



**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



27 Benk

*Victoria F. Sheehan*  
 Commissioner

*William Cass, P.E.*  
 Assistant Commissioner

December 21, 2016  
 Bureau of Turnpikes

His Excellency, Governor Christopher T. Sununu  
 and the Honorable Council  
 State House  
 Concord, New Hampshire 03301

**REQUESTED ACTION**

1. Pursuant to RSA 237:15-a, Transfers from the General Reserve Account, authorize the Department of Transportation, Bureau of Turnpikes to transfer funds in the amount of \$752,000.00 from the Turnpike General Reserve Account to budget and expend revenue for the design, development, testing, installation and consultant oversight of the Open Road Tolling System at the Bedford Mainline Plaza and maintenance of the existing ORT lanes at the Hampton Mainline and Hooksett Mainline Plazas for the Division of Operations to be effective upon Governor and Council approval through June 30, 2017. 100% Turnpike Funds.

**FROM:** 04-096-096-961017-363615-0000 Turnpike Fund Balance \$752,000.00

04-096-096-961017-70500000	Current Budget FY 2017	Requested Change	Revised Budget FY 2017
<b>Tpk Toll Collection</b>			
<b>Expenses:</b>			
020 500200 Current Expense	\$2,600,000	\$0	\$2,600,000
022 500255 Rents-Leases Other than State	1,633	0	1,633
023 500291 Heat, Electricity, Water	18,510	0	18,510
024 500225 Maint Other than Bldg-Grnds	3,926,309	0	3,926,309
026 500251 Membership Fees	75,000	0	75,000
046 500463 Eng Consultants Non-Benefits	8,778,000	752,000.00	9,530,000
080 500710 Out of State Travel	9,000	0	9,000
102 500731 Contracts for Program Svcs	13,864,081	0	13,864,081
103 502664 Contracts for Operational Svcs	9,200	0	9,200
Total	\$29,281,733	\$752,000.00	\$30,033,733
<b>Source of Funds</b>			
<b>Revenue:</b>			
000017 Turnpike Fund	\$29,281,733	\$752,000.00	\$30,033,733

The unaudited Turnpike Fund Balance Surplus account as of June 30, 2016 was \$94.9 million, and is projected to be \$54.5 million as of June 30, 2017. See attached.

2. Authorize the Department of Transportation to enter into a contract with Kapsch TrafficCom Transportation NA, Inc. (Vendor #164793) in the amount of \$9,170,943.23 for design, testing, installation and

maintenance services for the ORT System at the Bedford Mainline Plaza and the Maintenance of the existing ORT lanes at the Hampton Mainline and Hooksett Mainline Plazas for the Turnpike System within the Division of Operations effective upon Governor and Council approval, through June 30, 2023 with an option to renew, at the sole discretion of the State, for up to three (3) additional three (3) year optional maintenance periods up to, but not beyond June 30, 2032, subject to Governor and Council approval. 100% Turnpike Funds.

3. Further, authorize the Department of Transportation to exercise an option to install Open Road Tolling at Dover and Rochester Toll Plazas in FY 2021 and FY 2022 subject to Governor and Council approval.

Funds to support this request are anticipated to be available in the following accounts in State FY 2018, State FY 2019, State FY 2020, State FY 2021, State FY 2022 and State FY 2023 upon the availability and continued appropriation of funds in the future operating budget, with the ability to request encumbrances between State Fiscal years through the Budget Office, if needed and justified.

	<u>FY2017</u>	<u>FY2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
04-096-096-961017-7050 Toll Collection							
024-500225 Maintenance Other than Buildings/ Grounds			\$440,202.56	\$454,384.52	\$613,750.85	\$783,758.68	\$841,847.89
04-096-096-961017-7050 Toll Collection	\$751,069.38	\$1,574,222.82			\$1,827,921.59	\$1,883,784.94	
046-500463 Consultants							
<b>Fiscal Year Totals</b>	<b>\$751,069.38</b>	<b>\$1,574,222.82</b>	<b>\$440,202.56</b>	<b>\$454,384.52</b>	<b>\$2,441,672.44</b>	<b>\$2,667,543.62</b>	<b>\$841,847.89</b>

**EXPLANATION**

**Transfer from General Reserve Account to NH Turnpike Toll Collection (70500000) – 100% Turnpike Funds:**

Class 046 Consultants FY 2017: Increase Class 046 in Accounting Unit 7050 by \$752,000.00. This transfer will allow for payment of FY 2017 contract expenditures for the new ORT system development. This account was budgeted in FY 2017 but the amount of the contract exceeds the budget.

The above referenced RFP (Request for Proposal) involves engaging one vendor under a 5-year contract to perform the design, testing, installation and maintenance services for the Open Road Tolling (ORT) System for the Bureau of Turnpikes. This memorandum specifically addresses the procurement of the ORT System and the related maintenance services under RFP 2016-041.

The initial portion of the contract estimated to be 19 months involves the design, development, installation and commissioning of an ORT System at the Bedford Toll Plaza beginning upon G&C approval. The following project goals were described in the RFP.

- Goal 1:** Meeting the Project Schedule with the deployment of a fully integrated, working and accurate ORT solution.
- Goal 2:** Obtain ORT maintenance services for the current (“legacy”) system operating in Hooksett and Hampton. Work with existing ORT Contractor to maintain service.
- Goal 3:** Implement new redundant, highly reliable ORT system and maintenance services in Bedford, Dover and Rochester over the initial five (5) year Contract Term. ORT Systems at the Dover and Rochester Toll Plazas in FY 2021 and FY 2022 are subject to future G&C approval.
- Goal 4:** Receive the best value for the dollars invested.

The second portion of the contract involves the maintenance portion of the contract. This will be a fixed price contract for a five (5) year agreement beginning on July 1, 2018 and ending June 30, 2023, with the option, at the sole discretion of the State, to extend for up to three 3-year terms up to but not beyond June 30, 2032. The scope of maintenance work covers all predictive, preventative, and corrective maintenance required to support the ORT System. Further, the contract involves the design, development, installation and commissioning of ORT Systems at the Dover and Rochester Toll Plazas in FY 2021 and FY 2022.

On May 12, 2016, the Department publicly advertised the subject RFP. During the response period, the Department conducted a Vendor Conference for all vendors who responded with intent to submit and entertained questions and/or inquiries from the vendors. Proposals were received from the following vendors in accordance with the requirements for submission, including the stipulated deadline of July 28, 2016:

**VENDOR NAMES**

- BIT Mobility Solutions, LLC
- Kapsch TrafficCom Transportation NA, Inc.
- TransCore

Proposals from each vendor were reviewed by the ORT System RFP Selection Committee along with technical review support by the Bureau of Turnpikes’ tolling consultant, HNTB. On September 14<sup>th</sup> and 15<sup>th</sup> 2016, the Selection Committee held interviews with the three vendor teams, where each team conducted a presentation describing their team, capabilities, and pertinent aspects of their proposal; provided answers to a specific set of questions targeting each proposal; and participated in an open question and answer period. Following the interviews on September 20, 2016, the Selection Committee met to discuss the vendor interviews and finalize the ratings of the Proposals. The Selection Committee was comprised of Bureau of Turnpikes Administrator, Bureau of Turnpikes Assistant Administrator, Bureau of Turnpikes Toll Collection Manager, Bureau of Turnpikes E-ZPass Manager, and Department of Information technology IT Project Manager.

The Selection Committee used the table below to rate the technical aspect of each proposal taking into account the ORT System design and technical approach; ability to execute and meet the project schedule; system maintenance and warranty approach; and firm’s qualifications, project team, capabilities and references. The technical aspect accounted for 70 of the total 100 maximum points. A minimum of 49 points was required, as specified in the RFP, for further consideration in the overall selection process. Proposals not receiving a technical score of 49 points or higher, in addition to being removed from further consideration, will have the corresponding price proposal returned unopened to the applicable vendor.

<b>CATAGORIES</b>	<b>POINTS</b>
TECHNICAL PROPOSAL with the following potential maximum scores for each Technical Proposal category;	70
ORT System Design and Technical Approach (30%)	21
Ability to Execute and Meet the Project Schedule (30%)	21
System Maintenance and Warranty Approach (20%)	14
Firms Qualifications, Project Team, Capabilities and References (20%)	14

PRICE PROPOSAL POTENTIAL MAXIMUM POINTS	30
TOTAL POTENTIAL MAXIMUM POINTS AWARDED	100

\*The following formula was used to assign points for the price proposal: Vendor's Price Score = (Lowest Proposed Price/Vendor's Proposed Price) x 30.

Based on the above mentioned analysis, the Selection Committee identified two (2) vendors with technical scores exceeding 49 and worthy of consideration in the selection process. One (1) vendor, BIT Mobility Solutions, LLC did not achieve the minimum technical score. As such, based on the requirements in the RFP (RFP 2016-041, Section 6.4.1 Part b), the proposal submission was disqualified from further consideration. As a result, the corresponding price proposal will be returned unopened to the respective vendor.

The following table outlines the Committee's technical scoring, each firm's base price proposal, corresponding price score and total score.

Vendor	Technical Score (max. 70 points)	Proposed Based Price	Price Score (max. 30 points)	Total Score
Kapsch TrafficCom Transportation NA, Inc.	64.8	\$8,995,943.23	30	94.80
TransCore	63.4	\$11,856,618.00	22.75	86.16
BIT Mobility Solutions, LLC	28.6			

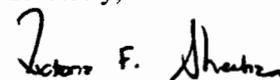
Kapsch and TransCore provided highly technical proposals meeting the RFP requirements as seen by their technical scores. Based on the Selection Committee proposal review, interview process, and price, the committee has concluded that Kapsch's proposal meets, and or exceeds each of the stated goals and requirements in the RFP. Their system is highly configurable and adaptable which will reduce the potential for change orders over the course of the contract term. The Kapsch system is a reliable system that provides redundant components and parallel systems that limit lost transactions. Their demonstrated performance, experience and references acknowledge their ability to excel in meeting performance measures. Their system solution is user friendly for various users of the ORT system to address system monitoring, reconciliation of files, viewing video and providing ad-hoc reporting queries.

The base price Kapsch provided for maintenance in the proposal was \$2,958,944.50. The overall price also includes maintenance contingency costs for each fiscal year to total \$175,000 (FY2019 \$35,000, FY2020 \$35,000, FY2021 \$35,000, FY2022 \$35,000 and FY2023 \$35,000). This money is required for unanticipated repairs and/or replacements of damaged items from motor vehicle accidents, and unforeseen maintenance repairs or weather events.

This Contract has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully executed contract are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that this resolution be approved.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachment: Proposal Scoring summary

**Open Road Tolling-RFP 2016-041  
PROPOSAL SCORING SUMMARY**

Scoring Category	Maximum Points	BMS - BIT Mobility Solution	Kapsch	Transcore
<b>TECHNICAL PROPOSAL</b>	<b>70</b>			
ORT System Design and Technical Approach (30%)	21	7.6	19.4	17.6
Ability to Execute and Meet the Project Schedule (30%)	21	7.6	19.8	19.4
System Maintenance and Warranty Approach (20%)	14	6.0	11.8	13.0
Firm Qualifications, Project Team, Capabilities and References (20%)	14	7.4	13.8	13.4
<b>Minimum Technical Points Required</b>	<b>49</b>	<b>28.6</b>	<b>64.8</b>	<b>63.4</b>
<b>PRICE PROPOSAL POTENTIAL MAXIMUM POINTS</b>	<b>30</b>			
<b>Total Cost</b>				
Contractor's Price Score = (Lowest Proposed Price / Contractor's Proposed Price) x 30	Lowest Price <b>\$8,995,943.31</b>			
<b>Total Points</b>	<b>100</b>			



**Denis Goulet**  
Commissioner

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**  
27 Hazen Dr., Concord, NH 03301  
Fax: 603-271-1516 TDD Access 1-800-735-2964  
www.nh.gov/doi

December 2, 2016

Victoria F. Sheehan  
Commissioner  
Department of Transportation  
State of New Hampshire  
John O. Morton Bldg., 7 Hazen Drive  
Concord, NH 03302-0483

Dear Commissioner Sheehan:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with Kapsch TrafficCom Transportation NA, Inc. (Vendor #164793) as described below and referenced as DoIT No. 2016-041.

The purpose of the contract is to have the vendor design, develop and install an Open Road Tolling (ORT) System at the Bedford Mainline Plaza, with an option to include ORT at additional designated plazas and maintain the existing ORT system at Hampton Mainline and Hooksett Mainline plazas. This is a continuation of the modernization of the ORT toll collection system, resulting in reduced congestion periods at mainline plazas and an enhanced service level.

The contract funding is not to exceed \$9,495,943.23 and shall become effective upon Governor and Council approval through June 30, 2023.

A copy of this letter should accompany the submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/mh  
DOT 2016-041

Cc: Gail Hambleton



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/30/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA, INC. 99 HIGH STREET BOSTON, MA 02110 Attn: Boston.certrequest@Marsh.com Fax: 212-948-4377  116924947-all-GAWU-16-17	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No. Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Federal Insurance Company		20281
<b>INSURER B :</b> Great Northern Insurance Company		20303
<b>INSURER C :</b> Chubb Indemnity Insurance Company		12777
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-008687508-01                      **REVISION NUMBER:** 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			9949-16-74	11/30/2016	11/30/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			7356-51-01	11/30/2016	11/30/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$			7983-64-37	11/30/2016	11/30/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	(17)7175-13-28	11/30/2016	11/30/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
The State of New Hampshire Department of Transportation is included as additional insured (except for Workers Compensation) where required by written contract.

### CERTIFICATE HOLDER

NH Dept. of Transportation  
 Office of Federal Compliance  
 7 Hazen Drive  
 Concord, NH 03302-0483

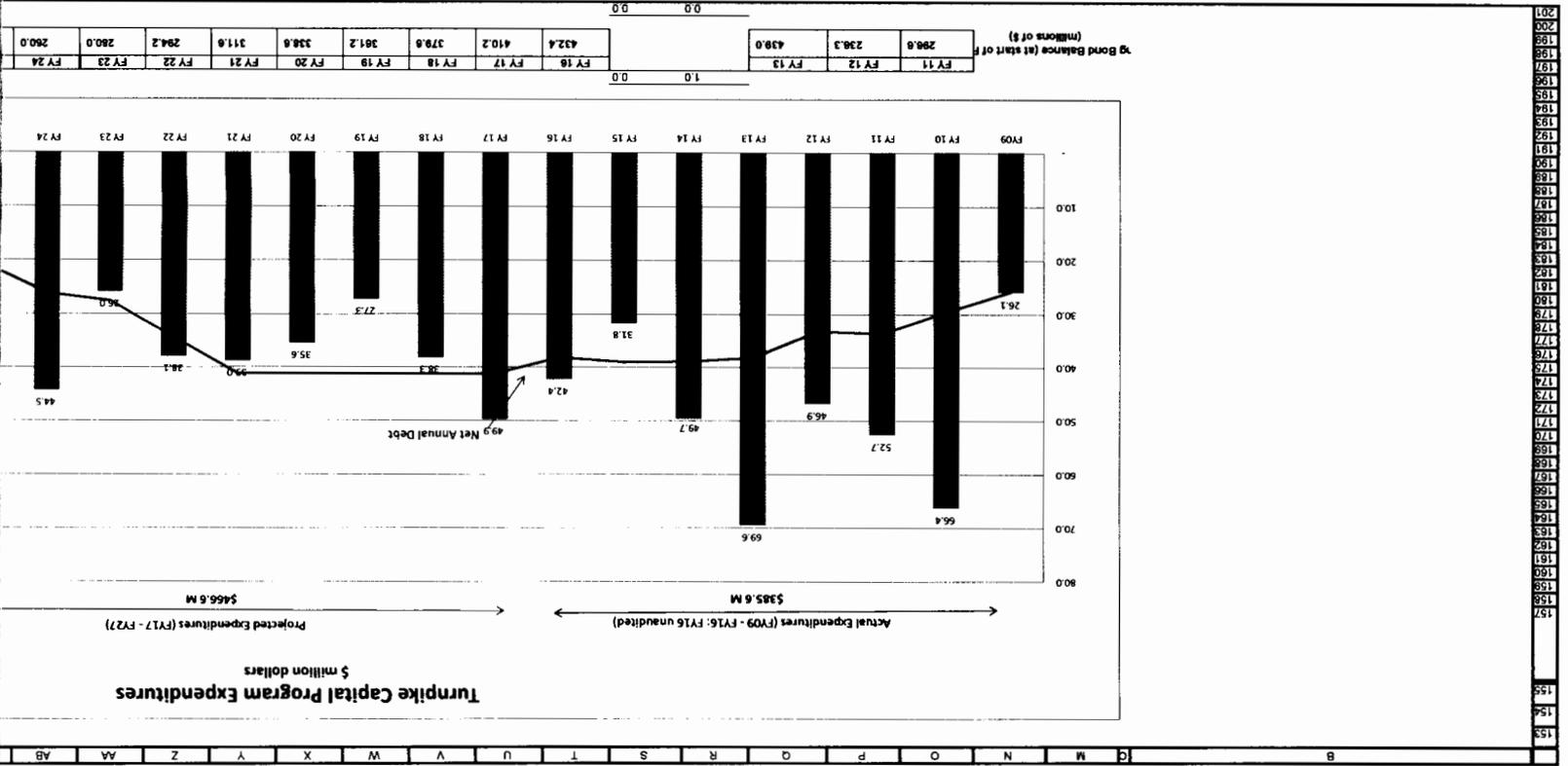
### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
 of Marsh USA Inc.  
 Elizabeth Stapleton *Elizabeth Stapleton*

