

Change Order 07

**Louisville Southern-Indiana Ohio River Bridges Project
Toll Services Agreement**

**Modification of Customer Service Performance Requirements,
Related Performance Liquidated Damages, Pass-Through Cost Items
for Out of State Lookups, and Supplemental Customer Service
Representatives and Supervisors**

Effective Date of November, 5 2020]

Recitals

- A. On May 12, 2015, the Indiana Finance Authority (“IFA”), a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, on behalf of the Joint Board (“Joint Board”) for the Louisville Southern Indiana Ohio River Bridges project (“LSIORB”), entered into the Toll Services Agreement, as amended, together with all Exhibits and prior amendments thereto (the “Agreement”) with Kapsch TrafficCom USA, Inc. (formerly known as Kapsch TrafficCom IVHS Inc.), a corporation organized under the laws of Delaware (“Toll System Provider” or “TSP”). The Joint Board and TSP are referred to herein as the “Parties”.
- B. The Parties have determined that it is in their best interests and in that of the Toll Collection System to implement certain changes to the Performance Requirements in the Toll Services Agreement, and certain Liquidated Damages associated therewith, in order to achieve more consistency and predictability in meeting the actual and anticipated levels of customer service needs for the users of the Bridges and Toll Collection System.
- C. The Parties also have determined that it is in their best interests and in that of the Toll Collection System, including that Gross Revenues will be favorably impacted, by their sharing in the costs for the TSP to successfully undertake Out of State Lookups to locate National Change of Address (NCOA)-compliant addresses for purposes of toll collection for vehicles registered in states other than Kentucky, Indiana, or any other state with which RiverLink has an agreement.

Capitalized terms used, but not defined, in this Change Order shall have the meanings described in, and all Section and Exhibit references shall be to, the Agreement.

The Parties mutually agree that the Agreement is hereby amended as follows:

Section I – Narrative, Discussion of Additions, Deletions, Modifications to the Toll Services Agreement

A. Modifications/Additions to Performance Requirements

The Parties mutually agree to the following additions and modifications to the Performance Requirements:

1. PR-018 shall be modified with supplemental language as follows (modified, supplemental language is underlined): “The average call wait time shall not exceed a monthly average of 1 minute through the term of the Contract as reported on the phone system reports. The average call wait time is measured based on all calls in which the customer elects to speak to a CSR during a monthly period and calculated monthly. The maximum call wait time shall not exceed ten (10) minutes. The frequency for reporting on this requirement shall be daily.”

The remainder of PR-018, including Proposer Response, is unchanged.

2. PR-032 shall be modified with supplemental language and revised as follows (modified, supplemental language is underlined and deleted language is in strikethrough): “The Toll System Provider staff shall be scheduled according to expected call arrivals in order to comply with the requirement that a minimum of 80% of calls be answered by a live representative within 60 seconds, calculated by dividing the number of calls answered by a live representative within 60 seconds by total number of calls received by the IVR on which the customers selected to speak to a live representative. The frequency for reporting on this requirement shall be semi-monthly (1st-14th, and 15th to end of month).”

The remainder of PR-032, including Proposer Response, is unchanged.

3. A new PR-037 shall be added to the Performance Requirements as follows:

“The Toll System Provider staff shall be scheduled according to expected call arrivals in order to comply with the requirement that no more than four percent (4%) of calls are abandoned after 60 seconds. A call is not considered “abandoned” if it is ended by the caller less than 60 seconds after entering the queue. The frequency for reporting on this requirement shall be daily.

Proposer (TSP) Response: Kapsch fully complies with PR-037.”

B. Amendment to Exhibit N – LIQUIDATED DAMAGES FOR PERFORMANCE BELOW THE GUARANTEED PERFORMANCE REQUIREMENTS

1. The Parties mutually agree that Exhibit N to the Agreement shall be amended to add the following new Section IV:

“IV. Customer Service Guaranteed Performance Requirements

Maximum Wait Time After Electing To Speak to CSR

As required by PR-018, the maximum call wait time shall not exceed ten (10) minutes on any singular call. As provided in Section 4.10.5 and 4.10.6 of the Contract, the Joint Board shall assess, and TSP shall pay to the Joint Board, Performance Liquidated Damages the sum of \$100 for each event in which the call wait time is ten (10) minutes or more.

