel of its own selection.

15.2.2 Service Provider shall have no obligations with respect to any infringement claims to the extent that the infringement claim arises or results from: (i) Service Provider's compliance with the Bank's specific technical designs or instructions (except where Service Provider knew or should have known that such compliance was likely to result in an Infringement Claim and Service Provider did not inform the Bank of the same); or (ii) any unauthorized modification or alteration of the product by the Bank.

16 **TERMINATION**

16.1 The Bank may, without prejudice to any other remedy for breach of Agreement, by written notice of not less than 30 (thirty) days, terminate the Agreement in whole or in part:

- (i) If Service Provider fails to deliver any or all the obligations within the time period specified in the Agreement, or any extension thereof granted by the Bank;
- (ii) If Service Provider fails to perform any other obligation(s) under the Agreement;
- (iii) Violations of any terms and conditions stipulated in the RFP;
- (iv) On happening of any termination event mentioned herein above in this Agreement.
- (v) If the service provider is removed from the NPCI's empaneled list of Tags suppliers/manufacturers for NETC project for any reason.

Prior to providing a written notice of termination to Service Provider under above mentioned sub-clause (i) to (iii), the Bank shall provide Service Provider with a written notice of 30 (thirty) days to cure such breach of the Agreement. If the breach continues or remains unrectified after expiry of cure period, the Bank shall have right to initiate action in accordance with above clause.

16.2 The Bank, by written notice of not less than 90 (ninety) days, may terminate the Agreement, in whole or in part, for its convenience, provided same shall not be invoked by the Bank before completion of half of the total Contract period (including the notice period). In the event of termination of the Agreement for

the Bank's convenience, Service Provider shall be entitled to receive payment for the Services rendered (delivered) up to the effective date of termination.

16.3 In the event the Bank terminates the Agreement in whole or in part for the breaches attributable to Service Provider, it may procure, upon such terms and in such manner as it deems appropriate, products and services similar to those undelivered, and subject to clause 17 Service Provider shall be liable to the Bank for any increase in cost for such similar products and/or services. However, Service Provider shall continue performance of the Agreement to the extent not terminated.

16.4 The Bank shall have a right to terminate the Agreement immediately by giving a notice in writing to Service Provider in the following eventualities :

16.4.1 If any Receiver/Liquidator is appointed in connection with the business of Service Provider or Service Provider transfers substantial assets in favour of its creditors or any orders / directions are issued by any Authority / Regulator which has the effect of suspension of the business of Service Provider.

16.4.2 If Service Provider applies to the Court or passes a resolution for voluntary winding up of Service Provider or any other creditor / person files a petition for winding up or dissolution of Service Provider.

16.4.3 If any acts of commission or omission on the part of Service Provider or its agents, employees, sub-contractors or representatives, in the reasonable opinion of the Bank tantamount to fraud or prejudicial to the interest of the Bank or its employee(s).

16.4.4 Any document, information, data or statement submitted by Service Provider in response to RFP, based on which Service Provider was considered eligible or successful, is found to be false, incorrect or misleading.

16.5 In the event of the termination of the Agreement, Service Provider shall be liable and responsible to return to the Bank all records, documents, data and information including Confidential Information pertains to or relating to the Bank in its possession.

16.6 In the event of termination of the Agreement for material breach, the Bank shall have the right to report such incident in accordance with the mandatory reporting obligations under the applicable law or regulations.

16.7 Upon termination or expiration of this Agreement, all rights and obligations of the Parties hereunder shall cease, except such rights and obligations as may

have accrued on the date of termination or expiration; the obligation of confidentiality and indemnity; obligation of payment; Governing Law clause; Dispute resolution clause; and any right which a Party may have under the applicable Law.

17 LIMITATION OF LIABILITY

17.1 The maximum aggregate liability of Service Provider, subject to below mentioned sub-clause 17.3, in respect of any claims, losses, costs or damages arising out of or in connection with this Agreement shall not exceed the total Purchase Order Value placed till the date of giving rise to any claims or equivalent to amount of PBG submitted by Service Provider, whichever is greater.

17.2 Under no circumstances shall either Party be liable for any indirect, consequential or incidental losses, damages or claims including loss of profit, loss of business or revenue.

17.3 The limitations set forth in above mentioned sub-clause 17.1 shall not apply with respect to:

17.3.1 claims that are the subject of indemnification pursuant to infringement of third party Intellectual Property Right;

17.3.2 damage(s) occasioned by the Gross Negligence or Willful Misconduct of Service Provider;

17.3.3 damage(s) occasioned by Service Provider for breach of Confidentiality Obligations;

17.3.4 Regulatory or statutory fines imposed by a Government or Regulatory agency for non-compliance of statutory or regulatory guidelines applicable to the Bank, provided such guidelines were brought to the notice of Service Provider.

For the purpose of above mentioned sub-clause 17.3.2 “Gross Negligence” means any act or failure to act by a party which was in reckless disregard of or gross indifference to the obligation of the party under this Agreement and which causes injury, damage to life, personal safety, real property, harmful consequences to the other party, which such party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to

act for which such Party is legally liable. Notwithstanding the forgoing, Gross Negligence shall not include any action taken in good faith.