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	B	C	M	N	O	P	AO	
1		Audited - Accrual-Based						
2							Assumptions and Comments	
3							on unaudited cash receipts, FY17 thru FY24 are based on Jacobs Traffic & Revenue Study dated May 15, 2015, and adjusted for actuals in Traffic & Revenue report. Average growth on the entire system is estimated to range between 1.40% to 1.58% per year between FY17 to 32.	
5	Existing Toll Revenue	103.9	116.0	118.7	118.8			
13	Additional Toll Revenue for Capital Program							
15	Transponder Revenue	0.7	0.7	0.8	0.7		ed in FY16 & FY17, with inventories increased to account for the probable failure of originally issued 300k transponders in fall of 2005	
18	Other Revenue (not including interest)	2.2	1.8	1.2	1.1		fees & processing fees, real estate sales, etc.; FY15 based on audited financials, FY16 based on near term projections, 2% growth thereafter	
19	Hooksett Service Area Revenue	0.8	0.8	0.2	0.1		n Projections in Exhibit D of Contract (35-yr ground lease contract)	
20	Interest income projections						16 forward assumes 0.30% interest on reserve accounts and 0.15% on other cash	
21	<b>Total Revenue</b>	<b>107.6</b>	<b>119.3</b>	<b>118.9</b>	<b>118.7</b>			
22								
23	Operating Expenditures	26.6	26.3	28.0	25.5		based on approved budget with 2% growth thereafter	
24	Existing Operating Expenditures						an Staffing Model in Tolls	
31	Projected Lease						at \$8.90 each. Transponder expense increased in FY16 & FY17 to account for the probable replacement of a high number of the 300k	
32	Transponder Expense	0.7	0.8	0.8	0.8		% growth thru FY32	
33	Toll System Maintenance Expenditures (Class 24 TRM), Xerox, Telvent	1.3	1.8	1.8	1.4		w vendor thru FY32. Includes \$4.3 increase for current vendor in FY 17.	
34	EZPass Customer Service Expenditures (Class 46 & 102), Xerox & Cubic	5.1	5.3	5.8	5.3			
35	Toll Collection Carry-forward						unds transferred previously; FY16 & FY17 based on approved budget with 2% growth thereafter	
36	Enforcement Expenditures (Safety)	5.4	5.0	4.9	4.9		rs, FY 16 & FY17 based on approved budget, with 2% growth thereafter	
37	Turnpike Funding of Welcome Centers (DRED)				1.2		-agency transfers for Traffic, Bridge Maintenance, Hwy Maintenance, TMC), FY16 & FY17 based on actual payments (cash basis) in FY 16 and	
40	Turnpike Funding of DOT - Highway	1.2	1.1	1.0	1.6			
41	<b>Total Operating Expenditures</b>	<b>40.3</b>	<b>40.1</b>	<b>42.3</b>	<b>40.7</b>			
42								
43	<b>Net Revenue</b>	<b>67.3</b>	<b>79.2</b>	<b>76.6</b>	<b>78.0</b>		<b>EXPENSES</b>	
44								
45	BABs Interest Subsidy		(1.3)	(3.1)	(3.1)		s (reimbursement back into debt service account)	
46	Debt Service on Remaining Revenue Bonds	25.9	23.8	20.5	20		nds paid off in FY24)	
47	Debt Service on FY 2010 Refunding Revenue Bonds		3.3	7.5	7.5		nds paid off in FY21)	
48	Debt Service on FY 2010 Revenue Bonds		3.7	8.9	8.9		nds paid off in FY39)	
50	Debt Service on 2012 Revenue Bonds						nds paid off in FY43)	
53	Proposed Debt Service on 2013 & Future Revenue Bonds	25.9	30.9	36.9	38.4			
59	<b>Total Revenue Bond Debt Service</b>	<b>25.9</b>	<b>29.8</b>	<b>33.8</b>	<b>33.3</b>			
60	<b>Net Total Revenue Bond Debt Service</b>							
61								
62	Existing Debt Service General Obligation Bonds	1.6	0.7	0.6	-		axrual Calculation"	
63	Existing Turnpike Renewal and Replacement Program	7.8	7.8	14.3	9.2		026	
64	Portsmouth-Kittery High-Level Bridge 16189 (R&R)						work from TYLI dated March 2016	
65								
66	Carry-fwd R&R (not included in debt service coverage ratios)						tative, R&R budgeted amounts do not lapse.	
67	I-95 Advanced Payment						i (excluded from All Obligations Debt Service Coverage Ratio), results in reduced payment term of 6 yrs - last payment in FY15	
68	Payments from General Reserves for I-95 Acquisition		30.0	20.0	28.0		unit based on amortization schedule in I-95 transaction agreement. FY10 and FY15 payments from sufficient General Reserves at year end	
70	Total Other Obligations	9.4	38.5	34.9	35.2		ations Debt Service Coverage Ratio.	
71								
72	<b>Total Operating Annual Surplus/(Deficit)</b>							
81								
82	Capital Additions	32.0	11.1	7.9	9.5			
83	Turnpike Operating Transfer							
91	Bond Proceeds		150.0	-	-		oacity, delayed from FY 2012	
92	Bond Issuance Costs		(1.2)	-	-		of bond issuance amounts based on experience	
93	<b>Total Capital Additions</b>	<b>32.0</b>	<b>158.9</b>	<b>7.9</b>	<b>9.5</b>			
95	Hooksett Rest Area Acquisition							
97	Turnpike Improvement Capital Expenditures	26.9	54.5	47.1	43.9			
99	Hampton ORT, Seabrook NH107 Bridge, & Portsmouth Soundwall	0.2	11.8	4.4	1.9			
100	Hooksett ORT 15803		0.1	1.2	2.0			
101	Bedford/Merrimack ORT Conversion 16100							
102	Newington-Dover (Dover End & GSB) 11238 Q, S, U							
103	Spaulding Turnpike ORT 26440							
104	Merrimack-Bedford FEET Widening to 3 Lanes 13761							
105	Manchester FEET Reconstruct Exit 6 (Amoskeag) & Widening FEET 18099A						lease by 19.5% to account for 2% inflation from FY15 to FY24)	
106	Manchester FEET Reconstruct Exit 7 (Full) 16099B						lease by 24% to account for 2% inflation from FY15 to FY26)	
107	Bow-Concord I-93 Widening & Improvements 13742						ments (Construction Costs increase by 26.8% to account for 2% inflation from FY15 to FY27)	
108	Nashua - Manchester ITS 29408							
110	Dover-Rochester-Somersworth Exit 10 Feasibility Study 40599							
111	Removal of Merrimack Exit 12 29306							
114	<b>Total Capital Expenditures</b>	<b>26.1</b>	<b>66.4</b>	<b>52.7</b>	<b>45.9</b>			
115								
116	<b>Total Annual Capital Surplus/(Deficit)</b>						<b>TOTAL EXPENDITURES</b>	
117								
118	<b>BEGINNING Operating Cash</b>	<b>24.1</b>	<b>24.1</b>	<b>18.9</b>	<b>17.1</b>			
119	<b>Annual Surplus / (Deficit)</b>	<b>5.9</b>	<b>87.0</b>	<b>(46.9)</b>	<b>(37.4)</b>		and increase required to Revenue Bond Interest & Principal Debt Service Accounts	
120	Set aside Reserve on Proposed bonds						in CAFR has been unrestricted in FY11 CAFR	
121	Prior Period Adjustment		(10.9)	3.5	(0.1)			
122	Cash - Accrual Adjustments							
123	Increase in Prepaid Tolls (reserved) & Accruals							
124	Deferred Revenue Account - Prepaid Tolls	(4.6)	3.5	3.8	(0.3)			
125	Ending Operating Cash and Short Term Investments						Request entered in Operating Expenditures and R&R Program. Updated 9/19/16.	
126	Restricted Cash (Bond Proceeds for Construction)			13.4	-		se updated quarterly, unless other major changes are done (line 5)	
127	Unrestricted Cash			82.1	57.7		6, 40, 63	
128							ue) line 45	
129	Change in Reserve Accounts	(0.1)	10.9	(3.5)	0.1		rd to \$ 8M in line with FY 2016 earnings	
130	Ending Balance of Reserve Accounts	40.6	61.4	47.9	48.0		nce expenditures from \$2.1M to \$2.2M line 33	
131							for \$4.3M line 34	
132							rected - was \$2.6M now \$2.2M cash basis line 40. FY 18 & FY 19 budget revised to \$2.2M, FY 17 updated to \$2.2M	
133	<b>PROJECTED BOND COVENANT COVERAGE RATIOS</b>						Tab broken out as separate line item 84 from remainder of R&R program	
134								
135	Revenue Bond Debt Service Coverage 1.2 (1.3)	2.60	2.68	2.27	2.34			
136								
137								
138	All Obligation Coverage 1.0 (1.1)	1.78	1.98	1.74	1.84			
139								
148								
147	<b>Turnpike Capital Program 2006-2032</b>						Note: Certain financial categories for FY07 thru FY14 tie to	
148	<b>1,873.9</b>						ws with revenues thereafter.	
149								
150								
151	The majority of the decline in the capital program between this and previous versions is due to the removal of portion of the Little Bay Bridges project to be funded with a federal earmark							
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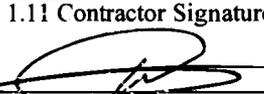
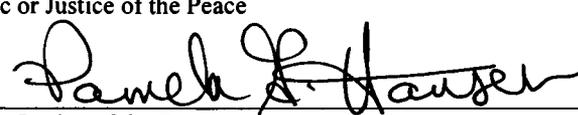
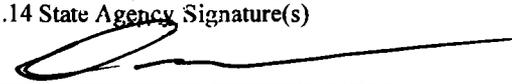
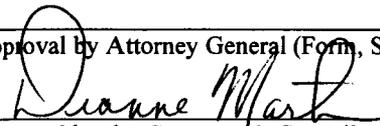


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**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
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The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

1.1 State Agency Name  Department of Transportation - Bureau of Turnpikes		1.2 State Agency Address  PO BOX 2950 Concord NH 03302-2950	
1.3 Contractor Name  Kapsch TrafficCom Transportation NA, Inc.		1.4 Contractor Address  211 E. 7 <sup>th</sup> Street, Suite 800 Austin Texas 78701	
1.5 Contractor Phone Number  1-832-540-0521	1.6 Account Number	1.7 Completion Date  June 30, 2023	1.8 Price Limitation  \$9,170,943.23
1.9 Contracting Officer for State Agency  Victoria Sheehan, Commissioner		1.10 State Agency Telephone Number  603-271-1486	
1.11 Contractor Signature  		1.12 Name & Title of Contractor Signatory Alfredo Escriba / Michael Hofer President / CFO	
1.13 Acknowledgement: State of Virginia, County of  On <u>11/11/2016</u> , before the undersigned officer, personally appeared the person identified in block 1.12 or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [seal]		 Pamela Gay Hansen NOTARY PUBLIC Commonwealth of Virginia Reg. #7664090 My Commission Expires 5/31/2019	
1.13.2 Name & Title of Notary or Justice of the Peace  Executive Assistant			
1.14 State Agency Signature(s)  		1.15 Name/Title of State Agency Signatory David Rodriguez Director of Operations	
1.16 Approval by N.H. Department of Administration, Division of Personnel (if applicable)  By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution)  By:  Assistant Attorney General, On: <u>1/11/17</u>			
1.18 Approval by the Governor & Council  By: _____ On: _____			

Contract Agreement RFP 2016-041 General Provisions

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**STATE OF NEW HAMPSHIRE  
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**TERMS AND DEFINITIONS**

The following general contracting terms and definitions apply except as specifically noted elsewhere in this document.

Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Acceptance Letter	An Acceptance Letter provides notice from the State that a Deliverable has satisfied Acceptance Tests or Review.
Acceptance Period	The timeframe during which the Acceptance Test is performed.
Acceptance Test Plan	The Acceptance Test Plan provided by Kapsch and agreed to by the State that describes at a minimum, the specific Acceptance process, criteria, and Schedule for Deliverables.
Access Control	Supports the management of permissions for logging onto a computer or network.
Agency	"Agency" shall mean the Bureau or Department, both as defined herein.
Agency Representative	In the context of Appendix C: System Requirements and Deliverables, the Bureau's designated representative. Also referred to as "Agency's Designated Representative".
Agreement	A Contract duly executed and legally binding.
Appendix	Supplementary material that is collected and appended at the back of a document.
Approve	"Approve" and its variations (e.g., "Approval") when capitalized in this RFP refers to the State's Acceptance of a Document, condition, action or Deliverable in writing for its own internal purposes. The State's Approval shall not be construed to mean the State's endorsement or assumption of liability, nor shall it relieve Kapsch of its responsibilities under the Contract.
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system.
Breach or Breach of Security	Unlawful and unauthorized acquisition of unencrypted computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by a person or commercial entity.
Bureau	New Hampshire Department of Transportation (NH DOT), Bureau of Turnpikes, 36 Hackett Hill Road, Hooksett, NH 03106.

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Business Day	The twenty-four (24) hour day expressed from 00:00 AM to 24:00 AM in military time.
Certification	Kapsch's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that Kapsch has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
Change Order or Change Request	Formal documentation prepared for a proposed change in the Specifications or the Contract Document.
Completion Date	End date for the Contract.
Confidential Information	Information required to be kept Confidential from unauthorized disclosure under the Contract.
Contract	The Agreement between the State of New Hampshire and a Contractor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Contract Conclusion	Refers to the conclusion of the Contract, for any reason, including but not limited to, the successful Contract completion, termination for convenience, or termination for default.
Contract Documents	Documents that comprise this Contract.
Contract Managers	The persons identified by the State and Kapsch who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities.
Contracted Contractor	Kapsch whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Custom Software	Software developed by Kapsch specifically for this project for the State of New Hampshire.
Data	State's records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used/converted by Kapsch during the Contract Term.
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, other), provided by Kapsch to the State or under the terms of a Contract requirement.
Department	An agency of the State – N.H. Department of Transportation.

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Department of Information Technology (DoIT)	The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.
Design Documentation	System Design Documentation required under this Contract, including as example but not limited to: the Requirements Document, Software Development Plan, System Requirements Document and System Detailed Design Document.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Digital Signature	Guarantees the unaltered state of a file.
Effective Date	The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract.
Encryption	Supports the encoding of data for security purposes.
Enhancements	Updates, additions, modifications to, and new releases for the Software, and all changes to the Documentation as a result of Enhancements, including, but not limited to, Enhancements produced by Change Orders.
Event of Default	Any one or more of the following acts or omissions of a Contractor shall constitute an event of default hereunder ("Event of Default") <ol style="list-style-type: none"> <li>1. Failure to perform the Services satisfactorily or on schedule;</li> <li>2. Failure to submit any report required; and/or</li> <li>3. Failure to perform any other covenant, term or condition of the Contract</li> </ol>
Existing Lane System	Existing Lane System and its variations, (e.g. Existing Lane Host Server, Existing Lane Contractor, Existing Lane System Central Host System, Existing Lane Host System) with Xerox.
Existing ORT System	Existing ORT System in Hooksett and Hampton and its variations, (e.g. ORT Host CPS) with Kapsch/Telvent.
<i>E-ZPass</i> Customer Service Center (CSC)	<i>E-ZPass</i> Back Office System.
Final Acceptance Test (FAT)	The Final Acceptance Test is a verification process performed in a natural storm event. The FAT verifies System functionality against predefined acceptance criteria that support the successful execution of approved maintenance solution(s).

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Final System Acceptance	Final System Acceptance will be considered by the State to have occurred when, the State in its sole discretion, determines Kapsch has complied with all of the completion requirements set forth for the Project in the Contract Agreement.
Firm Fixed Price Contract	A Firm-Fixed-Price Contract provides a price that is not subject to increase, i.e., adjustment on the basis of Kapsch's cost experience in performing the Contract.
Governor and Executive Council	The New Hampshire Governor and Executive Council.
GUI	Graphical User Interface.
Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users.
Implementation	The process for making the System operational for processing the Data.
Information Technology (IT)	Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.
Input Validation	Ensure the application is protected from buffer overflow, cross-site scripting, SQL injection, and canonicalization
Intrusion Detection	Supports the detection of illegal entrance into a computer system.
Invoking Party	In a dispute, the party believing itself aggrieved.
Key Project Staff	Personnel identified by the State and by the contracted Contractor as essential to work on the Project.
Licensee	The State of New Hampshire.
Maintenance	The phase of the Project immediately subsequent to Final System Acceptance to June 30, 2019 with the potential of three (3) – three (3) year optional extensions at the sole discretion of the State.
Non Exclusive Contract	A Contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract.
Non-Software Deliverables	Deliverables that are not Software Deliverables or Written Deliverables, e.g., meetings, help support, services, other.

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Normal Business Hours	Normal Business Hours – 8:00 a.m. to 5:00 p.m. EST, Monday through Friday excluding State of New Hampshire holidays. State holidays are: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, July 4th, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided.
Notice to Proceed (NTP)	The State Contract Manager’s written direction to Kapsch to begin work on the Contract on a given date and time.
Operating System	System is fully functional, all Data has been loaded into the System, is available for use by the State in its daily operations.
Operational	Operational means the System is operating and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued an Acceptance Letter.
Order of Precedence	The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence.
Project	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
Project Team	The group of State employees and contracted Contractor’s personnel responsible for managing the processes and mechanisms required such that the Services are procured in accordance with the Project Management Plan on time, on budget and to the required specifications and quality.
Project Management Plan	A document describing the processes and methodology to be employed by Kapsch to ensure a successful project. The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Project Management Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.

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Project Managers	The persons identified who shall function as the State's and Kapsch's representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Orders.
Project Staff	State personnel assigned to work with Kapsch on the project.
Proposer	Any individual, firm, or corporation who has submitted a Proposal on the Project and who has met the minimum requirements established by the State for Proposal evaluation. Also referred to as the "Contractor".
Proposal	The submission from a Contractor in response to the Request for a proposal or statement of work.
Review	The process of reviewing Deliverables for Acceptance.
Review Period	The period set for review of a Deliverable. If none is specified then the review period is fifteen (15) business days.
RFP (Request for Proposal)	A Request For Proposal solicits Proposals to satisfy State functional requirements by supplying data processing product and/or Service resources according to specific Terms and Conditions.
Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network.
Schedule	The dates described in the Project Management Plan for deadlines for performance of Services and other Project events and activities under the Contract.
SaaS	Software as a Service- Occurs where the COTS application is hosted but the State does not own the license or the code.
Service Level Agreement	A signed agreement between Kapsch and the State specifying the level of Service that is expected of, and provided by, Kapsch during the term of the Contract.
Services	The work or labor to be performed by Kapsch on the Project as described in the Contract.
Software	All custom Software and COTS Software provided by Kapsch under the Contract.
Software Deliverables	COTS Software and Enhancements.
Software License	Licenses provided to the State under this Contract.
Solution	The Solution consists of the total Solution, which includes, without limitation, Software and Services, addressing the requirements and terms of the Specifications. The off-the-shelf Software and configured Software customized for the State and provided by Kapsch in response to this RFP.

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Specifications	The written Specifications that set forth the requirements which include, without limitation, this RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other Specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State	Reference to the term "State" shall include applicable agencies as defined in Section 1: INTRODUCTION of this RFP.
Statement of Work (SOW)	A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and Kapsch. The SOW defines the results Kapsch remains responsible and accountable for achieving.
State's Confidential Records	The State's information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to RSA Chapter 91-A.
State Data	Any information contained within the State systems in electronic or paper format.
State Fiscal Year (SFY)	The New Hampshire State Fiscal Year extends from July 1st through June 30th of the following calendar year.
State Project Leader	The State's representative with regard to Project oversight.
State's Project Manager (PM)	The State's representative with regard to Project management and technical matters. The State's Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Orders.
Subcontractor	A person, partnership, or company not in the employment of, or owned by, Kapsch, which is performing Services under this Contract under a separate Contract with or on behalf of Kapsch.
System	All Software, specified hardware, and interfaces and extensions, integrated and functioning together in accordance with the Specifications.
System Integrator	The selected Contractor on this Project. See ""Contractor".

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Test Plan	A plan, integrated in the Project Management Plan, to verify the code (new or changed) works to fulfill the requirements of the Project. It may consist of a timeline, a series of tests and test data, test scripts and reports for the test results as well as a tracking mechanism.
Term	The duration of the Contract.
User Management	Supports the administration of computer, application and network accounts within an organization.
Contractor/Contractors	The contracted individual, firm, or company that will perform the duties and Specifications of the Contract.
Verification	Supports the confirmation of authority to enter a computer system, application or network.
Walk Through	A step-by-step review of a specification, usability features or design before it is handed off to the technical team for development.
Warranty Period	A period of coverage during which the contracted Contractor is responsible for providing a guarantee for products and services delivered. For this Contract the period will be one (1) year from the Provisional Final System Acceptance.
Warranty Releases	Code releases that are done during the warranty period.
Warranty Services	The Services to be provided by Kapsch during the Warranty Period.
Warranty Work	The Work to be provided during the Warranty Period under the terms of the Warranty as set forth in the Contract Documents.
Work	The term Work, as used herein, includes all work which, in the judgment of the State, is necessary for completion of the construction and the Project under the Contract Documents and includes, without limitation, all plant, labor, materials, equipment, systems, services and software and other facilities, installation, testing, operations and maintenance and other things necessary or proper for or incidental to the carrying out and completion of the terms of the Contract Documents. Furthermore, without limiting the generality of the foregoing, the Work includes and is the result of performing or furnishing Design professional services and construction and installed equipment required by the Contract Documents.

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Project Management Plan	The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Project Management Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.
Written Deliverables	Non-Software written deliverable Documentation (letter, report, manual, book, other) provided by Kapsch either in paper or electronic format.

**1. INTRODUCTION**

This Contract is by and between the State of New Hampshire, acting through New Hampshire Department Transportation (“State”), and Kapsch TrafficCom Transportation NA, Inc., a Texas Corporation, (Kapsch), having its principal place of business at 211 E. 7<sup>th</sup> Street, Suite 800, Austin Texas 78701.

The State of New Hampshire (hereinafter known as State), acting through the Bureau of Turnpikes, has released a Request for Proposal (RFP) Project to design, develop and install an Open Road Tolling System at the Bedford Mainline Plaza and maintenance of the existing ORT lanes at the Hampton Mainline and Hooksett Mainline Plazas.