As required by PR-032, a minimum of 80% of calls during any semi-monthly period (*i.e.*, the 1st through the 14th day of the month, and/or the 15th through last day of the month) shall be answered by a live representative within 60 seconds, calculated by dividing the number of calls answered by a live representative within 60 seconds by total number of calls received by the IVR during that semi-monthly period. As provided in Section 4.10.5 and 4.10.6 of the Contract, the Joint Board shall assess, and TSP shall pay to the Joint Board, Performance Liquidated Damages equal to \$500 for every percent or portion thereof below 80%. For example, if only 75% of the calls during the applicable semi-monthly period have a call wait time of 60 seconds or less, Performance Liquidated Damages will be \$2,500.

Maximum Abandoned Calls

As required by PR-037, no more than four percent (4%) of calls per day may be abandoned after 60 seconds. (Calls are not considered “abandoned” if ended by the caller less than 60 seconds after entering the queue.) As provided in Section 4.10.5 and 4.10.6 of the Contract, the Joint Board shall assess, and TSP shall pay to the Joint Board, Performance Liquidated Damages equal to \$300 for every percent or portion thereof above four percent (4%) for the day. For example, if 6% of the calls on any given day are abandoned after 60 seconds, Performance Liquidated Damages will \$600 for that day.”

2. The Parties also mutually agree that, consistent with Section 4.10.6(b) of the Agreement, each of the States’ Parties may, in its sole discretion and without prior notice or demand, offset the Performance Liquidated Damages set forth above in the event TSP fails to meet the Customer Service Guaranteed Performance Requirements set forth in this Section I(B) of this Change Order from amounts otherwise payable by such States’ Party to the TSP if TSP does not pay such Performance Liquidated Damages by the tenth day of the month following their accrual due to such failure. The TSP shall have the right to deduct any mutually agreed Performance Liquidated Damages based on the system performance shown in the Monthly Operations Report from the monthly Operations and Maintenance Fee invoice of that applicable month.

The Parties agree that the Performance Liquidated Damages outlined in this section will be assessed starting with the month in which the TSP submits its first pass through invoice as outlined in Section C of this Change Order.

The Parties also agree that no Performance Liquidated Damages shall be assessed until full payment for the Change Order Cost outlined in Section II – B and C have been fully received by the TSP.

C. Amendment to Exhibit H – PASS-THROUGH COST ITEMS

1. The Parties mutually agree that Exhibit H to the Agreement shall be amended to add the following:

Out of State Lookup Reimbursables
<p>Beginning with the first full month after the execution of this Change Order: 80% of the actual cost of each Out of State Lookup, without markup or overhead, up to a maximum of \$1.00 per Lookup, for which verification is provided by TSP in a monthly invoice submitted in the form of, and including all information requested in, the exemplar invoice attached hereto as Attachment 1, and that results in the return of an National Change of Address (NCOA)-compliant address. As used herein, “Out of State Lookup” means license plate and registration searches for vehicles registered in states other than Kentucky, Indiana, or any other state with which RiverLink has an agreement.</p>
Supplemental Customer Service Representatives
<p>As used herein “Customer Service Representative(s)” means TSP representatives who respond to telephonic inquiries at or through TSP’s call center. As used herein, “Supervisor(s)” means staffing utilized to supervise the Customer Service Representatives only.</p> <p>Beginning with the first full month after the Effective Date of this Change Order: \$19.50 per hour for Contract Year 5, with a two percent (2%) annual increase for each subsequent contract year for each Customer Service Representative utilized by TSP in excess of 20 full time Customer Service Representative staff dedicated to the Project (up to a maximum of 160 hours per month for each Customer Service Representative). For clarity, the first 20 full time Customer Service Representatives shall be paid for at the sole cost and expense of TSP, and the Joint Board will reimburse TSP at the hourly rate of \$19.50 for Contract Year 5, with a two percent (2%) annual increase for each subsequent contract year for Customer Service Representatives utilized by TSP in excess thereof. For every 15 supplemental Customer Service Representatives (<i>i.e.</i>, those in excess of the baseline of 20 that shall be paid for at TSP’s sole cost and expense), the Joint Board also will reimburse TSP for one supplemental Supervisor dedicated full-time to the Project (which shall be in excess of the two Supervisors dedicated to the Project full-time that are paid for at TSP’s sole cost and expense) at the hourly rate of \$24.50 for Contract Year 5, with a two percent (2%) annual increase for each subsequent contract year (up to a maximum of 160 hours per month for each Supervisor). Amounts</p>

for which TSP seeks reimbursement under this provision shall be accompanied with such back-up information as required by the Joint Board or its representatives, including that from which the hours worked and full-time dedication to the Project of all Customer Service Representatives and Supervisors can be verified.