“Willful Misconduct” means any act or failure to act with an intentional disregard of any provision of this Agreement, which a party knew or should have known if it was acting as a reasonable person, which would result in injury, damage to life, personal safety, real property, harmful consequences to the other party, but shall not include any error of judgment or mistake made in good faith.

18 CONTINGENCY PLANS & CONTINUITY ARRANGEMENTS.

18.1 Service Provider shall arrange and ensure proper contingency plans to meet any unexpected obstruction to Service Provider or any employees or sub-contractors (if allowed) of Service Provider in rendering the Services or any part of the same under this Agreement to the Bank.

18.2 Service Provider agrees for the following continuity arrangements to ensure the business continuity of the Bank.

18.2.1 In the event of failure of Service Provider to render the Services or in the event of termination of Agreement or expiry of term or otherwise, without prejudice to any other right, the Bank at its sole discretion may make alternate arrangement for getting the Services contracted with another vendor. In such case, the Bank shall give prior notice to the existing Service Provider. The existing Service Provider shall continue to provide services as per the terms of the Agreement until a ‘New Service Provider’ completely takes over the work.

18.2.2 During the transition phase, the existing Service Provider shall render all reasonable assistances to the new Service Provider within such period prescribed by the Bank, at no extra cost to the Bank, for ensuring smooth switch over and continuity of Services, provided where transition services are required by the Bank or New Service Provider beyond the term of this Agreement, reasons for which are not attributable to Service Provider, payment shall be made to Service Provider for such additional period on the same rates and payment terms as specified in this Agreement. If existing vendor is found to be in breach of this obligation, they shall be liable for paying a penalty of Rs._____on demand to the Bank, which may be

settled from the payment of invoices or bank guarantee for the contracted period.

19 ARBITRATION

19.1 Any and all disputes, controversies and conflicts ("Disputes") arising out of this Agreement or in connection with this Agreement or the performance or non-performance of the rights and obligations set forth herein, or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 (Arbitration Act) or any amendments thereof. Prior to submitting the Disputes to arbitration the parties shall make all endeavors to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled within 30 days of the arising thereof as evidenced through the first written communication from any party notifying the other regarding the disputes, the same shall finally be settled and determined by arbitration as above.

19.2 The place of arbitration shall be at _____ and the language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a mutually appointed sole arbitrator. If the Parties are unable to agree upon a sole Arbitrator, each Party shall appoint one arbitrator and the two arbitrators so appointed by the Parties shall appoint the third arbitrator, who shall be the Chairman of the Arbitral Tribunal.

19.3 The arbitral award shall be in writing and subject to the provisions of the Arbitration and Conciliation Act, 1996 Act shall be enforceable in any court of competent jurisdiction.

19.4 Pending the submission to arbitration and thereafter, till the Arbitrator or the Arbitral Tribunal renders the award or decision, the Parties shall, except in the event of termination of this Agreement or in the event of any interim order/award is granted under the afore stated Act, continue to perform their obligations under this Agreement.

20 GOVERNING LAW & JURISDICTION

20.1 The Agreement shall be governed and construed in accordance with the Laws of Republic of India.

20.2 The Parties agree to submit to the exclusive jurisdiction of the appropriate court in _____ in connection with any dispute between the Parties under the Agreement.

21 SEVERABILITY

If any part or any provision of this Agreement is or becomes illegal, invalid or unenforceable, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the validity or enforceability of the remaining parts of said provision or the remaining provisions of this Agreement. The Parties hereby agree to attempt to substitute any invalid or unenforceable provision with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

22 POWER TO VARY OR OMIT WORK

22.1 No alterations, amendments, omissions, additions, suspensions or variations of the work (hereinafter referred to as variation) under the Agreement shall be made by Service provider except as directed in writing by Bank. The Bank shall have full powers, subject to the provision herein after contained, from time to time during the execution of the Agreement, by notice in writing to instruct Service Provider to make any variation without prejudice to the Agreement. Service Provider shall carry out such variations and be bound by the same conditions, though the said variations occurred in the Agreement documents. If any suggested variations would, in the opinion of Service Provider, if carried out, prevent them from fulfilling any of their obligations under the Agreement, they shall notify the Bank, thereof, in writing with reasons for holding such opinion and Bank shall instruct Service Provider to make such other modified variation without prejudice to the Agreement. Service Provider shall carry out such variations and be bound by the same conditions, though the said variations occurred in the Agreement documents. If Bank confirms their instructions Service Provider's obligations will be modified to such an extent as may be

mutually agreed. If such variation involves extra cost, any agreed difference in cost occasioned by such variation shall be mutually agreed between the parties. In any case in which Service Provider has received instructions from the Bank as to the requirement of carrying out the altered or additional substituted work, which either then or later on, will in the opinion of Service Provider, involve a claim for additional payments, such additional payments shall be mutually agreed in line with the terms and conditions of the order.