**RECITALS**

The State desires to have Kapsch design, develop and install an Open Road Tolling System at the Bedford Mainline Plaza and maintenance of the existing ORT lanes at the Hampton Mainline and Hooksett Mainline Plazas for the Department of Transportation;

The parties therefore agree as follows:

**1.1 CONTRACT DOCUMENTS**

This Contract is comprised of the following documents (Contract Documents):

- A. Contract Agreement - General Provisions
- B. Consolidated Exhibits
  - Exhibit A- Contract Deliverables
  - Exhibit B- Price and Payment Schedule
  - Exhibit C- Special Provisions
  - Exhibit D- Administrative Services
  - Exhibit E- Implementation Services
  - Exhibit F- Testing Services
  - Exhibit G- Maintenance and Support Services

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Exhibit H- Compliance Matrix  
Exhibit I- Project Management Plan  
Exhibit J- Software License & Source Code  
Exhibit K- Warranty and Warranty Services  
Exhibit L- Training Services  
Exhibit M- NHDOT RFP 2016-041 with Addenda, by reference  
Exhibit N- The Vendor Proposal, by reference  
Exhibit O- Certificates and Attachments

**1.2 ORDER OF PRECEDENCE**

In the event of conflict or ambiguity among any of the text of the Contract Documents, the following Order of Precedence shall govern:

1. The State of New Hampshire, Department of Transportation Contract 2016-041 (resulting Contract from the RFP, once executed).
2. The State of New Hampshire Terms and Conditions, as stated in Appendix H of the RFP.
3. Final State Responses to Vendor Inquiries to RFP 2016-041.
4. RFP 2016-041 ORT Toll System May 12, 2016 with related attachments, appendices, and Addendums #1 and #2.
5. Kapsch Proposal including interview presentation material and response to State's questions to RFP 2016-041.

**1.3. CONTRACT TERM**

Kapsch shall be fully prepared to commence work after full execution of the Contract by the parties, and the receipt of required governmental approvals, including, but not limited to, Governor and Executive Council of the State of New Hampshire approval of the contract ("Effective Date").

**Kapsch initial term will begin on the Effective Date and extend through five (5) years ("Initial Term") and expire no later than June 30, 2023. The contract term may be extended by three (3) additional three (3) year terms ("Extended Term") at the sole option of the State, subject to the parties' prior written agreement on applicable fees for each extended term, up to but not beyond June 30, 2032.**

Kapsch shall commence work upon issuance of a Notice to Proceed (NTP) by the State.

The State does not require Kapsch to commence work prior to the Effective Date; however, if Kapsch commences work prior to the Effective Date and a Notice to Proceed, such work shall be performed at the sole risk of Kapsch. In the event that the Contract does not become effective, the State shall be under no obligation to pay Kapsch for any costs incurred or Services performed; however, if the Contract becomes effective, all costs incurred prior to the Effective Date shall be paid under the terms of the Contract.

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Contract Agreement RFP 2016-041 General Provisions

Kapsch initials:     *deu*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
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**2.0 COMPENSATION**

**2.1 CONTRACT PRICE**

The Contract Price, method of payment, and terms of payment are identified and more particularly described in Contract Exhibit B: *Price and Payment Schedule*.

**2.2 NON-EXCLUSIVE, NOT TO EXCEED CONTRACT**

This is a Non-Exclusive, Not To Exceed ("NTE") Contract with price and term limitations as set forth in the Contract.

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. Kapsch shall not be responsible for any delay, act, or omission of such other vendors, except that Kapsch shall be responsible for any delay, act, or omission of the other vendors if such delay, act, or omission is caused by or due to the fault of Kapsch.

Notwithstanding any other provision of the Contract to the contrary, in no event shall total payments under the Contract exceed \$9,170,943.23 the amount listed in block 1.8 Price Limitation of page 1 of the General Provisions.

**3.0 CONTRACT MANAGEMENT**

**Kapsch must obtain written consent from the State before any public announcement or news release is issued pertaining to any Contract award. Such permission, at a minimum, will be dependent upon approval of the Contract by Governor and Executive Council of the State of New Hampshire.**

The Project will require the coordinated efforts of a Project Team consisting of both Kapsch and State personnel. Kapsch shall provide all necessary resources to perform its obligations under the Contract. Kapsch shall be responsible for managing the Project to its successful completion.

**3.1 Kapsch Contract Manager**

Kapsch shall assign a Contract Manager who shall be responsible for all Contract authorization and administration. Kapsch's Contract Manager is:

Paul Muzzey  
Kapsch TrafficCom Transportation NA, Inc.  
Tel: (617) 461-4347  
Mobil: (617) 461-4347  
Email: [Paul.Muzzey@kapsch.net](mailto:Paul.Muzzey@kapsch.net)

**3.2 Kapsch Project Manager**

**3.2.1 Contract Project Manager**

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Contract Agreement RFP 2016-041 General Provisions

Kapsch initials:             
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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Kapsch shall assign a Project Manager who meets the requirements of the Contract. Kapsch's selection of their Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Kapsch Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Kapsch Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

**3.2.2** Kapsch Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as Kapsch representative for all administrative and management matters. Kapsch Project Manager shall perform the duties required under the Contract, including, but not limited to, those set forth in Exhibit I. Kapsch Project Manager must be available to promptly respond during Normal Business Hours within two (2) hours to inquiries from the State, and be at the site as needed. Kapsch Project Manager must work diligently and use his/ her best efforts on the Project.

**3.2.3** Kapsch shall not change its assignment of Kapsch Project Manager without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of Kapsch Project Manager shall not be unreasonably withheld. The replacement Project Manager shall have comparable or greater skills than Kapsch Project Manager being replaced; meet the requirements of the Contract; and be subject to reference and background checks described above in General Provisions, Section 3.2.1: *Contract Project Manager*, and in Contract Agreement General Provisions, Section 3.6: *Reference and Background Checks*, below. Kapsch shall assign a replacement Kapsch Project Manager within ten (10) business days of the departure of the prior Kapsch Project Manager, and Kapsch shall continue during the ten (10) business day period to provide competent Project management Services through the assignment of a qualified interim Project Manager.

**3.2.4** Notwithstanding any other provision of the Contract, the State shall have the option, at its discretion, to terminate the Contract, declare Kapsch in default and pursue its remedies at law and in equity, if Kapsch fails to assign a Kapsch Project Manager meeting the requirements and terms of the Contract.

**3.2.5** Kapsch Project Manager is:  
Michael Yager  
Kapsch TrafficCom Transportation NA, Inc.  
Tel: (512) 592-5954  
Mobil: (512) 761-2516  
Email: [Michael.Yager@kapsch.net](mailto:Michael.Yager@kapsch.net)

**3.3 Kapsch Key Project Staff**

**3.3.1** Kapsch shall assign Key Project Staff who meet the requirements of the Contract, and can implement the Software Solution meeting the requirements set forth in RFP Appendix C: *Requirements and Deliverables and Form 8 Compliance Matrix*. The State may conduct

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Kapsch initials:                       
Date: 11/11/16

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reference and background checks on Kapsch Key Project Staff. The State reserves the right to require removal or reassignment of Kapsch Key Project Staff who are found unacceptable to the State. Any background checks shall be performed in accordance with General Provisions Section 3.6: *Background Checks*.

**3.3.2** Kapsch shall not change any Kapsch Key Project Staff commitments without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of Kapsch Key Project Staff will not be unreasonably withheld. The replacement Kapsch Key Project Staff shall have comparable or greater skills than Kapsch Key Project Staff being replaced; meet the requirements of the Contract, including but not limited to the requirements set forth in RFP Appendix C: *Requirements and Deliverables* and be subject to reference and background checks described in Contract Agreement- General Provisions, Section 3.6: *Reference and Background Checks*.

**3.3.3** Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare Kapsch in default and to pursue its remedies at law and in equity, if Kapsch fails to assign Key Project Staff meeting the requirements and terms of the Contract or if it is dissatisfied with Kapsch replacement Project staff.

**3.3.3.1** Kapsch Key Project Staff shall consist of the following individuals in the roles identified below:

**Kapsch Key Project Staff:**

<b>Key Member(s)</b>	<b>Title</b>
Paul Muzzey	Project Principal
Michael Yager	Project Manager
Christina Mendez	Assistant Project Manager
Sam Sparks	Software Manager
Daniel Lafuente	Maintenance Manager
Carlos Aguilera	Quality Assurance Manager
Valentin Rusu	Data Migration Manager
Kris Larsen	Installation Manager

**3.4 STATE CONTRACT MANAGER**

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

John Corcoran  
Department of Transportation  
Bureau of Turnpikes  
Tel: (603)-485-3806  
Fax: (603)-485-2107  
Cell: (603)-545-4531  
[jcorocan@dot.state.nh.us](mailto:jcorocan@dot.state.nh.us)

**US Mail:**  
PO Box 2950  
Concord NH 03302-2950

**UPS, DHL, Federal Express (etc.):**  
36 Hackett Hill Road  
Hooksett NH 03106

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OPEN ROAD TOLLING SYSTEM  
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**3.5 STATE PROJECT MANAGER**

The State shall assign a Project Manager. The State Project Manager's duties shall include the following:

- Lead the Project through design, development, testing and maintenance;
- Oversee Project's acceptance, planning, implementation and follow-up issues;
- Contact point for coordination and management of Project Implementation Plan with Kapsch and State's Project team;
- Coordinate/plan with Contractor testing, conversion and implementation of the Project;
- Facilitate Project strategy and approach;
- Engage and manage Contractor;
- Manage significant issues and risks; and
- Manage stakeholders' concerns.

The State Project Manager is:

Renee Dupuis  
Department of Transportation  
Bureau of Turnpikes  
[rdupuis@dot.state.nh.us](mailto:rdupuis@dot.state.nh.us)

Tel: (603)-485-3806  
Fax: (603)-485-2107  
Cell: (603)-848-7481

**3.6 REFERENCE AND BACKGROUND CHECKS**

The State may, at its sole expense, conduct reference and background screening of Kapsch Project Manager and Kapsch Key Project Staff. The State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement – General Provisions- Section 11: *Use of State's Information, Confidentiality*.

**4. DELIVERABLES**

**4.1 VENDOR RESPONSIBILITIES**

Kapsch shall be solely responsible for meeting all requirements, and terms and conditions specified in this Contract, regardless of whether or not a subcontractor is used.

Kapsch may subcontract Services subject to the provisions of the Contract, including but not limited to, the terms and conditions in Section H-25: General Contract Requirements in RFP 2016-041 and the Contract Agreement-General Provisions. Kapsch must submit all information and documentation relating to the Subcontractor, including terms and conditions consistent with this Contract. The State will consider Kapsch to be wholly responsible for the performance of the Contract and the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

**4.2 DELIVERABLES AND SERVICES**

Kapsch shall provide the State with the Deliverables and Services in accordance with the time frames in the final approved Project Management Plan for this Contract, and as more particularly described in Contract Exhibit A: *Contract Deliverables*.

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Contract Agreement RFP 2016-041 General Provisions

Kapsch initials:     *JD*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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Upon its submission of a Deliverable or Service, Kapsch represents that it has performed its obligations under the Contract associated with the Deliverable or Service.

**4.3 NON-SOFTWARE AND WRITTEN DELIVERABLES REVIEW AND ACCEPTANCE**

After receiving written Certification from Kapsch that a Non-Software or Written Deliverable is final, complete, and ready for Review, the State will Review the Deliverable to determine whether it meets the Requirements outlined in Contract Exhibit A: *Contract Deliverables*.

Unless otherwise noted or instructed by NHDOT document deliverables require a draft, final draft submission for NHDOT review and approval.

- Draft – Draft submittals shall be completed by Kapsch with intent to represent a 90% completion. NHDOT's review of the Draft shall serve as the initial review and to resolve any outstanding issues and/or clarifications needed for Kapsch to complete the document and submit a Final Draft. NHDOT shall be allowed a 15 business day review period for all Draft submittals.
- Final Draft – The Final Draft shall be considered 100% complete taking into consideration and applying all comments and resolutions from the Draft submittal. NHDOT's review of the Final Draft is intended to verify that all comments and resolutions have been appropriately applied. NHDOT shall be allowed a 3 business day review period for all Final Draft submittals.

Final submittals shall also be subject to final review and approval by NHDOT and for subsequent payment where applicable. NHDOT review times are estimates. If the Kapsch's submittals are incomplete the review may take longer. The NHDOT reserves the right to reject any submittal which it feels has not been adequately prepared. The NHDOT will inform Kapsch in writing in such event and will request a resubmittal of the deliverable. NHDOT's rejection shall not waive Kapsch's responsibility to fulfill and maintain the approved project schedule.

If the State rejects the Deliverable, the State shall notify Kapsch of the nature and class of the Deficiency and Kapsch shall correct the Deficiency within the period identified in the Project Management Plan. If no period for Kapsch correction of the Deliverable is identified, Kapsch shall correct the Deficiency in the Deliverable within five (5) business days. Upon receipt of the corrected Deliverable, the State shall have fifteen (15) business days to review the Deliverable and notify Kapsch of its Acceptance or rejection thereof, with the option to extend the Review Period up to five (5) additional business days. If Kapsch fails to correct the Deficiency within the allotted period of time, the State may, at its option, continue reviewing the Deliverable and require Kapsch to continue until the Deficiency is corrected, or immediately terminate the Contract, declare Kapsch in default, and pursue its remedies at law and in equity. In the event Kapsch fails to address comments appropriately requiring

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Kapsch initials:       
Date: 11/11/16

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additional or repetitive reviews the NHDOT reserves the right to seek reimbursement for any additional consultant costs related to the additional review efforts.

NHDOT will review and approve all deliverables required under the Contract. In the event Kapsch fails to receive approval of any document prior to "Go-Live" as identified in Exhibit A *Contract Delivers*, the NHDOT may withhold, in its entirety, monthly operations payments until such documents are satisfactorily submitted and approved.

Kapsch shall take into consideration the review and response times of both the NHDOT and Kapsch in preparing and managing the timeliness of the document deliverables.

As part of each review process, NHDOT will provide Kapsch with a consolidated set of comments on the deliverable submitted for review. Kapsch shall respond in writing to all NHDOT provided comments. A comment resolution meeting may be conducted to clarify and resolve any remaining questions and issues concerning the comments and/or responses provided. Based on NHDOT comments and the results of the comment resolution meeting, Kapsch shall prepare a final version of the deliverable for NHDOT approval.

**4.4 SYSTEM/SOFTWARE TESTING AND ACCEPTANCE**

System/Software Testing and Acceptance shall be performed as set forth in the Test Plan and more particularly described in Exhibit F: *Testing Services*.

Kapsch shall provide the State with Remote Operations and Maintenance System (ROMS) Software Licenses and Documentation set forth in the Contract, and particularly described in Exhibit J: *Software License and Source Code* for the following Source Code.

<u>Kapsch Product</u>	<u>Version</u>
ROMS	1.0

**4.4.1 Software Support and Maintenance**

Kapsch shall provide the State with ROMS Software support and Maintenance Services set forth in the Contract, and particularly described in Exhibit J: *Software License and Source Code* for the following Source Code.

<u>Kapsch Product</u>	<u>Version</u>
ROMS	1.0

**4.5 SECURITY**

The State must ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of its information technology resources, information, and services. State resources, information, and services must be available on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and safeguard State networks, Systems and Data.

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IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.

All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets. See Exhibit F: *Testing Services* for detailed information on requirements for Security testing.

**5. SOFTWARE**

Kapsch shall provide the State with Software Licenses and Documentation set forth in the Contract, and particularly described in Exhibit J: *Software License and Source Code*, and Exhibit H: *Compliance Matrix*.

**6. WARRANTY SERVICES**

Kapsch shall provide the Warranty and Warranty Services set forth in the Contract, and particularly described in Exhibit K: *Warranty and Warranty Services*.

**7. SERVICES**

Kapsch shall provide the Services required under the Contract Documents. All Services shall meet, and be performed, in accordance with the Specifications.

**7.1 ADMINISTRATIVE SERVICES**

Kapsch shall provide the State with the administrative Services set forth in the Contract, and particularly described in Exhibit D: *Administrative Services*.

**7.2 IMPLEMENTATION SERVICES**

Kapsch shall provide the State with the Implementation Services set forth in the Contract, and particularly described in Exhibit E: *Implementation Services*.

**7.3 TESTING SERVICES**

Kapsch shall perform testing Services for the State set forth in the Contract, and particularly described in Exhibit F: *Testing Services*.

**7.4 TRAINING SERVICES**

Kapsch shall provide the State with training Services set forth in the Contract, and particularly described in Exhibit L: *Training Services*.

**7.5 MAINTENANCE AND SUPPORT SERVICES**

Kapsch shall provide the State with Maintenance and support Services for the Software set forth in the Contract, and particularly described in Exhibit G: *System Maintenance and Support*.

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**8. PROJECT MANAGEMENT PLAN DELIVERABLE**

Kapsch shall provide the State with a Project Management Plan that shall include, without limitation, a detailed description as described in the RFP 2016-041 of the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule.

The initial Project Management Plan shall be a separate Deliverable and is referenced in Contract Exhibit I: *Project Management Plan*. Kapsch shall update the Project Management Plan as necessary, but no less than every month, to accurately reflect the status of the Project, including without limitation, the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule. Any such updates to the Project Management Plan must be approved by the State, in writing, prior to final incorporation.

Unless otherwise agreed in writing by the State, changes to the Contract Exhibit I: *Project Management Plan* shall not relieve Kapsch from liability to the State for damages resulting from Kapsch failure to perform its obligations under the Contract, including, without limitation, performance in accordance with the Schedule.

In the event of any delay in the Schedule, Kapsch must immediately notify the State in writing, identifying the nature of the delay, i.e., specific actions or inactions of Kapsch or the State causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected Schedule impact on the Project.

In the event additional time is required by Kapsch to correct Deficiencies, the Schedule shall not change unless previously agreed in writing by the State, except that the Schedule shall automatically extend on a day-to-day basis to the extent that the delay does not result from Kapsch failure to fulfill its obligations under the Contract. To the extent that the State's execution of its major tasks takes longer than described in the Project Management Plan, the Schedule shall automatically extend on a day-to-day basis, or as mutually agreed to between the parties.

**9. CHANGE ORDERS**

**PHASE I - (DESIGN, TRAINING, INSTALLATION, DEVELOPMENT, DATA MIGRATION, TESTING AND BEDFORD GO-LIVE)**

The State may make changes or revisions at any time by written Change Order. Within five (5) business days of Kapsch receipt of a Change Order, Kapsch shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Project Management Plan.

Kapsch may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Project Management Plan. The State shall attempt to respond to Kapsch requested Change Order within five (5) business days. The State Agency must approve all Change Orders in writing.

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Kapsch initials:             
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All Change Order requests from Kapsch to the State, and the State acceptance of Kapsch estimate for a State requested change, will be acknowledged and responded to, either acceptance or rejection, in writing. If accepted, the Change Order(s) may be subject to the Contract amendment process, as determined to apply by the State.

**PHASE II – ORT MAINTENANCE AND WARRANTY**

The State may make changes or revisions at any time by written Change Order. Within ten (10) business days of Kapsch receipt of a Change Order, Kapsch shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Project Management Plan.

Kapsch may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Project Management Plan. The State shall attempt to respond to Kapsch requested Change Order within ten (10) business days. The State Agency must approve all Change Orders in writing.

All Change Order requests from Kapsch to the State, and the State acceptance of Kapsch estimate for a State requested change, will be acknowledged and responded to, either acceptance or rejection, in writing. If accepted, the Change Order(s) may be subject to the Contract amendment process, as determined to apply by the State.

**10. INTELLECTUAL PROPERTY**

**10.1 SOFTWARE TITLE**

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with Kapsch.

Upon successful completion and/or termination of the Implementation of the Project, Kapsch shall own and hold all title and rights in any Software modifications developed in connection with performance of obligations under the Contract, or modifications to Kapsch provided Software, and their associated Documentation including any and all performance enhancing operational plans and Kapsch special utilities. Kapsch shall license back to the State the right to produce, publish, or otherwise use such software, source code, object code, modifications, reports, and Documentation developed under the Contract pursuant to the provisions set forth in Exhibit J: *Software License and Source Code*.

In no event shall Kapsch be precluded from developing for itself, or for others, materials that are competitive with, or similar to Custom Software, modifications developed in connection with performance of obligations under the Contract. In addition, Kapsch shall be free to use its general knowledge, skills, experience, and any other ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this agreement.

**10.2 STATE'S DATA AND PROPERTY**

All rights, title and interest in State Data shall remain with the State. All data and any property which has been received from the State or purchased with funds provided for that purpose under

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Kapsch initials:     *JK*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

**10.3 VENDOR'S MATERIALS**

Subject to the provisions of this Contract, Kapsch may develop for itself, or for others, materials that are competitive with, or similar to, the Deliverables. In accordance with the confidentiality provision of this Contract, Kapsch shall not distribute any products containing or disclose any State Confidential Information. Kapsch shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this Contract, provided that such is not obtained as the result of the deliberate memorization of the State Confidential Information by Kapsch employees or third party consultants engaged by Kapsch.