Beginning _____, and each quarter thereafter, TSP shall submit a budget, for the Joint Board's Authorized Representatives' approval, showing the number of Customer Service Representatives it intends to utilize and the anticipated costs for which TSP anticipates seeking reimbursement for the supplemental Customer Service Representatives and Supervisors hereunder. The Joint Board's financial responsibility for that quarter shall not exceed the amount identified in the budget unless otherwise agreed to in writing by the Joint Board Authorized Representatives. In case the Joint Board or its Authorized Representatives withhold approval for the staffing plan provided by the TSP, the TSP shall not be liable for the Liquidated Damages that are added to the Toll Services Agreement under Section C of this Change Order, So long as the staffing plan proposed by the TSP reflects staffing levels reasonably related to previous call volumes. Additionally, in case the Joint Board or its Authorized Representatives or contractors schedule an event or activity that requires changes to the staffing levels after the budget for that quarter has been approved, the TSP shall be entitled to recover and be reimbursed for costs for additional staff in coordination with the Joint Board if the schedule allows for appropriate staffing. If the event is scheduled in a manner that the TSP cannot add additional staff in time, the TSP shall notify the Joint Board in advance and no Liquidated Damages shall be added to the Toll Services Agreement under Section C of this Change Order as a result of such event or activity shall be applied.

For clarity and ease of administration, the parties agree that the Pass-through reimbursement amount per hour shall be \$19.50 for each Customer Service Representative and \$24.50 for each Supervisor for Contract Year 5, with a two percent (2%) annual increase for each subsequent contract year and represent full payment for the of the TSP's direct and indirect costs associated with the supplemental Customer Service Representatives and Supervisors. The Joint Board's right to audit and inspect all books and records as provided in the Toll Services Agreement, including the right to audit all payroll and claimed expenses for which TSP seeks reimbursement, shall apply. Nothing herein shall relieve TSP of its obligations to comply with the CSC and WUC levels of service required by the Technical Requirements. For the approval of the cost for the reimbursement amount for additional Customer Service Representatives and Supervisors, TSP shall provide a list of Customer Service Representatives and Supervisors working on the Project over the past month, and provide the number of hours by date that each staff was dedicated to the Project, substantially similar to the sample report attached as Appendix A and herein incorporated by reference.

Section II – Cost Impact(s)

A. Summary

1. For the period January 2019 through the last complete calendar month prior to the Effective Date of this Change Order, the States’ Parties shall pay the TSP for 80% of the actual cost of each Out of State Lookup, without markup or overhead, up to a maximum of \$1.00 per Lookup that results in the return of an NCOA-compliant address. The total cost for the Out of State Lookups that resulted in the return of an NCOA-compliant address for this period is \$1,620,923.75, and 80% thereof is \$1,296,739.00 through September 2020. Therefore, the total change in price due to this change is an increase in the contract price of \$1,296,739.00 through September 2020 (the additional months to be updated upon execution of this Change Order). For the approval and payment of the cost of Out of State Lookups, TSP shall provide a report of all out of state lookups substantially similar to the sample report attached as Appendix B and herein incorporated by reference.

2. For the months of February 2019 through November 2019, the States’ Parties shall pay the TSP, at the hourly rate of \$19.50, for each supplemental Customer Service Representative (as defined in Section I(C) above) dedicated full-time to the Project that was utilized by TSP in excess of 20 full time Customer Service Representatives dedicated to the Project full-time during such period. For such months, the States’ Parties shall also pay the TSP, at the hourly rate of \$24.50, for Supervisors (as defined in Section I(C) above) that were utilized to supervise each 15 supplemental Customer Service Representatives. Such payments shall be subject to verification of hours worked and full-time dedication to the Project of all Customer Service Representatives and Supervisors during the applicable period. The Parties agree that TSP shall receive no additional compensation for supplemental Customer Service Representatives or Supervisors for the months of December 2019 through July 2020. The total change in price due to this change, subject to verification by Joint Board Representatives of hours worked and full-time dedication to the Project of all Customer Service Representatives and Supervisors during the applicable months (February 2019 – November 2019), is an increase in the contract price of \$1,615,600.00.