- 22.2 If any change in the work is likely to result in reduction in cost, the parties shall agree in writing so as to the extent of reduction in payment to be made to Service Provider, before Service provider proceeding with the change.

23 ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written agreements, undertakings, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of the Agreement, except which are expressly annexed or attached to this Agreement and saved by this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by any Party hereto.

23.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- 23.2.1 This Agreement;
- 23.2.2 Annexure of Agreement;
- 23.2.3 Purchase Order during contract period and
- 23.2.4 RFP

24 NOTICES

24.1 Any notice or any other communication required to be given under this Agreement shall be in writing and may be given by delivering the same by hand

or sending the same by prepaid registered mail, postage prepaid, telegram or facsimile to the relevant address set forth below or such other address as each Party may notify in writing to the other Party from time to time. Any such notice given as aforesaid shall be deemed to be served or received at the time upon delivery (if delivered by hand) or upon actual receipt (if given by postage prepaid, telegram or facsimile).

24.2 A notice shall be effective when it is delivered or on the effective date of the notice, whichever is later.

24.3 Address for communication to the Parties are as under:

24.3.1 To the Bank

Deputy General Manager (Projects)
State Bank of India,
2nd Floor, Mafatlal Centre,
Transaction Banking-S& SP,
Nariman Point, Mumbai-400021

24.3.2 To Service Provider

24.4 In case there is any change in the address of one party, it shall be promptly communicated in writing to the other party.

25 MISCELLANEOUS

25.1 Any provision of this Agreement may be amended or waived, if, and only if such amendment or waiver is in writing and signed, in the case of an amendment by each party, or in this case of a waiver, by the Party against whom the waiver is to be effective.

25.2 No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

25.3 Neither this Agreement nor any provision hereof is intended to confer upon any person/s other than the Parties to this Agreement any rights or remedies hereunder.

- 25.4 If this Agreement is signed in counterparts, each counterpart shall be deemed to be an original.
- 25.5 Service Provider shall not assign or transfer all or any of its rights, benefits or obligations under this Agreement without the approval of the Bank. The Bank may, at any time, assign or transfer all or any of its rights, benefits and obligations under this Agreement.
- 25.6 Service Provider agrees that they shall not use the logo, trademark, copy rights or other proprietary rights of the Bank in any advertisement or publicity materials or any other written communication with any other party, without the prior written consent of the Bank.
- 25.7 The Parties agree that the Bank shall have the right, but without any obligation to monitor and assess the Services to enable the Bank to take necessary corrective measures, provided any such monitoring shall not amount to supervision of any of the jobs of Service Provider or the employees of Service Provider.
- 25.8 Service Provider agrees that the complaints/feedback, if any received from the customers of the Bank in respect of the Services by Service Providers shall be recorded and Bank/Reserve Bank of India shall have access to such records and redressal of customer complaints by Service Provider.
- 25.9 Service Provider agrees that the Bank shall have the right to disclose the details of this Agreement and the details of Services covered herein to the Reserve Bank of India and Indian Banks Association.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date and day first mentioned above.

State Bank of India

Service Provider

By:

By:

Name:

Name:

Designation:

Designation:

Date:

Date:

WITNESS:

- | | |
|----|----|
| 1. | 1. |
| 2. | 2. |

ANNEXURE-A

1. The Vendor warrants that the SBI FASTags supplied under the Contract (SLA) are new, unused, of the most recent or current model and they incorporate all recent improvements in design and / or features. The Vendor further warrants that all the SBI FASTags supplied under this Contract (SLA) shall have no defect, arising from design or from any act of omission of the Vendor that may develop under normal use of the supplied SBI FASTags in the conditions prevailing in India.
2. During the term of the Contract (SLA), Vendor will ensure that the SBI FASTags are delivered securely and completely to the designated location as advised by the Bank as per the delivery schedule. The vendor shall further ensure that:
 - a) It maintains sufficient inventory of SBI FASTags for all the seven classes of tollable vehicles and/or as per NPCI guidelines from time to time.
 - b) In the event of its inability to comply with the procurement order due to some technical reasons it will be its responsibility to inform Bank within time frame of 30 days to enable the Bank to divert the requirement to some other and procure the SBI FASTags.
3. Vendor shall replace any defective or otherwise unusable SBI FASTags within one week from the date of receiving the intimation.
4. If there is any kind of penalty levied on the vendor, the payment settlement would be net of the total penalty(ies) amount.
5. If the tags are not delivered within 12 days from the Purchase Order date, the Bank will recover penalty amount equivalent to 20% of Tag Cost multiplied by number of tags undelivered.
6. The Penalties for supply of defective SBI FASTags will be imposed as under:

Defective SBI FASTags per Purchase	Penalty amount
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Order	
Upto 0.5%	0.5% of the invoice amount for the consignment.
0.5% to 1%	1% of the invoice amount for the consignment.
1% to 1.5%	1.5% of the invoice amount for the consignment.
More than 1.5%	Minimum 5% of invoice amount and maximum 100% for the consignment as per discretion of the Bank.

7. Any penalty due during the Contract (SLA) period will be adjusted against the invoice amount of the next invoice raised.