Without limiting the foregoing, the parties agree that the general knowledge referred to herein cannot include information or records not subject to public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings*, which includes but is not limited to the following: records of grand juries and petit juries; records of parole and pardon boards; personal school records of pupils; records pertaining to internal personnel practices, financial information, test questions, scoring keys and other examination data use to administer a licensing examination, examination for employment, or academic examination and personnel, medical, welfare, library use, video tape sale or rental, and other files containing personally identifiable information that is private in nature.

**10.4 STATE WEBSITE COPYRIGHT**

**WWW Copyright and Intellectual Property Rights**

All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.

**10.5 CUSTOM SOFTWARE SOURCE CODE**

Kapsch shall provide the State with a copy of the source code for any custom developed software for the APEX, ROMS and ICS Software as noted below, which shall be subject to the License rights.

The State shall receive a worldwide, perpetual, irrevocable, non-exclusive paid –up right and license to use, copy, modify and prepare derivative works of any custom developed software.

Kapsch Product  
N/A

Version  
Providing Baseline

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Kapsch initials:     *JK*      
Date: 11/11/16

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**10.6 SURVIVAL**

This Contract Agreement Section 10: *Intellectual Property* shall survive the termination of the Contract.

**11 USE OF STATE'S INFORMATION, CONFIDENTIALITY**

**11.1 USE OF STATE'S INFORMATION**

In performing its obligations under the Contract, Kapsch may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: 5 *Exemptions*). Kapsch shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as directly connected to and necessary for Kapsch performance under the Contract.

**11.2 STATE CONFIDENTIAL INFORMATION**

Kapsch shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential Information that becomes available to Kapsch in connection with its performance under the Contract, regardless of its form.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.

Any disclosure of the State Confidential Information shall require the prior written approval of the State. Kapsch shall immediately notify the State if any request, subpoena or other legal process is served upon Kapsch regarding the State Confidential Information, and Kapsch shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

In the event of the unauthorized release of State Confidential Information, Kapsch shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

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Kapsch initials:     *ds*      
Date: 11/11/16

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**11.3 KAPSCH CONFIDENTIAL INFORMATION**

Insofar as Kapsch seeks to maintain the confidentiality of its confidential or proprietary information, Kapsch must clearly identify in writing all information it claims to be confidential or proprietary. Notwithstanding the foregoing, the State acknowledges that Kapsch considers the Software and Documentation to be Confidential Information. Kapsch acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A: *Access to Public Records and Meetings*. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable State and federal laws or regulations, including but not limited to, RSA Chapter 91-A: *Access to Public Records and Meetings*. In the event the State receives a request for the information identified by Kapsch as confidential, the State shall notify Kapsch and specify the date the State will be releasing the requested information. At the request of the State, Kapsch shall cooperate and assist the State with the collection and review of Kapsch information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Kapsch's sole responsibility and at Kapsch's sole expense. If Kapsch fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Kapsch, without any liability to Kapsch.

**11.4 SURVIVAL**

This Contract Agreement Section 11, *Use of State's Information, Confidentiality*, shall survive termination or conclusion of the Contract.

**12 LIMITATION OF LIABILITY**

**12.1 STATE**

Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Subject to applicable laws and regulations, the State's liability to Kapsch shall not exceed the total Contract price set forth in Contract Agreement – General Provisions, Block 1.8.

**12.2 KAPSCH**

Subject to applicable laws and regulations, in no event shall Kapsch be liable for any consequential, special, indirect, incidental, punitive or exemplary damages and Kapsch liability to the State shall not exceed the total Contract price set forth in Contract Agreement – General Provisions, Block 1.8.

Notwithstanding the foregoing, this limitation of liability shall not apply to Kapsch indemnification obligations set forth in the Contract Agreement-General Provision 13: *Indemnification* and confidentiality obligations in Contract Agreement-General Provisions Section 11: *Use of State's Information, Confidentiality*, which shall be unlimited.

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Kapsch initials:     *See*      
Date: 11/11/16

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**12.3 STATE'S IMMUNITY**

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive termination or Contract conclusion.

**12.4 SURVIVAL**

This Section 12: *Limitation of Liability* shall survive termination or Contract conclusion.

**13. INDEMNIFICATION**

Kapsch shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of Kapsch. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

**14. TERMINATION**

This Section 14 shall survive the termination or Contract Conclusion.

**14.1 TERMINATION FOR DEFAULT**

Any one or more of the following acts or omissions of Kapsch shall constitute an event of default hereunder ("Event of Default")

- a. Failure to perform the Services in accordance with the Specifications and other contract documents or on schedule;
- b. Failure to submit any report required; and/or
- c. Failure to perform any other covenant, term or condition of the Contract.

**14.1.1** Upon the occurrence of any Event of Default, the State may take any one or more, or all, of the following actions:

- a. Unless otherwise provided in the Contract, the State shall provide Kapsch written notice of default and require it to be remedied within, in the absence of a greater or lesser specification of time, within thirty (30) days from the date of notice, unless otherwise indicated within by the State ("Cure Period"). If Kapsch fails to cure the default within the Cure Period, the State may terminate the Contract effective two (2) days after giving Kapsch notice of termination, at its sole discretion, treat the Contract as breached and pursue its remedies at law or in equity or both.
- b. Give Kapsch a written notice specifying the Event of Default and suspending all payments to be made under the Contract and ordering that the portion of the

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Contract price which would otherwise accrue to Kapsch during the period from the date of such notice until such time as the State determines that Kapsch has cured the Event of Default. The State may withhold the suspended payments at its discretion if the State determines that the default substantially impacted the products and services provided to the State by Kapsch during the default period.

- c. Set off against any other obligations the State may owe to Kapsch any damages the State suffers by reason of any Event of Default;
- d. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both.
- e. Procure Services that are the subject of the Contract from another source and Kapsch shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.

**14.1.2** Kapsch shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

**14.1.3** Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive termination or Contract Conclusion.

**14.2 TERMINATION FOR CONVENIENCE**

**14.2.1** The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to Kapsch. In the event of a termination for convenience, the State shall pay Kapsch the agreed upon price, if separately stated in this Contract, for Deliverables for which Acceptance has been given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated under the Contract shall be paid, in whole or in part, generally in accordance with Contract Exhibit B, *Price and Payment Schedule*, of the Contract.

**14.2.2** During the thirty (30) day period, Kapsch shall wind down and cease Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services.

**14.3 TERMINATION FOR CONFLICT OF INTEREST**

**14.3.1** The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties

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hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.

In such case, the State shall be entitled to a pro-rated refund of any current development, support, and maintenance costs. The State shall pay all other contracted payments that would have become due and payable if Kapsch did not know, or reasonably did not know, of the conflict of interest.

**14.3.2** In the event the Contract is terminated as provided above pursuant to a violation by Kapsch, the State shall be entitled to pursue the same remedies against Kapsch as it could pursue in the event of a default of the Contract by Kapsch.

**14.4 TERMINATION PROCEDURE**

**14.4.1** Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Kapsch to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.

**14.4.2** After receipt of a notice of termination, and except as otherwise directed by the State, Kapsch shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, but in no event longer than thirty (30) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Kapsch and in which State has an interest;
- d. Except for Kapsch Software transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to State and which has been accepted or requested by the State;
- e. Provide written certification to the State that Kapsch has surrendered to the State all said property; and
- f. Assist in Transition Services in accordance with Appendix C Section 9.6.2 at no additional cost.

**15. CHANGE OF OWNERSHIP**

In the event that Kapsch should change ownership for any reason whatsoever, the State shall have the option of continuing under the Contract with Kapsch, its successors or assigns for the full

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Kapsch initials:           *JK*            
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remaining term of the Contract; continuing under the Contract with Kapsch, its successors or assigns for such period of time as determined necessary by the State; or immediately terminate the Contract without liability to Kapsch, its successors or assigns.

**16. ASSIGNMENT, DELEGATION AND SUBCONTRACTS**

**16.1** Kapsch shall remain wholly responsible for performance of the entire Contract even if assignees, delegates, Sub-contractors, or other transferees (“Assigns”) are used, unless otherwise agreed to in writing by the State, and the Assigns fully assumes in writing any and all obligations and liabilities under the Contract from the Effective Date. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract, or other transfer shall neither relieve Kapsch of any of its obligations under the Contract nor affect any remedies available to the State against Kapsch that may arise from any event of default of the provisions of the contract. The State shall consider Kapsch to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

**16.2** Notwithstanding the foregoing, nothing herein shall prohibit Kapsch from assigning the Contract to the successor of all or substantially all of the assets or business of Kapsch provided that the successor fully assumes in writing all obligations and responsibilities under the Contract. In the event that Kapsch should change ownership, as permitted under Section 15: *Change of Ownership*, the State shall have the option to continue under the Contract with Kapsch, its successors or assigns for the full remaining term of the Contract; continue under the Contract with Kapsch, its successors or assigns for such period of time as determined necessary by the State; or immediately terminating the Contract without liability to Kapsch, its successors or assigns.

**17. DISPUTE RESOLUTION**

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the party believing itself aggrieved (the “Invoking Party”) shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted under the Contract.

The parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

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**Dispute Resolution Responsibility and Schedule Table**

<b>LEVEL</b>	<b>CONTRACTOR</b>	<b>STATE</b>	<b>CUMULATIVE ALLOTTED TIME</b>
<b>Primary</b>	Michael Yager Kapsch Project Manager (PM)	Renee Dupuis State Project Manager (PM)	5 Business Days
<b>First</b>	Paul Muzzey Kapsch Project Principal	John Corcoran Administrator	10 Business Days
<b>Second</b>	Tawnya Clark Kapsch Vice President Sales, Tolling North America	David Rodrigue Director of Operations	15 Business Days

The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

**18 ESCROW OF CODE**

Kapsch will enter into a source and configuration code escrow agreement, with a State approved escrow agent, set forth in Exhibit J: *Software License and Source Code*.

**19 GENERAL PROVISIONS**

**19.1 CONDITIONAL NATURE OF CONTRACT**

Notwithstanding any provision of the Contract to the contrary, all obligations of the State, including, without limitation, the continuance of payments, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate the Contract immediately upon giving notice of such termination.

The State shall not be required to transfer funds from any other account to the account identified in General Provisions, Page 1, block 1.6: *Account No.* in the event funds in that account are reduced or unavailable.

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**19.2 COMPLIANCE BY WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY**

**19.2.1** In connection with the performance of the Contract, Kapsch shall comply with all statutes, laws, regulations, orders of federal, state, county or municipal authorities which impose any obligation or duty upon, including, but not limited to, civil rights, anti-discrimination and equal opportunity laws. Kapsch shall also comply with all applicable local, State and federal licensing requirements and standards necessary in the performance of the Contract. In addition, Kapsch shall comply with all applicable copyright laws.

**19.2.2** During the term of the Contract, Kapsch shall not discriminate against employees or applicants for employment in violation of applicable State or federal laws, including but not limited to non-discrimination because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and shall take affirmative action to prevent such discrimination.

**19.2.3** If the Contract is funded in any part by monies of the United States, Kapsch shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issues to implement these regulations. Kapsch further agrees to permit the State, or United States, access to any of pertinent books, records, and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and covenants and conditions of the Contract.

**19.3 REGULATORY/GOVERNMENT APPROVALS**

Kapsch shall obtain applicable regulatory or other governmental approvals necessary for it to perform its obligations under the Contract.

**19.4 WORKERS' COMPENSATION.**

**19.4.1** By signing this agreement, Kapsch agrees, certifies and warrants that it is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

**19.4.2** To the extent Kapsch is subject to the requirements of N.H. RSA chapter 281-A, Kapsch shall maintain, and require any sub or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Kapsch shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 28 1-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be

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Kapsch initials:     *deu*      
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responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for, or any sub or employee of, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**19.5 PERSONNEL**

**19.5.1** The performance of Kapsch's obligations under the Contract shall be carried out by Kapsch, at its own expense, and Kapsch shall provide all personnel, materials and resources required under the Contract and as necessary to perform' obligations under the Contract. Kapsch warrants that all personnel engaged in the Contract Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**19.5.2** Unless otherwise authorized in writing, during the term of the Contract, and for a period of six (6) months after the Completion Date of the Contract (General Provisions, Page 1, Block 1.7 of the Contract Agreement), shall not hire, and Kapsch shall not permit any sub or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who is a State employee or official, who is materially involved in the procurement, administration or performance of the Contract. This provision shall survive termination of the Contract

**19.6 WAIVER OF BREACH.**

No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of Kapsch.

**19.7 AMENDMENT.**

This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19.8 CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and insures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement was chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**19.9 THIRD PARTIES.**

The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

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**19.10 HEADINGS.**

The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**19.11 SPECIAL PROVISIONS.**

Additional provisions set forth in the attached Exhibit C: *Special Provisions* are incorporated herein by reference.

**19.12 SEVERABILITY.**

In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**19.13 ENTIRE AGREEMENT.**

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**19.14 TRAVEL EXPENSES**

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services of this Contract. The State will reimburse for any travel or out of pocket expenses incurred in the performance of any Services deemed to be outside the scope of this Contract i.e. Change Request and Work Orders as described in Exhibit B: *Price and Payment Schedule*.

**19.15 SHIPPING AND DELIVERY FEE EXEMPTION**

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

**19.16 ACCESS/COOPERATION**

As applicable, and reasonably necessary, and subject to the applicable State and federal laws and regulations and restrictions imposed by third parties upon the State, the State shall provide Kapsch with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete contracted services.

The State shall use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow Kapsch to perform its obligations under the Contract.

**19.17 REQUIRED WORK PROCEDURES**

All work done must conform to standards and procedures established by DoIT and the State.

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Kapsch initials:     dsw      
Date: 11/11/16

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**19.18 COMPUTER USE**

In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter "Information"), Kapsch understands and agrees to the following rules:

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Kapsch access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Kapsch access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Kapsch must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other Agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Kapsch Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.
- e. That if Kapsch is found to be in violation of any of the above-stated rules, the User may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

**19.19 REGULATORY GOVERNMENT APPROVALS**

Kapsch shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

**19.20 INSURANCE**

**19.20.1 Kapsch Insurance Requirement**

Kapsch shall, at its sole expense, obtain and maintain in force, and shall require any sub-contractor or assignee to obtain and maintain in force, the following insurance:

Additional insurance required for this Project include:

- 19.20.1.1** Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amount \$2,000,000 per occurrence;
- 19.20.1.2** Fire and extended coverage insurance covering all property subject to Section 10.1: *Software Title* herein, in an amount not less than 80% of the whole replacement value of the property;
- 19.20.1.3** Pollution/Environmental Impairment Liability Coverage

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**19.20.1.4** Insurance for this coverage shall meet the New Hampshire DOT Standard Specification under Section 107.17 *Hazardous Materials*.

**19.20.1.5** Professional Liability Coverage: Professional Liability Insurance in the amount of \$1,000,000 shall be obtained by Kapsch and any design professionals retained by Contractor for the Project.

**19.20.1.6** Inland Marine: All tools and equipment that Kapsch has at the job Site or is owned by Kapsch are the responsibility of Kapsch, respectively. The Agency assumes no responsibility for the protection, maintenance, or repair of any tools or equipment.

All materials required by the Contract that can be damaged, stolen, or lost, must be insured by Kapsch as any partial payments made to Kapsch are deemed to be payment for such materials.

**19.20.1.7** Proof of coverage for applicable limits shall be provided on the Certificate of Insurance. The transportation risk must be included. Deductibles or Self Insured Retentions: All deductibles and self-insured retentions are the sole responsibility of Kapsch. Deductibles or Self-Insured Retentions must be shown on the Certificate of Insurance. No retention (deductible) shall be more than \$100,000.

**19.21.2** The policies described in subparagraph 19.21.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

**19.21.3** Kapsch shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Kapsch shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement upon the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause related to notice of cancellation or modification of the policy.

**19.21.4** The ACORD Insurance Certificate should note the Certificate Holder in the lower left hand block including State of New Hampshire, Department Name, name of the individual responsible for the funding of the contracts and his/her address.

**19.21.5 Licensed Sureties and Insurers; Certificates of Insurance**

The following shall be required in addition to the requirements in New Hampshire DOT Standard Specification Section 107.11 related to this topic:

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Contractor shall deliver to Agency, with copies to each additional insured indicated in the Contract Documents, certificates of insurance (and other evidence of insurance requested by Agency or any other additional insured) which Contractor is required to purchase and maintain in accordance with the requirements stated within this RFP and referenced documents.

**19.22 EXHIBITS**

The Exhibits referred to, in and attached to the Contract are incorporated by reference as if fully included in the text.

**19.23 VENUE AND JURISDICTION**

Any action on the Contract may only be brought in the State of New Hampshire, Merrimack County Superior Court.

**19.24 SURVIVAL**

The terms, conditions and warranties contained in the Contract by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive. The terms, conditions and warranties contained in the Contract that by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive, including, but not limited to, the terms of the Exhibit E Section 3: *Records Retention and Access Requirements*, Exhibit E Section 4: *Accounting Requirements*, and General Provisions-Section 11: *Use of State's Information*, Confidentiality and General Provisions- Section 13: *Indemnification* which shall all survive the termination of the Contract.

**19.25 FORCE MAJEURE**

Neither Kapsch nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

Except in the event of the foregoing, Force Majeure events shall not include Kapsch inability to hire or provide personnel needed for Kapsch performance under the Contract.

**19.26 NOTICES**

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the following addresses.

KAPSCH TRAFFICCOM  
TRANSPORTATION NA, INC.  
8201 Greensboro Drive, Suite  
1002, McLean, VA 22102  
Attn: Legal Counsel

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF TURNPIKES  
PO BOX 2950  
CONCORD NH 03302-2950  
TEL: (603) 485-3806

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Kapsch initials:           *ds*            
Date: 11/11/16

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CONTRACT AGREEMENT - EXHIBIT A – CONTRACT DELIVERABLES**

**1. DELIVERABLES, MILESTONES AND ACTIVITIES**

Kapsch shall provide shall provide the State with the Deliverables and Work required under this Contract, and as more particularly described in Contract Exhibit H: *Requirements – Compliance Matrix*.

**General Project Assumptions**

1. Kapsch will provide project tracking tools and templates to record and manage Issues, Risks, Change Orders, Requirements, Decision Sheets, and other documents used in the management and tracking of the project. The State of New Hampshire and Kapsch Project Manager will review these tools and templates and determine which ones will be used for the project. Training on these tools and templates will be conducted at the start of each phase in which they will be used.
2. Prior to the commencement of work on Non-Software and Written Deliverables, Kapsch shall provide to the State a template, table of contents, or agenda for Review and prior approval by the State.
3. Kapsch shall ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of the State's Information Technology resources, information, and services. Security requirements are defined in Appendix C of the RFP 2016-041. Kapsch shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.
4. The Deliverables are set forth in the Schedule described below in Section 2. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all testing as set forth in Exhibit F, *Testing Services*, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

Pricing for Deliverables set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof subject to the terms of this Contract Section 1.3 *Contract Term*.

**2. DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE**

The project will be delivered in two (2) distinct phases. Phase I will commence upon issuance of NTP and involve the various efforts and tasks required to design, develop, install and commission the new ORT System for revenue collection. Phase I will accomplished under the following sub phases:

**Phase IA – Design, Development and Factory Test** – Under this sub phase Kapsch shall complete the new ORT design and develop culminating in Factory Acceptance Test (FAT).

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Contract Agreement RFP 2016-041 Exhibit A Contract Deliverables

Kapsch Initials             
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
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**Phase IB – Training, Installation, On-Site First Installation Test (OFIT), Commissioning, and Bedford Go Live** – This will include the necessary efforts to provide any and all necessary installation and upgrade efforts including system commissioning testing.

**Phase IC – Extended Operations Test (EOT)** – This test will be a forty five (45) day evaluation of the new ORT under live operating conditions to prove out conformance with the specified requirements.

Phase II will commence with the Selected Contractor assuming all legacy system maintenance efforts on July 1, 2018. It is expected that Phase II will be completed no later than June 30, 2023.

**Phase II – ORT Maintenance and Warranty** – This phase includes both the provisions of full maintenance and system support during a twelve (12) month Warranty Period, following issuance of Provisional Final System Acceptance, and throughout the maintenance term. The Warranty Period is only applicable to the hardware installed at the Bedford Plaza.