B. Basis for Change Order Price

1. The total price for payment for successful Out of State Lookups during the period January 2019 through the last complete month prior to the Effective Date of this Change Order is based on the rate of 80% of the actual cost for each, up to a maximum of \$1.00, as illustrated below:

Successful Out of State Lookups (OOSL)				
Month	No. of OOSLs	TSP Cost per Unit	Reimbursable Rate per CO	Reimbursable amount per CO
Jan 2019	58,195	1.25	1.00	\$58,195.00
Feb 2019	31,959	1.25	1.00	\$31,959.00

Mar 2019	54,479	1.25	1.00	\$54,479.00
Apr 2019	98,719	1.25	1.00	\$98,719.00
May 2019	71,652	1.25	1.00	\$71,652.00
June 2019	73,669	1.25	1.00	\$73,669.00
July 2019	93,179	1.25	1.00	\$93,179.00
Aug 2019	75,715	1.25	1.00	\$75,715.00
Sept 2019	81,984	1.25	1.00	\$81,984.00
Oct 2019	81,556	1.25	1.00	\$81,556.00
Nov 2019	52,311	1.25	1.00	\$52,311.00
Dec 2019	57,011	1.25	1.00	\$57,011.00
Jan 2020	61,367	1.25	1.00	\$61,367.00
Feb 2020	48,140	1.25	1.00	\$48,140.00
Mar 2020	46,217	1.25	1.00	\$46,217.00
Apr 2020	25,374	1.25	1.00	\$25,374.00
May 2020	36,998	1.25	1.00	\$36,998.00
June 2020	42,194	1.25	1.00	\$42,194.00
July 2020	94,966	1.25	1.00	\$94,966.00
Aug 2020	59,939	1.25	1.00	\$59,939.00
Sept 2020	51,115	1.25	1.00	\$51,115.00
Oct 2020		1.25	1.00	TBD
Total for Out of State Lookups				\$1,296,739.00*

* Actual cost amount for September and October 2020 to be added when final invoices are available

- The total price for payment for supplemental Customer Service Representatives and Supervisors for the months of February 2019 – November 2019 is based on hourly rates of \$19.50 for Customer Service Representatives, and \$24.50 for Supervisors, as illustrated below:

Customer Service Representatives (CSRs)						
Months	Baseline CSRs paid for by TSP	Actual CSRs per MOR	Reimbursable CSRs per CO	Reimbursable Hrs per CO	Hourly Rate per CO	Reimbursable Amount per CO
Feb 2019	20	73	53	160	19.50	\$165,360.00
Mar 2019	20	69	49	160	19.50	\$152,880.00
Apr 2019	20	58	38	160	19.50	\$118,560.00
May 2019	20	67	47	160	19.50	\$146,640.00
June 2019	20	57	37	160	19.50	\$115,440.00
July 2019	20	55	35	160	19.50	\$109,200.00
Aug 2019	20	66	46	160	19.50	\$143,520.00
Sept 2019	20	87	67	160	19.50	\$209,040.00
Oct 2019	20	86	66	160	19.50	\$205,920.00
Nov 2019	20	86	66	160	19.50	\$205,920.00
Subtotal for CSRs						\$1,572,480.00
Supervisors (Sups)						

Months	Baseline Sups paid for by TSP	Actual Sups per MOR	Reimbur- sable Sups per CO	Reimbur- sable Hrs per CO	Hourly Rate per CO	Reimbursable Amount per CO
Feb 2019	2	3	1	160	\$24.50	\$3,920.00
Mar 2019	2	3	1	160	\$24.50	\$3,920.00
Apr 2019	2	2	0	160	\$24.50	\$0.00
May 2019	2	2	0	160	\$24.50	\$0.00
June 2019	2	2	0	160	\$24.50	\$0.00
July 2019	2	2	0	160	\$24.50	\$0.00
Aug 2019	2	2	0	160	\$24.50	\$0.00
Sept 2019	2	5	3	160	\$24.50	\$11,760.00
Oct 2019	2	5	3	160	\$24.50	\$11,760.00
Nov 2019	2	5	3	160	\$24.50	\$11,760.00
Subtotal for Supervisors						\$43,120.00
Total Amount						\$1,615,600.00¹

The total change in price due to these two changes is an increase in the contract price (Exhibit C, Form G-1 (line CP-016) of \$2,801,285.00¹ (“Change Order Price”) as shown below:

Item	Change in Price
Reimbursement for Out of State Lookups	\$1,296,739.00*
Reimbursement for Supplemental CSRs and Sups	\$1,615,600.00 ¹
Total Change	\$2,912,339.00

* Actual cost amount for October 2020 to be added when final invoices are available

C. Payment of Change Order Price


The Joint Board will pay the Change Order Price to TSP in a single lump sum payment upon verification by the Joint Board Authorized Representatives of hours worked and full-time dedication to the Project of all Customer Service Representatives and Supervisors during the applicable period (February 2019 – November 2019) identified herein. TSP’s sole compensation for the Work described herein shall be the Change Order Price. TSP shall not be entitled to any other adjustments to the Contract Price in connection with this Change Order. Acceptance of this Change Order does not relieve TSP of its obligations to comply with the levels of service and other requirements set forth in the Technical Requirements or otherwise in the Agreement. The Indiana Finance Authority, on behalf of the Joint Board, reserves all rights under the Agreement.