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**2.1 Design/Implementation/Testing**

<b>Item No.</b>	<b>Deliverable/Milestone</b>	<b>Estimate Due Date*</b>
1	Notice to Proceed/Mobilization	
2	Civil Design Function Requirements	30 Days from NTP
3	Project Schedule (Baseline)/Escrow Deposit	45 Days from NTP
4	Final Project Management Plan, including Quality Assurance Plan	45 Days from NTP
5	System Requirements Document	During Phase IA
6	Draft Business Rules Document	During Phase IA
7	Draft Interface Control Documents	During Phase IA
8	Preliminary System Detailed Design Document	During Phase IA
9	Final Data Migration Plan	During Phase IA
10	Final Implementation & Transition Plan	During Phase IA
11	Final Master Test Plan	During Phase IA
12	Factory Acceptance Test (FAT) Plan	During Phase IA
13	Final Interface Control Documents	During Phase IB
14	Final System Detailed Design Document	During Phase IB
15	Final Maintenance Manual	During Phase IB
16	Final ORT installation Plan and 100% drawings Approved	During Phase IB
17	ORT On-Site First Installation Test (OFIT) Test Plan Approved	During Phase IB
18	Commissioning Test Plan	During Phase IB
19	Successful Completion of Installation, Commissioning and Go-Live (Phase IB complete)	During Phase IB
20	Final Business Rules Document	During Phase IB
21	Draft Reports Manual	During Phase IB
22	Draft User Manuals	During Phase IB
23	Final Disaster Recovery Plan & Business Continuity Plan	During Phase IB
24	Final Training Plan	During Phase IB
25	Final User Manuals	During Phase IB
25	Final Reports Manual	During Phase IB
26	Training Completed	During Phase IB
27	Extended Operations Test Plan	During Phase IC
28	Final As Built Drawings & Spare Parts List & BOM	During Phase IC
29	Final Project Acceptance and Final Software Escrow Deposit	During Phase IC
30	Retainage Released**	

**\*Completion shall be based on approval by NHDOT**

**\*\*Retainage Released after all final items, including satisfactory completion of all documentation, punch list issues are delivered, approved and closed.**

\*Final due dates will be set based on Kapsch Project Schedule approved by NHDOT.

**3. TRAINING DELIVERABLES**

Training will be in accordance with the requirements set forth in Contract Exhibit L: *Training Services*. All pricing has been established in Contract Exhibit B: *Price and Payment Schedule*.

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**4. SOFTWARE LICENSES**

Software Licenses for are set forth in Contract Exhibit J: *Software License and Source Code* and associated pricing is established in the year maintenance cost in Contract Exhibit B: *Price and Payment Schedule*.

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**1. PAYMENT SCHEDULE**

**1.1 Non-Exclusive Not to Exceed**

This is a Non-Exclusive Not to Exceed (NTE) with a maximum contract value of \$9,170,943.23 for the period between the Effective Date through June 30, 2018. Kapsch shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow Kapsch to invoice the State for the following activities, Deliverables, or milestones appearing in the price and payment tables below.

**1.2 Cost Summary Detail**

**Table 1.2 Cost Summary Details**

Project Delivery Costs – Phases I						
Bedford Design, Implementation, Testing				\$862,768.12		\$862,768.12
Bedford Plaza Hardware Cost Detail				\$636,104.33		\$636,104.33
Bedford Civil Cost				\$826,419.75		\$826,419.75
<b>Project Delivery Phase I Total Costs</b>						<b>\$2,325,292.20</b>
Future ORT Projects						
Dover ORT (2021)				\$1,827,921.59		\$1,827,921.59
Rochester ORT (2022)				\$1,883,784.94		\$1,883,784.94
<b>Future ORT Projects Total Costs</b>						<b>\$3,711,706.53</b>
Maintenance Costs						
Hooksett, Hampton & Bedford ORT	\$440,202.56	\$454,384.52	\$469,063.16	\$484,255.16	\$499,979.24	\$2,347,884.64
Dover ORT			\$144,687.69	\$149,751.76	\$154,993.07	\$449,432.52
Rochester ORT				\$149,751.76	\$154,993.07	\$304,744.83
Future Cost Item					\$31,882.51	\$31,882.51
<b>Sub-Total Maintenance</b>	<b>\$440,202.56</b>	<b>\$454,384.52</b>	<b>\$613,750.85</b>	<b>\$783,758.68</b>	<b>\$841,847.89</b>	<b>\$3,133,944.50</b>
<b>TOTAL CONTRACT PRICE</b>						<b>\$9,170,943.23</b>

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**1.3 Design, Testing and Implementation Costs**

**Table 1.3 Design, Testing and Implementation Costs**

Project Documentation & Manuals	\$190,380.32
ORT Design & Development including MOMS and OCR	\$154,406.85
ORT Integration & Implementation	\$140,653.76
Data Migration	\$34,311.85
Testing	\$220,074.55
Training (NHDOT Staff Training)	\$22,496.28
Third Party Software Licenses	\$59,427.81
Interface to Lane and Back Office Systems	\$24,852.80
Insurance Bonding	\$16,163.90

**1.4 Kapsch Bedford Civil Costs**

**Table 1.4: Kapsch Bedford Civil Costs**

Development of Toll System Installation Plans		LS	\$125,381.47
Civil Work includes necessary equipment rental	Includes Equipment Installation and DVAS Costs	LS	\$415,371.88
Electrical Work (AC Power, Data, RF Cabling)		LS	\$285,666.40
<b>TOTAL BEDFORD CIVIL COSTS</b>			<b>\$626,419.75</b>

**1.5 Kapsch Bedford Plaza Hardware Cost Detail**

**Table 1.5: Kapsch Bedford Plaza Hardware Cost Detail**

Redundant Toll Zone Controller and In-Lane Electronics		LS	\$18,405.60
AVDC System		LS	\$43,561.59
Violation Enforcement System		LS	\$200,812.22
AVI System		LS	\$39,487.05
Communications, Network, and Host Equipment		LS	\$208,609.53
Enclosures w/locks and Environmental Control		LS	\$29,352.76
UPS		LS	\$32,004.74
Digital Video Auditing System	Included in Civil Costs	LS	\$0.00
Spare Parts Inventory		LS	\$63,870.84
<b>TOTAL BEDFORD HARDWARE COSTS</b>			<b>\$636,104.33</b>

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**1.6 Kapsch Spare Parts**

**Table 1.6: Kapsch Spare Parts**

PowerEdge R330 Rack Server	1	\$4,601.40	\$4,601.40
JANUS MRP Reader, Redundant	1	\$11,816.05	\$11,816.05
MRP Lane Kit (Including RF module, circulator, antenna, enclosure, RF rack, additional RF modules)	1	\$1,454.28	\$1,454.28
RF Connectors (Male) for LMR-600, 1 pc Crimp	5	\$16.99	\$84.95
RF Connectors (Male) for MPR+600, 1pc Crimp, 90-degree	5	\$19.75	\$98.75
Weather Sealing Tape	1	\$19.69	\$19.69
Connector Seal, Insulation Sleeving, RayOLOn	1	\$35.11	\$35.11
0-6 GHz N-Male to N-Female Altelicon Lighting Protector, DS-14355786-03	5	\$39.67	\$198.35
Detector Rack - 16 position (14 detector slots)	1	\$1,024.06	\$1,024.06
Loop Detector, 4 Channel (up to 200 feet lead-in)	2	\$181.79	\$363.58
Power Supply for Northstart Rack	1	\$127.25	\$127.25
16 Port USB to RS-232 422/485 Isolated Serial Adaptor DIN-Rail Mount	1	\$727.14	\$727.14
SICK Scanner: LMS511-10900S04	1	\$3,672.92	\$3,672.92
SICK Mounting Kit 1	1	\$54.12	\$54.12
Sick Mounting Kit 2	1	\$105.84	\$105.84
Protection Hood	1	\$73.93	\$73.93
Han3A RJ45 Hybrid GL Cat6A insert 8+4p	1	\$21.81	\$21.81
HanA Hood Top Entry M20 for Han Bid	1	\$24.24	\$24.24
SNAP PAC R-series Programmable Automation Controller	1	\$871.05	\$871.05
SNAP PAC 12-Module Mounting Rack	1	\$302.98	\$302.98
SNAP Digital Input (fast), 4-points	3	\$52.11	\$156.33
SNAP Relay Module, 4-Channel, up to 30VDC/250VAC x6A	3	\$93.92	\$281.76
Catalyst 3850 24 Port Data IP Base Layer 3 Switch, 24 10/100/1G ports, 4 x Gigabit Ethernet with Small Form-Factor Pluggable (SFP)	1	\$2,666.19	\$2,666.19
TS-5000EN High Resolution Progressive Scan Monochrome Camera	2	\$8,343.95	\$16,687.90
TNL-50 IR LED flash for lane illumination	3	\$2,120.83	\$6,362.49
3430HD SERIES IP67 H.264 FIXED CAMERA SYSTEM, POE OR 12VDC INPUT POWER, 1080P 30X DAY/NIGHT, DEFOT, AUTO	0	\$1,130.70	\$0.00
3430HD Wall Mount Bracket	0	\$26.66	\$0.00
Layer 2 Switch, Catalyst 2960X 24 Ethernet 10/100/1000 PoE+ ports, 4 One Gigabit Ethernet SFP ports, 740-watt power supply	2	\$1,696.66	\$3,393.32

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Fiber Jumper Cable	2	\$242.38	\$484.76
Fiber Patch Panel SFPs	2	\$302.98	\$605.96
Indoor HD 720P Wireless Plug and Play IP Camera with Night Vision Up to 26ft, Super Wide 115 Viewing Angle, PIR Motion	2	\$78.77	\$157.54
Smart-UPS SRT 6000VA RM 208V	1	\$3,472.10	\$3,472.10
Temperature & Humidity Sensor	1	\$90.89	\$90.89
24 Volt, 12-amp power supply, Redundant variant	5	\$393.87	\$1,969.35
Eight (8) PTC Protected DC Rack Mount Power Supply. 12VDC @8 amp	0	\$363.57	\$0.00
Switched ATS PDU, 1U, 2x NEMA L6-20P, 10 (8 IEC-320 C13, 2 IEC-320 C19), 240VAC	1	\$605.95	\$605.95
Power Supply; DC-DC; 5V 5A 18-75V In; Enclosed DIN Rail Mount; TCL Series	2	\$127.25	\$254.50
Surge Voltage Protection Modular, Terminal Block	6	\$109.07	\$654.42
Camera Mounting bracket	3	\$45.75	\$137.25
Scanner Mounting bracket	3	\$45.75	\$137.25
Grade 5 Zinc-Plated Steel Hex Head Cap Screw, 1/4" Thread, 2" long, Fully Threaded	20	\$0.29	\$5.80
Galvanized Grade 2 Steel Hex Nut, 1/4"-20 Thread size, 7/16" Width, 7/32" height	20	\$0.58	\$11.60
Hot Dipped Galvanized Steel Flat Washer, USS, 1/4" Screw Size, 47/64" OD, .05"-.08" Thick	20	\$0.33	\$6.60
Galvanized Steel Split Lock Washer, 1/4" Screw Size, .49" OD, .06" min Thick	20	\$0.50	\$10.00
Extended-Length Hot-Dipped Galvanized Steel U-Bolt, 3/8"-16 Thread, for 2-7/16" OD, 2" pipe, 1090 lb. Work Load Limit	10	\$3.51	\$35.10
Galvanized Grade 2 Steel Hex Nut, 3/8"-16 Thread Size, 9/16" Width, 21/64" Height	20	\$0.12	\$2.40
Hot Dipped Galvanized Steel Flat Washer, USS, 3/8" Screw Size, 1" OD, .06"-.11" Thick	20	\$0.07	\$1.40
Galvanized Steel Split Lock Washer, 3/8" Screw Size, .68" OD, .09" min Thick	20	\$0.12	\$2.40
<b>TOTAL SPARE PARTS COSTS</b>			<b>\$63,870.76</b>

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**1.7 Project Delivery Detail Cost Phase I  
Table 1.7 Project Delivery Detail Cost Phase I**

Item No.	Deliverable/Milestone	Percent Payment**	Cumulative Gross Payment	Payment Minus Retainage	Cumulative Net Payment	Pmt Amt	Cum Pay Amt
							<b>2,325,292.20</b>
1	Notice to Proceed/Mobilization	2.50%	2.50%	2.375%	2.38%	\$55,225.69	\$55,225.69
2	Civil Design Function Requirements	2.50%	5.00%	2.375%	4.75%	\$55,225.69	\$110,451.38
3	Project Schedule (Baseline)/Escrow Deposit	1.00%	6.00%	0.950%	5.70%	\$22,090.28	\$132,541.66
4	Final Project Management Plan, including Quality Assurance Plan	2.50%	8.50%	2.375%	8.08%	\$55,225.69	\$187,767.35
5	System Requirements Document	4.00%	12.50%	3.800%	11.88%	\$88,361.10	\$276,128.45
6	Draft Business Rules Document	2.00%	14.50%	1.900%	13.78%	\$44,180.55	\$320,309.00
7	Draft Interface Control Documents	2.00%	16.50%	1.900%	15.68%	\$44,180.55	\$364,489.55
8	Preliminary System Design Document	4.00%	20.50%	3.800%	19.48%	\$88,361.10	\$452,850.66
9	Final Data Migration Plan	2.50%	23.00%	2.375%	21.85%	\$55,225.69	\$508,076.35
10	Final Implementation & Transition Plan	2.50%	25.50%	2.375%	24.23%	\$55,225.69	\$563,302.04
11	Final Master Test Plan	2.50%	28.00%	2.375%	26.60%	\$55,225.69	\$618,527.73
12	Factory Acceptance Test (FAT) Plan	5.00%	33.00%	4.750%	31.35%	\$110,451.38	\$728,979.10
13	Final Interface Control Documents	1.00%	34.00%	0.950%	32.30%	\$22,090.28	\$751,069.38
14	Final System Detailed Design Document	4.00%	38.00%	3.800%	36.10%	\$88,361.10	\$839,430.48
15	Final Maintenance Manual	2.00%	40.00%	1.900%	38.00%	\$44,180.55	\$883,611.04
16	Final ORT installation Plan and 100% drawings Approved	10.00%	50.00%	9.500%	47.50%	\$220,902.76	\$1,104,513.80
17	ORT On-Site First Installation Test (OFIT) Test Plan Approved	2.50%	52.50%	2.375%	49.88%	\$55,225.69	\$1,159,739.48
18	Commissioning Test Plan	2.50%	55.00%	2.375%	52.25%	\$55,225.69	\$1,214,965.17
19	Successful Completion of Installation, Commissioning and Go-Live (Phase IB complete)	5.00%	60.00%	4.750%	57.00%	\$110,451.38	\$1,325,416.55
20	Final Business Rules Document	2.00%	62.00%	1.900%	58.90%	\$44,180.55	\$1,369,597.11
21	Draft Reports Manual	2.50%	64.50%	2.375%	61.28%	\$55,225.69	\$1,424,822.80
22	Draft User Manuals	2.50%	67.00%	2.375%	63.65%	\$55,225.69	\$1,480,048.49
23	Final Disaster Recovery Plan & Business Continuity Plan	5.00%	72.00%	4.750%	68.40%	\$110,451.38	\$1,590,499.86
24	Final Training Plan	2.50%	74.50%	2.375%	70.78%	\$55,225.69	\$1,645,725.55
25	Final Manuals: User Manual, Reports Manual	2.50%	77.00%	2.375%	73.15%	\$55,225.69	\$1,700,951.24
26	Training Completed	5.00%	82.00%	4.750%	77.90%	\$110,451.38	\$1,811,402.62
27	Extended Operations Test Plan	10.00%	92.00%	9.500%	87.40%	\$220,902.76	\$2,032,305.38
28	Final As Built Drawings & Spare Parts List & BOM	5.00%	97.00%	4.750%	92.15%	\$108,551.38	\$2,140,856.76
29	Final Project Acceptance and Final Software Escrow Deposit	3.00%	100.00%	2.850%	95.00%	\$66,270.83	\$2,207,127.59
30	Retainage Release	5.00%		5.000%	100.00%	\$118,164.61	\$2,325,292.20

\*Completion shall be based on approval by NHDOT

\*\*Retainage Released after all final items, including satisfactory completion of all documentation, punch list issues are delivered, approved and closed.

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**1.8 Kapsch Maintenance Costs**

**Table 1.8.1: Kapsch Maintenance Costs FY 2019**

DESCRIPTION	Unit Cost	Months	Cost
1st Year Hardware Warranty and Maintenance			
Hampton	\$11,255.63	12	\$135,067.56
Hooksett	\$11,255.63	12	\$135,067.56
Bedford	\$3,574.25	12	\$42,891.00
1st Year Software Warranty and Maintenance			
Bedford	\$7,681.37	12	\$92,176.44
Maintenance Contingency	\$35,000.00		\$35,000.00
<b>FY 19 Total Maintenance Costs</b>			<b>\$440,202.56</b>

**Table 1.8.2: Kapsch Maintenance Costs FY 2020**

DESCRIPTION	Unit Cost	Months	Cost
2nd Year Hardware Warranty and Maintenance			
Hampton	\$11,649.57	12	\$139,794.84
Hooksett	\$11,649.57	12	\$139,794.84
Bedford	\$3,699.35	12	\$44,392.20
2nd Year Software Warranty and Maintenance			
Bedford	\$7,950.22	12	\$95,402.64
Maintenance Contingency	\$35,000.00		\$35,000.00
<b>FY 20 Total Maintenance Costs</b>			<b>\$454,384.52</b>

**Table 1.8.3: Kapsch Maintenance Costs FY 2021**

DESCRIPTION	Unit Cost	Months	Cost
3rd Year Software Warranty and Maintenance			
Hampton	\$12,057.31	12	\$144,687.72
Hooksett	\$12,057.31	12	\$144,687.72
Bedford	\$3,828.83	12	\$45,945.96
3rd Year Hardware Warranty and Maintenance			
Bedford	\$8,228.48	12	\$98,741.76
Maintenance Contingency	\$35,000.00		\$35,000.00
<b>FY 21 Total Maintenance Costs</b>			<b>\$469,063.16</b>

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**Table 1.8.4: Kapsch Maintenance Costs FY 2022**

DESCRIPTION	Unit Cost	Months	Cost
4th Year Software Warranty and Maintenance			
Hampton	\$12,479.31	12	\$149,751.72
Hooksett	\$12,479.31	12	\$149,751.72
Bedford	\$3,962.84	12	\$47,554.08
4th Year Hardware Warranty and Maintenance			
Bedford	\$8,516.47	12	\$102,197.64
Maintenance Contingency	\$35,000.00		\$35,000.00
<b>FY 22 Total Maintenance Costs</b>			<b>\$484,255.16</b>

**Table 1.8.5: Kapsch Maintenance Costs FY 2023**

DESCRIPTION	Unit Cost	Months	Cost
5th Year Software Warranty and Maintenance			
Hampton	\$12,916.09	12	\$154,993.08
Hooksett	\$12,916.09	12	\$154,993.08
Bedford	\$4,101.54	12	\$49,218.48
5th Year Hardware Warranty and Maintenance			
Bedford	\$8,814.55	12	\$105,774.60
Maintenance Contingency	\$35,000.00		\$35,000.00
<b>FY 23 Total Maintenance Costs</b>			<b>\$499,979.24</b>

**1.9 Kapsch Dover Toll Cost Details**

**Table 1.9: Kapsch Dover Toll Cost Details**

Project Documentation and Manual Update	Includes Project Management	LS	\$93,224.55
ORT Design, Development, Integration, Implementation including MOMS and OCR		LS	\$30,690.20
Third Party Software Licenses (list, quantify and price separately)		LS	\$50,437.93
Interface to Lane and Back Office Systems		LS	\$11,877.24
Insurance and Bonding		LS	\$15,729.82
Redundant Toll Zone Controller and In-Lane Electronics		LS	\$21,863.27

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AVDC System		LS	\$51,745.06
Violation Enforcement System		LS	\$238,536.78
AVI System		LS	\$46,905.08
Communications, Network, and Host Equipment		LS	\$21,285.43
Enclosures w/locks and Environmental Control		LS	\$34,866.97
UPS		LS	\$38,017.15
Digital Video Auditing System	Included Item-16 below	LS	\$0.00
Spare Parts Inventory		LS	\$25,221.27
Development of Toll System Installation Plans		LS	\$70,746.31
Civil Work includes necessary equipment rental	Includes Equipment Installation and DVAS Costs	LS	\$390,180.31
Electrical Work (AC Power, Data, RF Cabling)		LS	\$340,582.46
Testing		LS	\$346,011.76
<b>Subtotal Dover Cost</b>			<b>\$1,827,921.59</b>
Hardware Warranty and Maintenance		LS	\$117,259.43
Software Warranty and Maintenance		LS	\$27,428.26
2nd Year Hardware Warranty and Maintenance		LS	\$121,363.51
2nd Year Software Warranty and Maintenance		LS	\$28,388.25
3rd Year Hardware Warranty and Maintenance		LS	\$125,611.23
3rd Year Software Warranty and Maintenance		LS	\$29,381.84
<b>Subtotal Dover Maintenance</b>			<b>\$449,432.52</b>

The Dover Open Road Tolling (ORT) quote (pending future approval) shall remain valid for twelve (12) months after 2021. If the deployment is not executed within the twelve (12) months the quote will be subject to an escalation rate not to exceed 3.0% per year.

**1.10 Kapsch Rochester Toll Cost Details**

**Table 1.10: Kapsch Rochester Toll Cost Details**

Project Documentation and Manual Update	Includes Project Management	LS	\$95,017.74
ORT Design, Development, Integration, Implementation including MOMS and OCR		LS	\$31,650.82

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Third Party Software Licenses (list, quantify and price separately)		LS	\$52,016.67
Interface to Lane and Back Office Systems		LS	\$12,249.00
Insurance and Bonding		LS	\$17,764.51
Redundant Toll Zone Controller and In-Lane Electronics		LS	\$22,547.60
AVDC System		LS	\$53,364.71
Violation Enforcement System		LS	\$246,003.12
AVI System		LS	\$48,373.24
Communications, Network, and Host Equipment		LS	\$21,951.67
Enclosures w/locks and Environmental Control		LS	\$35,958.32
UPS		LS	\$39,207.11
Digital Video Auditing System	Included Item-16 below	LS	\$0.00
Spare Parts Inventory		LS	\$26,010.71
Development of Toll System Installation Plans		LS	\$72,892.31
Civil Work includes necessary equipment rental	Includes Equipment Installation and DVAS Costs	LS	\$401,474.58
Electrical Work (AC Power, Data, RF Cabling)		LS	\$351,242.88
Testing		LS	\$356,059.95
<b>Subtotal Rochester Cost</b>			<b>\$1,883,784.94</b>
Hardware Warranty and Maintenance		LS	\$36,198.77
Software Warranty and Maintenance		LS	\$113,552.99
2nd Year Hardware Warranty and Maintenance		LS	\$37,465.72
2nd Year Software Warranty and Maintenance		LS	\$117,527.35
<b>Subtotal Rochester Maintenance</b>			<b>\$304,744.83</b>

The Rochester Open Road Tolling (ORT) quote (pending future approval) shall remain valid for twelve (12) months after 2021. If the deployment is not executed within the twelve (12) months the quote will be subject to an escalation rate not to exceed 3.0% per year.

**1.11 Kapsch Labor Rates**

The State may request additional Services from Kapsch and requires rates in the event that additional Service is required. The following format must be used to provide this information. "SFY" refers to State Fiscal Year. The New Hampshire State Fiscal Year runs from July 1 through June 30 of the following calendar year.

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Contract Agreement RFP 2016-041 Exhibit B Price and Payment Schedule

Kapsch Initials JKW  
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT B – PRICE AND PAYMENT SCHEDULE**

**Table 1.11: Kapsch Labor Rates Worksheet**

1	Project Principal	\$340.29	\$352.21	\$364.53	\$377.29	\$390.50	\$404.16
2	Project Manager	\$221.18	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69
3	Assistant Project Manager	\$221.18	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69
4	Quality Assurance Manager	\$221.18	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69
5	Technical (Software) Manager	\$178.65	\$184.90	\$191.37	\$198.07	\$205.00	\$212.18
6	Installation Manager	\$187.15	\$193.70	\$200.48	\$207.50	\$214.76	\$222.28
7	System Administrator	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
8	Network Administrator	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
9	System Analyst	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
10	Software Architect	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
11	Software Development Engineer	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
12	Hardware Engineer	\$204.17	\$211.31	\$218.71	\$223.36	\$234.29	\$242.49
13	Compunctions Engineer	\$170.14	\$176.10	\$182.26	\$188.64	\$195.24	\$202.07
14	Maintenance Technician	\$76.09	\$78.75	\$81.51	\$84.36	\$87.32	\$90.37
15	Manager, Quality Engineering	\$178.65	\$184.90	\$191.37	\$198.07	\$205.00	\$212.18
16	Licensed Electrician	\$221.18	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69
17	Electrician Helper	\$165.88	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69
18	Installation Technician	\$95.11	\$98.44	\$101.89	\$105.45	\$109.15	\$112.97
19	Installation Supervisor	\$118.89	\$123.05	\$127.36	\$131.82	\$136.43	\$141.21
20	Licensed Electrical Engineer	\$221.18	\$228.92	\$236.93	\$245.23	\$253.81	\$262.69

\* Labor Rates for optional years 6 through 9 will be based on Cost of Living Adjustment (COLA).

\*\* Any travel for out of scope work will be reimbursed by NHDOT without markup. All travel shall be approved by NHDOT prior to commencement of travel. Prior to travel Kapsch shall submit to NHDOT a travel request detailing the estimated costs to complete the trip for each individual. All travel reimbursements must be supported by appropriate records and receipts.

**1.12 Kapsch Transition Plan**

**Table 1.12: Kapsch Transition Plan**

End of Contract Term Transition	LS	\$31,882.51
<b>TOTAL TRANSITION COSTS</b>		<b>\$31,882.51</b>

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT B – PRICE AND PAYMENT SCHEDULE**

**2. CONTRACT PRICE**

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed \$9,170,943.23 (“Total Contract Price”). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to Kapsch for all fees and expenses, of whatever nature, incurred by Kapsch in the performance hereof. However, for purposes of the Contract Price, the pass-through amounts in this Exhibit B are budgetary estimates within each Operations FY. Should the actual pass-through costs in any of the specified categories exceed the maximum of each such yearly amount, the State shall increase the affected pass-through amount(s) accordingly without increasing the overall Contract Price.

**3. INVOICING**

Kapsch shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State’s prior written approval, which shall not be unreasonably withheld. Kapsch shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

**4. PAYMENT ADDRESS**

All invoices shall be sent to the following address:

Renee Dupuis  
New Hampshire Department of  
Transportation - Bureau of Turnpikes

**UPS, DHL, Federal Express (etc.):**  
36 Hackett Hill Road  
Hooksett NH 031206  
Concord NH 03302-2950

**US Mail:**  
PO Box 2950  
Concord NH 03302-2950

**5. OVERPAYMENTS TO KAPSCH**

Kapsch shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

**6. CREDITS**

The State may apply credits due to the State arising out of this Contract, against Kapsch invoices with appropriate information attached.

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Contract Agreement RFP 2016-041 Exhibit B Price and Payment Schedule

Kapsch Initials     *du*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT B – PRICE AND PAYMENT SCHEDULE**

**7. CONTRACT SECURITY/PERFORMANCE BOND**

Kapsch shall furnish the Agency with a Performance Bond in an amount equal to 100% of the total value of the Project Delivery Cost Phases I, Appendix B Table 1.2 Cost Summary Details within ten (10) business days of receipt of notice of intent to award a contract. Kapsch shall bear the full expense for the Performance Bond including any extensions or renewals as may be required. If such is not provided, the award may be nullified.

The Performance Bond shall be in a form and substance satisfactory to the Agency. The Performance Bond shall be maintained by Kapsch in full force and effect until Final System Acceptance. Kapsch or any of its sureties shall not be released from their obligations under the Performance Bond from any change or extension of time, or termination of this Contract. The Performance Bond shall contain a waiver of notice of any changes to this contract or the Deliverables or the Specifications, or of any Change Orders.

A licensed insurance company authorized to do business in the State of New Hampshire shall issue the Performance Bond made payable to the State of New Hampshire. The Performance Bond shall contain the Contract number and dates of performance. Kapsch shall extend the validity and enforcement of the Performance Bond until Final System Acceptance is achieved.

**8. CONTRACT EXTENSION COSTS**

Contract extension costs for maintenance and labor rates are based on COLA, if extended at the sole option of the State as outlined in Contract Agreement-General Provisions Section 1.3, Contract Term. Pricing will be negotiated at the time of the contract extension.

**9. PROJECT HOLDBACK**

The State shall withhold five percent (5%) of the price for each Deliverable, as set forth in the Appendix B Table 1.5 Project Delivery Cost Detail Phase I until successful Final Project Acceptance.

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Contract Agreement RFP 2016-041 Exhibit B Price and Payment Schedule

Kapsch Initials     *des*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT C - SPECIAL PROVISIONS**

**SPECIAL PROVISIONS**

No special provisions are included in this Contract.

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Contract Agreement RFP 2016-041 Exhibit C - Special Provisions

Kapsch Initials             
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT D - ADMINISTRATIVE SERVICES**

**ADMINISTRATIVE SERVICES**

**1. STATE-OWNED DOCUMENTS AND DATA**

Kapsch shall provide the State access to all Documents, State Data, materials, reports, and other work in progress relating to the Contract ("State Owned Documents"). Upon expiration or termination of the Contract with the State, Kapsch shall turn over all State-owned Documents, State Data, material, reports, and work in progress relating to this Contract to the State at no additional cost to the State. State-Owned Documents must be provided in both printed and electronic format.

**2. SHIPPING AND DELIVERY FEE EXEMPTION**

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

**3. ACCESS/COOPERATION**

As applicable, and subject to the applicable laws and regulations, the State will provide Kapsch with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete the contracted Services.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow Kapsch to perform its obligations under the Contract.

**4. RECORDS RETENTION AND ACCESS REQUIREMENTS**

Kapsch shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

Kapsch and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Kapsch and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records

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Contract Agreement RFP 2016-041 Exhibit D - Administrative Services

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT D - ADMINISTRATIVE SERVICES**

shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Kapsch shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to Kapsch cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

**5. ACCOUNTING REQUIREMENTS**

Kapsch shall maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The costs applicable to the Contract shall be ascertainable from the accounting system and Kapsch shall maintain records pertaining to the Services and all other costs and expenditures.

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Contract Agreement RFP 2016-041 Exhibit D - Administrative Services

Kapsch Initials     *JK*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT E - IMPLEMENTATION SERVICES**

**IMPLEMENTATION SERVICES**

Kapsch shall provide the State with the following services set forth in Exhibit A per Open Road Tolling System RFP 2016-041 Appendix C, and addendums #1 and #2.

**STATE MEETINGS AND REPORTS**

The State believes that effective communication and reporting are essential to Project success.

Kapsch's Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

- a) **Kickoff & Introductory Meeting:** Participants will include Kapsch Key Project Staff and State Project leaders from both Agency and the Department of Information Technology. This meeting will enable leaders to become acquainted and establish any preliminary Project procedures and establish a sound foundation for activities that will follow
- b) **Status Meetings:** Participants will include, at the minimum, the Kapsch Project Manager and the State Project Manager. These meetings will be conducted at least monthly or biweekly and address overall Project status and any additional topics needed to remain on schedule. A status and error report from Kapsch shall serve as the basis for discussion.
- c) **The Project Management Plan:** shall be reviewed at each Status Meeting and updated, at minimum, a prior to the meeting.
- d) **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- e) **Exit Meeting:** Participants will include Project leaders from Kapsch and the State. Discussion will focus on lessons learned from the Project and on follow up options that the State may wish to consider.

The State expects Kapsch to prepare agendas and background for and minutes of meetings. Background for each status meeting must include an updated Project Management Plan. Drafting of formal presentations, such as a presentation for the kickoff meeting, will also be Kapsch's responsibility.

The Kapsch Project Manager shall submit monthly progress report in accordance with the Schedule and terms of this Contract. If the Kapsch's schedule falls behind the progress reports may be required bi-weekly as directed by the State. All progress reports shall be prepared in formats approved by the State as described in the RFP 2016-041 Section C4.4. The Kapsch's

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Contract Agreement RFP 2016-041 Exhibit E - Implementation Services

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT E - IMPLEMENTATION SERVICES**

Project Manager shall assist the State's Project Manager, or itself produce reports related to Project Management as reasonably requested by the State, all at no additional cost to the State.

As reasonably requested by the State, Kapsch shall provide the State with information or reports regarding the Project. Kapsch shall prepare special reports and presentations relating to Project Management, and shall assist the State in preparing reports and presentations, as reasonably requested by the State, all at no additional cost to the State.

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Contract Agreement RFP 2016-041 Exhibit E - Implementation Services

Kapsch Initials     *AK*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
CONTRACT AGREEMENT - EXHIBIT F - TESTING SERVICES**

**TESTING SERVICES**

Kapsch shall provide the testing services as described in the Open Road Tolling System RFP 2016-041 Section C-6 Testing Requirements and System Acceptance, including addendum #1 and #2 and/or Compliance Matrix table included in Exhibit H.

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Contract Agreement RFP 2016-041 Exhibit F - Testing Services

Kapsch Initials     *JK*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT G - MAINTENANCE AND SUPPORT SERVICES**

**1. MAINTENANCE AND SUPPORT SERVICES**

Kapsch shall provide the maintenance and support services, including all Key Performance Indicators (KPI) as described in RFP 2016-041, including addendum # 1 and #2 and/or Compliance Matrix table included in Exhibit H.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT H - REQUIREMENTS - COMPLIANCE MATRIX

**COMPLIANCE MATRIX**

Kapsch shall meet all requirements as described in RFP 2016-041 Form 8 as agreed to in their Compliance Matrix shown below.

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Contract Agreement RFP 2016-041 - Exhibit H - Requirements - Compliance Matrix

Kapsch Initials 

Date: 11/11/16

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT H - REQUIREMENTS - COMPLIANCE MATRIX

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING (ORT) RFP 2016-041  
Appendix J - Form 8 - Compliance Matrix

Section	Conformance with RFP 2016-041 Requirements	Compliance <sup>1</sup>			Existing Functionality <sup>2</sup>							Configurability <sup>3</sup>				Contractor Comments		
		Y	N	E	E	M	D	C	F	U	C	F	U					
C-1	Scope of Work	X											X					
C-1.1	Project Goals	X											X					
C-1.2	Definition & Understanding of the Term Configurable	X											X					
C-1.3	Project Overview	X											X					
C-1.3.1	Existing ORT System Maintenance Requirements	X											X					
C-1.3.2	Existing Software and Firmware Maintenance	X											X					
C-1.4	Project Schedule, Phases and Milestones	X											X					
C-1.4.1	Project Phases	X											X					
C-1.5	General Requirements	X											X					
C-1.6	Legal Requirements	X											X					
C-1.6.1	FCC License	X											X					
C-1.7	Interoperability Requirements	X											X					
C-1.8	General Lane and Plaza Modifications	X											X					
C-1.9	Description	X											X					
C-1.9.1	Scope of Work	X											X					
C-1.9.1	Remove Existing Infrastructure	X											X					
C-1.9.2	Integrate/Reuse Existing Infrastructure	X											X					
C-1.9.3	Furnish New Infrastructure	X											X					
C-1.10	Scope of Maintenance for System	X											X					
C-1.11	Responsibility Matrix	X											X					
C-1.12	Pricing Framework	X											X					
C-1.13	Project Deliverables	X											X					
C-1.13.1	General	X											X					
C-1.14	Deliverable Payment Schedule	X											X					
C-2	Functional Requirements	X											X					
C-2.1	Toll Collection System Hardware	X											X					
C-2.1.1	General Requirements	X											X					
C-2.1.2	Maintainability	X											X					
C-2.1.3	Diagnostics	X											X					
C-2.2	Customized Hardware	X											X					
C-2.2.1	Equipment and Computer Enclosures	X											X					
C-2.2.2	Environmental	X											X					
C-2.2.3	Assembly	X											X					
C-2.2.4	Bill of Materials (BOM)	X											X					
C-2.2.5	Asset Inventory	X											X					
C-2.2.6	Spare Parts	X											X					
C-2.2.7	Hardware Warranty	X											X					
C-2.2.8	Toll Collection System Software	X											X					

Contract Agreement RFP 2016-041 - Exhibit H - Requirements - Compliance Matrix

Kapsch Initials due  
Date: 11/11/16











**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT H - REQUIREMENTS - COMPLIANCE MATRIX**

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING (ORT) RFP 2016-041  
Appendix J - Form B - Compliance Matrix

C-7.8.9.1	System Detailed Design Document	X							X											X
C-7.8.9.2	As-Built Drawings	X							X											X
C-7.9	Quality Assurance Program and Quality Control	X							X											X
C-7.9.1	Configuration Management System	X							X											X
C-7.9.2	Change Control Process	X							X											X
C-7.9.3	Records	X							X											X
C-7.9.4	Control of Purchase	X							X											X
C-7.9.5	Inspection and Verification	X							X											X
C-7.9.6	Handling, Storage and Delivery	X							X											X
C-7.9.7	Inspection at Subcontractor and Contractor Facilities	X							X											X
C-7.9.8	Access to/Inspection of Contractor's Facilities	X							X											X
C-7.10	Training	X							X											X
C-7.10.1	Overview of Training Program	X							X											X
C-7.10.2	Training Plan	X							X											X
C-7.10.3	Training Requirements	X							X											X
C-7.10.4	Training Facilities	X							X											X
C-7.10.5	Scheduling and Preparation for Training	X							X											X
C-7.10.6	Training Materials	X							X											X
C-7.10.6.1	Instructor Guides	X							X											X
C-7.10.6.2	Training Aids	X							X											X
C-7.10.6.3	Student Workbook	X							X											X
C-7.10.6.4	Training Room Set-up and Software Installation	X							X											X
C-8	Maintenance Scope of Work	X							X											X
C-8.1	General Description of Maintenance and Software Support Services	X							X											X
C-8.2	ORT System Maintenance and Software Continuous Support Services	X							X											X
C-8.2.1	Summary Scope of Work	X							X											X
C-8.2.2	Maintenance and Software Support Services/Requirements	X							X											X
C-8.2.2.1	In-Line ORT System (Hardware and Software)	X							X											X
C-8.2.2.2	ORT System Miscellaneous Components	X							X											X
C-8.2.2.3	Network Equipment and Communications Components	X							X											X
C-8.2.2.4	System Administration Services	X							X											X
C-8.2.2.5	ORT Plaza/Host System and Equipment	X							X											X

Contract Agreement RFP 2016-041 - Exhibit H - Requirements - Compliance Matrix

Kapsch Initials SK  
Date: 11/11/16











**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT I PROJECT MANAGEMENT PLAN**

**PROJECT MANAGEMENT PLAN**

Kapsch's Project Manager and the State Project manager shall finalize the Project Management Plan as described in RFP 2016-041 Section C-4 .1 Project Management Plan within 45 days of the Notice To Proceed and further refine the tasks required to implement the Project. The elements of the preliminary Project Management Plan are documented to implement the Application Software, Hardware, Documentation, and Training. Continued development and management of the Project Management Plan is a joint effort on the part of Kapsch and State Project Managers.

The preliminary Project Management Plan is set forth in this Exhibit.

In conjunction with Kapsch's Project Management methodology, which shall be used to manage the Project's life cycle, the Kapsch team and the State shall finalize the Project Management Plan at the onset of the Project. This plan shall identify the tasks, Deliverables, major milestones, task dependencies, and a payment Schedule required to implement the Project. It shall also address intra-task dependencies, resource allocations (both State and Kapsch team members), refine the Project's scope, and establish the Project's Schedule. The Plan is drafted in accordance with the RFP's Project Management Plan and shall utilize MS Word and MS Project to support the ongoing management of the Project.

**1. ASSUMPTIONS**

**A. General**

- The State shall provide team members with decision-making authority to support the Implementation efforts, at the level outlined in the Request for Proposal Document State Staffing Matrix.
- All State tasks must be performed in accordance with the revised Project Management Plan.
- All key decisions will be resolved within five (5) business days. Issues not resolved within this initial period will be escalated to the State Project Manager for resolution.
- Any activities, decisions or issues taken on by the State that affect the mutually agreed upon Project Management Plan timeline, scope, resources, and costs shall be subject to the identified Change Control process.
- Kapsch shall provide a separate escrow agreement for the application.
- Kapsch shall maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP).

**B. Logistics**

- The Kapsch Team shall honor all holidays observed by Kapsch or the State, although with permission, may choose to work on holidays and weekends.
- The State shall provide the Kapsch Team a Virtual Private Network (VPN) access, and access to any necessary internal State networks and/or software (within State standards).