Section III – Project Schedule Deadline Impact

There will be no impact to the schedule due to the matters in this Change Order.

¹ This portion of the change order price remains subject to verification by Joint Board Representatives of hours worked and full-time dedication to the Project of all Customer Service Representatives and Supervisors during the applicable periods.

Section IV – (Reviewed and recommended for agreement by Toll System Provider’s Program Manager)



Peter Aczel
Toll System Provider’s Program Manager

Date: November 12 . 2020

Comments:

SECTION V (Reviewed and agreed by the State Parties and the Toll System Provider’s Authorized Representative)

The undersigned Authorized Representatives of the State Parties and the Toll System Provider hereby certify, under penalty of perjury, as follows:

1. Sections I, II and III of this Change Order collectively represent a true, accurate and complete summary of all aspects of this Change Order.
2. The amounts of time and/or compensation set forth in this Change Order (a) are, in each case, justified as to entitlement and amount, (b) reflect all changes to compensation for and scheduling of the Project (inclusive of all Subcontractor and Supplier amounts, impacts), (c) are complete, accurate and current and (d), in each case, the amounts of time, if any, and/or compensation, if any, agreeable to, and are hereby agreed by, Toll System Provider.
3. This Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which have been and may be incurred by Toll System Provider as a result of the event, occurrence or matter giving rise to this Change Order, to include specifically Out of State Lookups and compensation for excess Customer Service Representatives and Supervisor up to and including the effective date of this Change Order. This Change Order constitutes a full and complete settlement of all of the State Parties’ and Toll System Provider’s Losses, Claims, or damages existing as of the effective date of this Change Order, of whatever nature, kind or character for the Out of State Lookups and compensation for Customer Service Representatives up to and including the effective date of this Change Order. The State Parties and the Toll System Provider hereby acknowledges that they shall not be entitled to assert any Claim for relief under the Contract Documents for delay, disruption costs or any other adverse financial or Project Schedule impacts existing as of the effective date of this Change Order and arising out of, or relating to, Out of State Lookups and compensation for Customer Service Representatives up to and including the effective date of this Change Order. Otherwise, the Joint Board and the Toll Services Provider reserve all rights under the Contract Documents, or at law or equity.

4. If the foregoing Change Order includes claims of Subcontractors or Suppliers, Toll System Provider represents that authorized representatives of each Subcontractor and Supplier, if any, reviewed such claims, this Change Order and accept this Change Order as dispositive on the same, subject to separate agreement between Toll System Provider and each such Subcontractor and Supplier, as applicable. Furthermore, Toll System Provider has determined in good faith that such claims are justified as to both entitlement and amount.

5. It is understood and agreed that this Change Order shall not alter or change, in any way, the force and effect of the Contract Documents, including any previous amendment(s) thereto, except insofar as the same is expressly altered and-amended by this Change Order.

6. This Change Order supersedes all prior commitments, negotiations, correspondence, conversations, agreements or understanding applicable to the issues addressed herein, which include the Out of State Lookups and compensation for Customer Service Representatives up to and including the effective date of this Change Order. No deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written, other than the Agreement, as amended in accordance with its terms.

7. This Change Order is binding upon, and shall inure to the benefit of, each of the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, Toll System Provider and State Parties, intending to be legally bound, have executed this Change Order as of the date below.

Date: 11/12/2020, 2020

Toll System Provider

KAPSCH TRAFFICOM USA, INC.

By:  _____

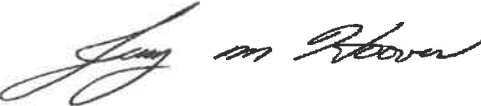
Name: Robert Corion _____

Title: Senior Vice President Delivery and Operations

SECTION VI (Reviewed and recommended agreed by KYTC\INDOT)

By: 
Name: Megan McLain
Title: Innovative Finance Manager, KYTC

Date: 11/5/2020

By: 

Name: Jerry M. Hoover
Title: INDOT Director of Operations Ohio River Bridges

Date: 11/5/2020

Comments:

SECTION VII (Agreed by IFA's Authorized Representative)

IN WITNESS WHEREOF, IFA, intending to be legally bound, has executed this Change Order as of the date first written above.

Date: _____
(the effective of this Change Order)

IFA

INDIANA FINANCE AUTHORITY

By: _____

Name: _____

Title: _____