**C. Project Management**

- The State shall approve the Project Management Methodology used for the Project.
- The State shall provide the Project Team with reasonable access to the State personnel as needed to complete Project tasks.

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Contract Agreement RFP 2016-041 Exhibit I Project Management Plan

Kapsch Initials     *ds*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT I PROJECT MANAGEMENT PLAN**

- A Project folder shall be created within a Kapsch FTP site to be used for centralized storage and retrieval of Project documents, work products, and other material and information relevant to the success of the Project and required by Project Team members. This central repository is secured by determining which team members have access to the Project folder and granting either view or read/write privileges. Kapsch's Project Manager or his designee will establish and maintain this folder. The State Project Manager shall approve access for the State team. Final versions of all Documentation shall be loaded to the State System.
- Kapsch assumes that an assistant Project Manager may be appointed from time to time to handle reasonable and ordinary absences of the Project Manager.

**D. Preliminary Project Schedule**

The following Table provides the preliminary agreed upon Schedule for the Contract Deliverables based on NTP November 16, 2016. Kapsch will submit a Project Schedule to the State within 45 days of NTP as described in the RFP 2016-041.

**High Level Preliminary NH Project Schedule**

Notice to Proceed/Mobilization	November 16, 2016
Civil Design Function Requirements	July 11, 2017
Project Schedule (Baseline)/Escrow Deposit	December 23, 2016
Final Project Management Plan, including Quality Assurance Plan	December 22, 2016
System Requirements Document	January 11, 2016
Draft Business Rules Document	January 13, 2016
Draft Interface Control Documents	January 27, 2017
Preliminary System Detailed Design Document	July 10, 2017
Final Data Migration Plan	September 5, 2017
Final Implementation & Transition Plan	August 22, 2017
Final Master Test Plan	September 8, 2017
Factory Acceptance Test (FAT) Plan	July 25, 2017
Final Interface Control Documents	January 27, 2017
Final System Detailed Design Document	June 26, 2017
Final Maintenance Manual	May 22, 2018
Final ORT installation Plan and 100% drawings Approved	August 22, 2017
ORT On-Site First Installation Test (OFIT) Test Plan Approved	August 8, 2017
Commissioning Test Plan	August 10, 2017
Successful Completion of Installation, Commissioning and Go-Live (Phase IB complete)	April 10, 2018
Final Business Rules Document	May 1, 2016
Draft Reports Manual	April 3, 2018

Contract Agreement RFP 2016-041 Exhibit I Project Management Plan

Kapsch Initials       
Date: 11/11/16

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Draft User Manuals	March 30, 2018
Final Disaster Recovery Plan & Business Continuity Plan	August 24, 2017
Final Training Plan	April 13, 2018
Final User Manuals	April 13, 2018
Final Reports Manual	April 18, 2018
Training Completed	April 26, 2018
Extended Operations Test Plan	August 25, 2017
Final As Built Drawings & Spare Parts List & BOM	May 1, 2018
Final Project Acceptance and Final Software Escrow Deposit	June 30, 2018

**E. Reporting**

- Kapsch shall conduct meetings as described in Exhibit E, and provide reports that include, but are not limited to, minutes, action items, test results and Documentation.

**F. User Training**

- The Kapsch Team shall lead the development of the end-user training plan.

**G. Testing**

- The State shall work with Kapsch on performance testing as set forth in Appendix C, Section C-6 Testing Requirements and System Acceptance.

**2. ROLES AND RESPONSIBILITIES**

**A. Kapsch Team Roles and Responsibilities**

**1) Kapsch Team Project Manager**

The Kapsch Team Project Manager shall have overall responsibility for the day-to-day management of the Project and shall plan, track, and manage the activities of the Kapsch Implementation Team. The Kapsch Team Project Manager will have the following responsibilities:

- Maintain communications with the State's Project Manager;
- Work with the State in planning and conducting a kick-off meeting;
- Create and maintain the Project Management Plan;
- Assign Kapsch Team consultants to tasks in the Implementation Project according to the scheduled staffing requirements;
- Define roles and responsibilities of all Kapsch Team members;
- Provide bi-weekly and month update progress reports to the State Project Manager;
- Notify the State Project Manager of requirements for State resources in order to provide sufficient lead time for resources to be made available;
- Review task progress for time, quality, and accuracy in order to achieve progress;
- Review requirements and scheduling changes and identify the impact on the Project in order to identify whether the changes may require a change of scope;

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- Implement scope and Schedule changes as authorized by the State Project Manager and with appropriate Change Control approvals as identified in the Implementation Plan;
- Inform the State Project Manager and staff of any urgent issues if and when they arise;
- Provide the State completed Project Deliverables and obtain sign-off from the State's Project Manager.

**2) Kapsch Team**

The Kapsch Team shall conduct analysis of requirements, validate the Kapsch Team's understanding of the State business requirements by application, and perform business requirements mapping:

- Construct and confirm application test case scenarios;
- Produce application configuration definitions and configure the applications;
- Conduct testing of the configured application;
- Produce functional Specifications for extensions, conversions, and interfaces;
- Assist the State in the testing of extensions, conversions, and interfaces;
- Assist the State in execution of the State's Acceptance Test;
- Conduct follow-up meetings to obtain feedback, results, and concurrence/approval from the State;
- Assist with the correction of configuration problems identified during system, integration and Acceptance Testing; and
- Assist with the transition to production.
- Development and review of functional and technical Specification to determine that they are at an appropriate level of detail and quality;
- Development and Documentation of conversion and interface programs in accordance with functional and technical Specifications;
- Development and Documentation of installation procedures; and
- Development and execution of unit test scripts;
- Unit testing of conversions and interfaces developed; and
- System Integration Testing.
- System Migration.

<b>Kapsch Project Team</b>			
<b>Team Member</b>	<b>Project Position</b>	<b>Phone</b>	<b>Email</b>
Paul Muzzey	Project Principal	(617) 461 4347	<a href="mailto:Paul.Muzzey@kapsch.net">Paul.Muzzey@kapsch.net</a>
Michael Yager	Project Manager	(512) 761 2516	<a href="mailto:Michael.Yager@kapsch.net">Michael.Yager@kapsch.net</a>
Christina Mendez	Assistant Project Manager	(512) 592-5933	<a href="mailto:Christina.Mendez@kapsch.net">Christina.Mendez@kapsch.net</a>
Valentin Rusu	Data Migration Manager	(647) 317-9700	<a href="mailto:valentin.rusu@kapsch.net">valentin.rusu@kapsch.net</a>
Carolos Aguilera	Quality Assurance Manager	(512) 450 6297	<a href="mailto:Carlos.Aguilera@kapsch.net">Carlos.Aguilera@kapsch.net</a>
Sam Sparks	Software Manager	(512) 574-5115	<a href="mailto:Samuel.Sparks@kapsch.net">Samuel.Sparks@kapsch.net</a>
Kris Larsen	Installation Manager	(512) 420-6129	<a href="mailto:Kristopher.Larsen@kapsch.net">Kristopher.Larsen@kapsch.net</a>
Daniel Lafuente	Maintenance Manager	(713) 854-3687	<a href="mailto:Daniel.LaFuente@kapsch.net">Daniel.LaFuente@kapsch.net</a>

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EXHIBIT I PROJECT MANAGEMENT PLAN**

**B. State Roles and Responsibilities**

The following State resources have been identified for the Project. The time demands on the individual State team members will vary depending on the phase and specific tasks of the Implementation. The demands on the Subject Matter Experts' time will vary based on the need determined by the State Leads and the phase of the Implementation.

<b>States Project Team</b>			
<b>Team Member</b>	<b>Project Position</b>	<b>Phone</b>	<b>Email</b>
Renee Dupuis	Project Manager	603-485-3806 (w) 603-848-7481 (c)	<a href="mailto:rdupuis@dot.state.nh.us">rdupuis@dot.state.nh.us</a>
Laura Marriott	Assistant Project Manager	603-485-3806 603-419-0734 (c)	<a href="mailto:lmariott@dot.state.nh.us">lmariott@dot.state.nh.us</a>
Celeste Soucy	E-ZPass Program Manager	603-485-3806	<a href="mailto:csoucy@dot.state.nh.us">csoucy@dot.state.nh.us</a>
Charles Burns	DoIT Liaison	603-485-3806 603-419-0201 (c)	<a href="mailto:cburns2@dot.state.nh.us">cburns2@dot.state.nh.us</a>
Walter Fagerlund	Technical Advisor	(207) 228-0886	<a href="mailto:WFagerlund@HNTB.com">WFagerlund@HNTB.com</a>

**1) State Project Manager**

The State Project Manager shall work side-by-side with the Kapsch Project Manager. The role of the State Project Manager is to manage State resources (IF ANY), facilitate completion of all tasks assigned to State staff, and communicate Project status on a regular basis. The State Project Manager represents the State in all decisions on Implementation Project matters, provides all necessary support in the conduct of the Implementation Project, and provides necessary State resources, as defined by the Project Management Plan and as otherwise identified throughout the course of the Project. The State Project Manager has the following responsibilities:

- Lead the Project through design, development, testing and maintenance;
- Oversee Project's acceptance, planning, implementation and follow-up issues;
- Contact point for coordination and management of Project Implementation Plan with Kapsch and State's Project team;
- Coordinate/plan with Contractor testing, conversion and implementation of the Project;
- Facilitate Project strategy and approach;
- Engage and manage Contractor;
- Manage significant issues and risks; and
- Manage stakeholders' concerns.

**2) Assistant Project Manager**

- DOT Documentation Coordinator
- Lead in report development
- Lead with Training

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- Assists in Testing, including development of test scripts and review of data
- Attend all project meetings
- Backup to Project Manager in his absence
- Work with Kapsch in developing and maintain role-based security as defined by the State Team;

**3) State Subject Matter Expert(s) (SME)**

The role of the State SME is to assist application teams with an understanding of the State's current business practices and processes, provide agency knowledge, and participate in the Implementation. Responsibilities of the SME include the following:

- Be the key user and contact for their section, Bureau or agency;
- Attend Project Team training and acquire in-depth functional knowledge of the relevant applications;
- Assist in validating and documenting user requirements, as needed;
- Assist in reviewing of documentation and development of report;
- Assist in mapping business requirements;
- Assists in Testing, including development of test scripts and review of data;
- Attends all Project meetings;
- Assist in training end users in the use of the Kapsch Software Solution and the business processes the application supports; and
- Lead in the connection to the State's Financial System.

**4) State DoIT Liaison and Technical Advisor**

The State's Technical Lead and Architect reports to the State's Project Manager and is responsible for leading and managing the State's technical tasks. Responsibilities include:

- Assist in all the aspects of SME's
- DOT lead in Data Migration effort (DOIT liaison)
- Assist in reviewing of documentation and development of report
- DoIT's Liaison will coordinate all efforts/reviews required by the Network Administrator and Database Administrator Attend technical training as necessary to support the project;
- Work with the Kapsch Technical Lead and the State's vendor to architect and establish an appropriate hardware platform for the State's project development and production environments;
- Assists in Testing, including; development of test scripts and review of data
- Work in partnership with the Kapsch and lead the State technical staff's efforts in documenting the technical operational procedures and processes for the Project. This is a Contractor deliverable and it will be expected that Kapsch will lead the overall effort with support and assistance from the State; and
- Represent the technical efforts of the State at monthly project meetings and bi-weekly meetings as needed.
- Work with the Kapsch to finalize logical and physical database configuration;

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- Work with the Kapsch upgrades to the Application instances as required by the Teams. Maintain a consistent and constant parity with all instances as required by the Application teams;
- Work with the Kapsch to establish and execute backup and recovery procedures throughout the project;
- Work with the State Team to manage the availability of Application instances throughout the project;
- Work with the Kapsch to define and test Application security, backup and recovery procedures;
- Establish new Kapsch Application user Ids;
- Configure menus, request groups, security rules, and custom responsibilities;
- Assess the ability of the State's overall network architecture and capacity to adequately support implemented applications;
- Establish connections among the database and application servers; and
- Establish connections among the desktop devices and the Application and database servers.

**5) State Technical Advisor**

The State's Technical Advisor reports to the State's Project Manager and his responsibilities include:

- Assist the State Team with oversight and technical advisory services for the development of system, integration, performance, and required test plans by Kapsch;
- Coordinating with State Team for system, integration, performance, and required tests by Kapsch;
- Coordinating the State's team and external third parties involvement in testing;
- Ensuring that proposed process changes are considered by process owners;
- Establish priorities of Deficiencies requiring resolution; and
- Tracking Deficiencies through resolution.

**6) Conversions**

The following Table identifies the conversions within the scope of this Contract.

**Planned Conversions**

<b>Conversion</b>	<b>Components, If applicable</b>	<b>Lead Responsibility</b>	<b>Description</b>
<b>Data Migration</b>		Kapsch	Migration of Legacy data to new system

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**A. Conversion Testing Responsibilities**

- The Kapsch Team shall develop a Data Migration Plan as outline in the RFP 2016-041
- The Kapsch Team and the State, based on their assigned conversion responsibilities, as set forth in Contract Exhibit F: *Testing Services* shall identify applicable test scripts and installation instructions, adapt them to the Project specifics, test the business process, and compare with the documented expected results.
- The Kapsch Team and the State, based on their assigned conversion responsibilities, shall execute the applicable test scripts that complete the conversion and compare execution results with the documented expected results.
- State is responsible to initiate a work order with the incumbent vendor as described in the RFP 2016-041.

**7) Interfaces**

Interfaces shall be implemented in cooperation with the State. The following Table identifies the interfaces within the scope of this Contract and their relative assignment.

**In-Scope Existing Interfaces**

<b>Agency Name</b>	<b>Import or Export</b>	<b>Function</b>	<b>Frequency</b>
Agency Existing <i>E-ZPass</i> Violation Server	Export	Send Violation Images to CSC for violation processing.	Live
Agency Existing <i>E-ZPass</i> Host Server	Import	Receive Transponder Status File to update ORT lanes.	Daily
Agency Existing Lane (Toll Collection System) Host Server	Export	Send <i>E-ZPass</i> transactions to existing Lane System Host for inclusion in processing.	Hourly

**A. Interface Responsibilities**

- The Kapsch Team shall lead the State with the mapping of legacy data to the Kapsch Applications.
- The Kapsch Team shall lead the review of functional and technical interface Specifications.
- The Kapsch Team shall assist the State with the resolution of problems and issues associated with the development and Implementation of the interfaces.
- The Kapsch Team shall document the functional and technical Specifications for the interfaces.
- The Kapsch Team as set forth in Contract Exhibit F: *Testing Services* shall identify applicable test scripts and installation instructions, adapt them to the Project specifics, test the business process, and compare with the documented expected results.
- The State and the Kapsch Team shall jointly verify and validate the accuracy and completeness of the interface.

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EXHIBIT J – SOFTWARE LICENSE & SOUCE CODE**

**SOFTWARE LICENSE**

**1. LICENSE GRANT**

Subject to the payment of applicable license fees set forth in Contract Exhibit B: *Price and Payment Schedule*, Kapsch hereby grants to the State a worldwide, perpetual, irrevocable, non-exclusive, non-transferable, limited license to use the Software and its associated Documentation, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

**2. SOFTWARE AND DOCUMENTATION COPIES**

Kapsch shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft WORD and PDF format. The State shall have the right to copy the Software and its associated Documentation for its internal business needs. The State agrees to include copyright and proprietary notices provided to the State by the Kapsch on such copies.

**3. RESTRICTIONS**

Except as otherwise permitted under the Contract, the State agrees not to:

- a. Remove or modify any program markings or any notice of Kapsch proprietary rights;
- b. Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
- c. Cause or permit reverse engineering, disassembly or recompilation of the programs.
- d. License restricted to use only on operations and maintenance of the NHDOT BOS.

**4. TITLE**

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with Kapsch

**5. VIRUSES**

Kapsch shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

As a part of its internal development process, Kapsch will use reasonable efforts to test the Software for viruses Kapsch shall also maintain a master copy of the appropriate versions of the Software, free of viruses. If the State believes a virus may be present in

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Contract Agreement RFP 2016-041 Exhibit J – Software License & Source Code

Kapsch Initials             
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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the Software, then upon its request, Kapsch shall provide a master copy for comparison with and correction of the State's copy of the Software.

**6. AUDIT**

Upon forty-five (45) days written notice, Kapsch may audit the State's use of the programs at Kapsch sole expense. The State agrees to cooperate with Kapsch audit and provide reasonable assistance and access to information. The State agrees that Kapsch shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, Kapsch audit rights are subject to applicable State and federal laws and regulations.

**7. SOFTWARE NON-INFRINGEMENT**

Kapsch warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Material infringe their intellectual property rights, Kapsch shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies Kapsch in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives Kapsch control of the defense and any settlement negotiations; and
- c. Gives Kapsch the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If Kapsch believes or it is determined that any of the Material may have violated someone else's intellectual property rights, Kapsch may choose to either modify the Material to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Kapsch may end the license, and require return of the applicable Material and refund all fees the State has paid Kapsch under the Contract. Kapsch will not indemnify the State if the State alters the Material without Kapsch consent or uses it outside the scope of use identified in Kapsch user Documentation or if the State uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the State at no additional cost. Kapsch will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by Kapsch. Kapsch will not indemnify the State

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to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Kapsch without Kapsch consent.

**SOFTWARE ESCROW**

1. Kapsch represents and warrants that the currently existing source code for the Software licensed to the State under the Contract, as well as the Documentation for such Software, and developer comments to the source code for the Software (the "Deposit Materials") have been deposited in an escrow account maintained at Iron Mountain "Escrow Agent") as required by this Contract. Future Deposit Materials for major version releases (e.g., x.y.z) of the Software not otherwise delivered to the State Licensee as source code shall be deposited in the escrow account (normally within six (6) months after the first commercial shipment of each such release). Kapsch shall promptly pay to the Escrow Agent all escrow fees that become due under the Escrow Agreement to maintain the Software in escrow.
2. Kapsch agrees that, upon execution of this Contract, the State shall be added to the Escrow Agreement as a beneficiary. The Escrow Agent shall notify the State that it has been added as a subscriber within a commercially reasonable time. Thereafter, upon the request of the State, to be made no more frequently than annually, Kapsch shall provide the State with written verification that the Software has been deposited with the Escrow Agent.
3. The Escrow Agent shall make and release a copy of the applicable Deposit Materials to the State upon the occurrence of any of the following events ("Release Events"):
  - (a) Kapsch has made an assignment for the benefit of creditors;
  - (b) Kapsch institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;
  - (c) A receiver or similar officer has been appointed to take charge of all or part of Kapsch assets;
  - (d) Kapsch terminates its maintenance and operations support services for the State for the Software or has ceased supporting and maintaining the Software for the State whether due to its ceasing to conduct business generally or otherwise, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;
  - (e) Kapsch defaults under the Contract; or
  - (f) Kapsch ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.
  - (g) Enter into operations phase of the Contract, and subject to the terms of the Exhibit J: *Software License & Source Code*.

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Contract Agreement RFP 2016-041 Exhibit J – Software License & Source Code

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
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4. In the event that Deposit Materials are released from escrow to the State prior to the start of Operations Phase of the Contract, Kapsch hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the Deposit Materials, and to authorize others to do the same on behalf of the State (Contractors, agents, etc.), solely for the purpose of completing the performance of Kapsch obligations under the Contract, including, but not limited to, providing maintenance and support for the Software and subject to the rights granted in this Contract and License.
  
5. Kapsch agrees to pay all costs associated with the escrow covered by this Contract, except for nominal fees to cover the cost of reproduction and distribution of release of the Deposit Materials to the State, including all related reasonable administrative expenses.

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Contract Agreement RFP 2016-041 Exhibit J – Software License & Source Code

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
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EXHIBIT K – WARRANTY AND WARRANTY SERVICES**

**WARRANTY AND WARRANTY SERVICES**

Kapsch shall provide the warranty and warranty services as described in the RFP 2016-041 Appendix H 25.8 Warranty, documented in the RFP: C-2.2.7 Hardware Warranty, C-8.3 Warranty Program, and including addendum #1 and #2 and/or Compliance Matrix table included in Exhibit H.

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Contract Agreement RFP 2016-041 Exhibit J – Software License & Source Code

Kapsch Initials See  
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT L - TRAINING SERVICES**

**TRAINING SERVICES**

Kapsch shall provide the Training Services as described in the RFP 2016-041 Appendix C-7.10 *Training* and as agreed to in addendum #1 and #2 and/or in their Compliance Matrix in Exhibit H.

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Contract Agreement RFP 2016-041 Exhibit L - Training Services

Kapsch Initials     *JK*      
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT M - NHDOT RFP 2016-041 (WITH ADDENDA) INCORPORATED**

**NHDOT RFP 2016-041 (WITH ADDENDA) INCORPORATED**

NH Department of Transportation RFP 2016-041 Open Road Tolling dated May 12, 2016, with Addendum #1, dated July 7, 2016, Addendum #2, dated July 21, 2016 and Responses to State's Questions RFP 2016-041, dated September 15, 2016 are included by reference as binding Deliverables to this Contract.

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Contract Agreement RFP 2016-041 Exhibit M - NHDOT RFP 2016-041 (with Addenda) Incorporated

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT N - VENDOR PROPOSAL, BY REFERENCE**

**VENDOR PROPOSAL, BY REFERENCE**

Kapsch Proposal to Department of Transportation RFP 2016-041 Open Road Tolling System dated July 27, 2016 is hereby incorporated by reference as fully set forth herein.

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Contract Agreement RFP 2016-041 Exhibit N - Vendor Proposal, by Reference

Kapsch Initials       
Date: 11/11/16

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING SYSTEM  
BUREAU OF TURNPIKES - CONTRACT RFP 2016-041  
EXHIBIT O - CERTIFICATES AND ATTACHMENTS**

**CERTIFICATES AND ATTACHMENTS**

Attached are:

- A. Kapsch's Certificate of Vote/Authority
- B. Kapsch's Certificate of Good Standing
- C. Kapsch's Certificate of Insurance
- D. Kapsch's Proposal Transmittal Form Letter
- E. Change Request Work Instruction
- F. Software License Agreement

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Contract Agreement RFP 2016-041 Exhibit O - Certificates and Attachments

Kapsch Initials JK  
Date: 11/11/16

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that KAPSCH TRAFFICOM TRANSPORTATION NA, INC. is a Michigan Profit Corporation registered to transact business in New Hampshire on March 13, 2015. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 722633



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 14th day of November A.D. 2016.

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**Kapsch TrafficCom Transportation NA, Inc.**

**Officer's Certificate of Authority**

The undersigned Officers of Kapsch TrafficCom Transportation NA, Inc., a Michigan corporation (the "Company") hereby certifies, as of the date hereof, as follows:

1. I am the duly elected, qualified Corporate Secretary of the Company, and am familiar with the facts herein certified with respect to the Company and am duly authorized to certify the same with respect to the Company.

2. I have reviewed the Resolutions of the Company and confirm that the Officers of the Company, Alfredo Escriba and Michael Hofer are both authorized to sign the contract:

<b>Name</b>	<b>Position</b>
Alfredo Escriba	President
Michael Hofer	Chief Financial Officer

IN WITNESS OF, I have hereunto set my hand as of the 11<sup>th</sup> day of November, 2016.



Janet Eichers  
Secretary  
Kapsch TrafficCom Transportation NA, Inc.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/30/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA, INC. 99 HIGH STREET BOSTON, MA 02110 Attn: Boston.certrequest@Marsh.com Fax: 212-948-4377  116924947-all-GAWU-16-17	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Federal Insurance Company		20281
<b>INSURER B:</b> Great Northern Insurance Company		20303
<b>INSURER C:</b> Chubb Indemnity Insurance Company		12777
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-009687508-01                      **REVISION NUMBER:** 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			9949-16-74	11/30/2016	11/30/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			7356-51-01	11/30/2016	11/30/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$      RETENTION \$			7983-64-37	11/30/2016	11/30/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	(17)7175-13-28	11/30/2016	11/30/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

The State of New Hampshire Department of Transportation is included as additional insured (except for Workers Compensation) where required by written contract.

**CERTIFICATE HOLDER**                      **CANCELLATION**

NH Dept. of Transportation Office of Federal Compliance 7 Hazen Drive Concord, NH 03302-0483	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>
	<b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc.  Elizabeth Stapleton <i>Elizabeth Stapleton</i>

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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING (ORT) RFP 2016-041

Form 1: Proposal Transmittal Letter

State of New Hampshire Proposal Transmittal Form Letter

Vendor Name Kapsch TrafficCom Transportation NA, Inc.

Address 1390 Piccard Drive, Suite 200

City/State/ZIP Rockville, MD 20850

TO: John Corcoran, Administrator  
Administrator, Bureau of Turnpikes  
36 Hackett Hill Road  
Hooksett, NH 03106  
Telephone (603) 485-3806  
Email: [JCorcoran@dot.state.nh.us](mailto:JCorcoran@dot.state.nh.us)

RE: Proposal Invitation Name: Open Road Tolling  
Proposal Number: 2016-041  
Proposal Due Date and Time: June 18, 2016, 2:30 pm

Dear Sir:

Vendor Name: Kapsch TrafficCom Transportation NA, Inc. hereby offers to sell to the State of New Hampshire the Services Indicated in RFP 2016-041 Open Road Tolling at the price(s) quoted in Vendor Response Section VIII: *Price Proposal*, and Appendix J: *Price Proposal Forms*, in complete accordance with all conditions of this RFP and all Specifications set forth in the RFP and in the State of New Hampshire Terms and Conditions outlined in RFP Appendix H: *State of New Hampshire Terms and Conditions*.

Contractor Signor: Michael Hofer, CFO is authorized to legally obligate

Contractor Name: Kapsch TrafficCom Transportation NA, Inc.

We attest to the fact that:

The Vendor has reviewed and agreed to be bound by all RFP Terms and Conditions, including but not limited to, the *State of New Hampshire Terms and Conditions* in Appendix H, which shall form the basis of any Contract resulting from this RFP; No new



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**Title: Toll System Computer Change Request**

Page 1 of 3

Document #: Turn-Toll-004

Revision #: 1

Date: May 8, 2013

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**1.0 PURPOSE:** Procedure for requesting changes to the Toll System application.

**2.0 RESPONSIBILITIES**

- 2.1 The Vendor and Turnpikes develops the proposed change request.
- 2.2 NHDOT Review Board of Information Technology (RBIT) reviews and approves the change request.
- 2.3 The Assistant Administrator of the Tolls (AAT) gives final approval to begin work.

**3.0 PROCEDURE**

- 3.1 A change request is developed due to an update or upgrade in the Vendor's software, an enhancement requested by the Bureau, or a "fix" to correct a problem. See 3.7 for Emergency Change Request.
- 3.2 Turnpikes or the Vendor fills out the Change Request Form for the necessary improvements and/or application changes. All sections within Turnpikes will submit these changes through the AAT or designee by AAT. Include samples of the proposed change when applicable, i.e. new report.
- 3.3 Test plan is described under the Turnpikes approval section and is developed by Turnpikes.
- 3.4 The Vendor estimates the hours for the change request, cost, completion date, lays out the proposed change implementation procedure and concurs with the test plan.
- 3.5 Once the Change Request is received from the Vendor, Turnpikes submits the request to the NHDOT RBIT Board for their review and approval. The NHDOT RBIT Board pays particular attention to the cost and estimated time frame to make sure the quotes are reasonable and assigns a person for oversight.
  - 3.5.1 NHDOT RBIT Board meets Thursdays of the pay week. All requests should be in Thursday morning by 10:00 a.m.
- 3.6 After NHDOT RBIT approval, the AAT approves the Change Request and then sends it to the Vendor for a Notice to Proceed (NTP).



**Title: Toll System Computer Change Request**

Document #: Turn-Toll-004

Revision #: 1

Page 3 of 3

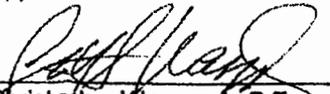
Date: May 8, 2013

**5.0 DOCUMENT CONTROL**

**5.1 Revision #1**

5.1.1 Revised the procedure to include all the updates to steps.

5.1.2 Revised to include Emergency Change Request process.

Approved:		REV. NO.	<u>1</u>
	<u>5/17/13</u>	DATE	<u>5/17/13</u>
Christopher Waszczuk, P.E. Administrator, Bureau of Turnpikes	Date	SUPERSEDES EDITION	<u>10/31/2007</u>

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
OPEN ROAD TOLLING (ORT) RFP 2016-041**

**Form 9: Toll System Technology Change Request Form**

Project Name:		Project Number:	
Requested By:		Change Number:	
Description of Change Request:			
Estimate Hours:		Estimate Cost:	
Completion Date:		VI Number:	
Comments:			
Estimate Hours:		Estimate Cost:	
Approved By:		Title:	Date:
Comments:			
Client Name:		Title:	Date:
Approved By:		Title:	Date:
Comments:			

Vendor Initials \_\_\_\_\_  
Date \_\_\_\_\_

**SOFTWARE LICENSE AGREEMENT**



This Software License Agreement (together with all referenced attachments, this "Agreement") is entered into as of the Effective Date by and between:

<b>Licensor</b>	Kapsch TrafficCom Transportation NA, Inc. 211 East 7 <sup>th</sup> Street, Suite 800 Austin, Texas 78701 Tel: (832) 540-0521 Fax: (512) 450-6307 (Referred to as "Kapsch")
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And

<b>Licensee</b>	New Hampshire Department of Transportation or NHDOT Bureau of Turnpikes 36 Hackett Hill Road Hooksett, NH 03106 Tel: (603) 485-3806 Fax: (603) 485-2107 (Referred to as "Licensee")
-----------------	--

This Agreement is comprised of this Cover Page and the following attachment(s):

<b>Attachment "A"</b>	Terms and Conditions
<b>Attachment "B"</b>	Software Product Schedule

Licensee shall obtain a site license to use the Kapsch Software at the named Facilities, with access to source code under the terms and conditions set out in this Agreement.

For and in consideration of mutual covenants herein contain the parties hereto have caused this Agreement to be executed by their duly authorized officers.

<b>Kapsch TrafficCom Transportation NA, Inc.</b>	
By:	
Name: Alfredo Escriba	Michael Hofer
Title: President	CFO
Date: November 22, 2016	November 28, 2016

<b>New Hampshire Department of Transportation</b>	
By:	
Name:	
Title:	
Date:	

**Attachment A**  
**Terms and Conditions**

**1. Definitions**

- (a) "Authorized Facility" has the meaning ascribed in Article 4.
- (b) "Business Use" means Licensee's internal use (used within NHDOT) of the Kapsch Software at the Facilities in connection with the Licensee identified use in the Contract.
- (c) "Kapsch Software" means the Kapsch Software described in Attachment "B" of this License Agreement.
- (d) "Kapsch Source Code" means the series of computer language statements in programmer readable form (for example, Assembly Language, C, C++, Basic, 4GL, SQL), embodied in either magnetic disk or tape, which forms a software program or group of programs from which a computer can be made to perform specified functions after the Source has been translated into "Binary" executable code.
- (e) "Confidential Information" has the meaning ascribed in Article 9: *Non Disclosure and Security*.
- (f) "Contract" means the Agreement between Licensee and Kapsch with respect to the Kapsch Software, and designated as Contract No. RFP 2016-041, dated the \_\_\_ day of \_\_\_\_\_, 2016.
- (g) "Documentation" means code, files, paperwork and applications necessary to execute and use the Software and Source Code.
- (h) "Facilities" means all NHDOT Turnpike facilities (existing or new) for Open Road Tolling application, as long as Kapsch is implementing and maintaining the system and lanes.

**2. License**

Kapsch hereby grants to Licensee and Licensee hereby accepts a full paid, royalty free, perpetual, non-transferable, non-exclusive license to use the Kapsch Software solely at the Authorized Facilities described herein for Licensee's Business Use, under the terms and conditions herein contained ("License").

Kapsch also hereby grants to Licensee and Licensee hereby accepts the limited, fully paid, royalty-free, non-transferable, non-exclusive right and license to access, use, and modify the Kapsch Source Code for the sole purpose of modifying and maintaining the Kapsch Software. Any resulting object code of the Kapsch Software shall also be subject to the terms set forth in this Agreement.

**3. Term**

This License Agreement shall be effective from the date of issuance of the Acceptance Certificate of the Kapsch Software in accordance with the Contract and payment by Licensee to Kapsch of all amounts owed and payable to Kapsch under the Contract (the "Effective Date"). This License Agreement shall remain in effect until such time as it may be

terminated by either party in accordance with this License Agreement. Any use of the Kapsch Software before the Effective Date for the purposes of testing and commissioning, shall be on a temporary license basis only.

**4. Location of Use**

The Kapsch Source Code (including all copies thereof) shall only be stored and used at Licensee's location(s) specified in the attached Schedule "B" - Software Product Schedule or such other locations of Licensee as may be agreed to from time to time in writing by Kapsch in its sole discretion ("Authorized Facilities"). Licensee shall mark any removable storage media containing copies of the Kapsch Source Code (in whole or part) or documentation (if applicable) with a notice indicating that the software or information contained therein is the property of Kapsch.

**5. Kapsch Source Code**

Licensee acknowledges and agrees that title and all interests and rights of ownership in and to the Kapsch Software and Kapsch Source Code, including and resulting object code and documentation, all copies in any form of all or any part thereof, and all intellectual property rights with respect thereto, are and shall remain with, and shall be the sole and exclusive property of, Kapsch.

Neither Licensee nor any other person or entity shall acquire any interest in the Kapsch Source Code, except for Licensee's right to use as specifically set forth in this Agreement.

Kapsch acknowledges that Licensee shall own all right, title, and interest in and to any modifications it makes to the Kapsch Source Code (the "Licensee Modifications"). Such ownership is at all times subject to the ownership by Kapsch of the underlying Kapsch Source Code and the requirement that any distribution of or access to the Licensee Modifications be in accordance with the limitation on distribution provisions set forth in this License. With respect to the Licensee Modifications, Licensee grants a perpetual, royalty-free, irrevocable and non-terminable, fully paid-up, transferable and assignable, non-exclusive, worldwide right and license to Kapsch to the Licensee Modifications.

**6. Documentation**

If the applicable box labeled "yes" on the Software Product Schedule is marked, Licensor will provide Licensee with applicable documentation for the Kapsch Source Code. Otherwise, Kapsch will not provide any documentation for the Kapsch Source Code. Any documentation provided by Kapsch shall only be used by Licensee for its internal Business Use with respect to its use and modification of the Kapsch Source Code as permitted under this Agreement.

**7. Distribution Limitation**

Except as expressly provided, in no case shall Licensee publish, disseminate, distribute, disclose, or otherwise make available the Kapsch Software, Kapsch Source Code, Documentation or Licensee Modifications to any third party without the prior written consent of Kapsch. Notwithstanding the foregoing, Licensee may make the Kapsch Source Code available to third parties working on the Kapsch Source Code for the sole benefit of Licensee, provided each such third party:

- (i) has a need to access the Kapsch Source Code in order to perform their responsibilities for Licensee, and

- (ii) has entered into a written confidentiality agreement with Licensee which contains language that expressly requires such third party to keep the Kapsch Source Code in strict confidence and not use the same for the benefit of any party other than Licensee; and
- (iii) the Kapsch Source Code remains at all times at the Authorized Facilities.

**8. Technical Support**

Kapsch does not represent that the Kapsch Source Code is error free. Licensee acknowledges and agrees that it shall be solely responsible for its use and modification of the Kapsch Source Code as delivered by Kapsch under this Agreement (including installation and compilation of the same and configuration, implementation, and operation of any resulting object code). Licensee may request technical support with respect to understanding the Kapsch Source Code, which shall be provided for under the terms and conditions of the Contract. With respect to foregoing and in particular assisting Licensee with understanding the operation of the Kapsch Source Code, Licensee acknowledges that such assistance will only be provided to the employees of Licensee and/or contractors of Licensee who have been engaged by Licensee, who are permitted to access the Kapsch Source Code in accordance with this License.

**9. Non Disclosure and Security**

Licensee acknowledges and agrees that all information with respect to the Kapsch Software, Kapsch Source Code or Documentation is the proprietary and valuable property of Kapsch ("Confidential Information"). If there is an unauthorized disclosure, breach or anticipated breach of the Confidential Information by Licensee, Kapsch reserves the right to pursue any and all legal remedies available to it under the laws of the State of New Hampshire.

**10. Termination**

Notwithstanding the provisions of Article 2: *License* herein; in the event:

- (i) Licensee substantially breaches or fails to observe or perform any of the obligations of Licensee set out in this License Agreement, and such breach or failure has not been corrected within ten (10) days of Licensee receiving written notice of same from Kapsch; or
- (ii) Licensee makes an assignment for the benefit of creditors, or a petition in bankruptcy is filed by or against Licensee and is not discharged within thirty (30) days; or
- (iii) proceedings for the appointment of a receiver for Licensee are commenced and not discontinued within thirty (30) days; then

Kapsch shall have the right to terminate this License Agreement upon further notice to Licensee. Upon termination of this License Agreement by Kapsch as specified above, Licensee shall, within thirty (30) days either return the Kapsch Software and all copies to Kapsch or certify to Kapsch that the original Kapsch Software and all copies have been destroyed.

**11. Representations and Warranties**

KAPSCHPROVIDES THE KAPSCHSOURCE CODE "AS IS, WITH ALL FAULTS" AND KAPSCHDISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL, OR WRITTEN) WITH RESPECT TO THE KAPSCHSOURCE CODE, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY

PARTICULAR PURPOSE; WARRANTIES ARISING FROM A COURSE OF DEALING, TRADE USAGE, OR TRADE PRACTICE; AND ANY AND ALL WARRANTIES OF NON-INFRINGEMENT AND TITLE.

In the event any modifications are made to the Kapsch Source Code by Licensee, Licensee acknowledges and agrees that Licensee shall thereafter be solely responsible for the maintenance and support of the Kapsch Software, including documentation. The making of such modifications to the Kapsch Source Code will void any warranty provided under the Contract by Kapsch and assistance may only be provided by means of technical support as described in Article 8.

**12. Assignment**

Neither party shall assign this License Agreement without the written consent of the other, which consent shall not be unreasonably delayed or withheld.

**13. Intellectual Property**

(a) Provided that the Kapsch Software is used in the scope contemplated by this License Agreement, Kapsch will indemnify and hold harmless, at its expense, any action or proceeding brought against Licensee to the extent that it is based on a claim that any part of the Kapsch Software, or their use as contemplated in the Contract Documents, infringes any copyrights, licenses, trademarks, patents or other proprietary rights. Licensee shall promptly notify Kapsch in writing of any infringement action or proceeding that has been brought or threatened of which it is aware. Kapsch will settle or defend the action and pay the costs and damages awarded in any action or proceeding, both Kapsch and Licensee shall participate in the defense of any action and all negotiations for settlement or compromise in connection therewith. Kapsch shall also do all things necessary, including the payment of money, to prevent the Work or components thereof, or its use being delayed by injunction or other reason. In the event that a final injunction is obtained against Licensee's use of any part of the Kapsch Software by reason of infringement of a foregoing proprietary right, or if in Kapsch opinion the Kapsch Software is likely to become the subject of a claim for such infringement, Kapsch shall at its option and expense, either (i) procure for Licensee the right to continue using the Kapsch Software; or (ii) replace or modify the Kapsch Software so that it becomes non-infringing;

(b) Kapsch shall not have any liability to Licensee under any provision of this section for any patent or copyright infringement if the claim is based upon Licensee's use of the Kapsch Software in combination with any equipment or device not made by or previously approved by Kapsch or in any manner for which the Kapsch Software was not designed.

**14. Indemnity and Limitation of Liability**

(a) Kapsch shall defend, indemnify and save harmless Licensee, its employees, officers and agents, from and against any and all awards, judgment, costs and expenses, including legal fees arising out of or connected with any claims, demands, causes of action or suits of whatsoever nature asserted against Licensee by any party, resulting from loss, injury, property damage or death to such a party and that has been caused by the breach of contract, negligence or willful misconduct of Kapsch, its employees or agents, whether before or after delivery of the Kapsch Software provided under this License Agreement, except to the extent such loss, injury, damage or death is

caused by the breach of contract, negligence or willful misconduct of Licensee, its employees or agents.

- (b) In no event shall either party be liable for indirect, special, consequential, incidental, punitive or exemplary damages, in connection with Licensee's use of the Kapsch Software, regardless of the form or nature of the cause of action (whether for breach of contract, breach of warranty or in tort) and regardless of whether advised of or aware of the possibility of such damages.

**15. Notice**

Any statement, notice, approval, demand or request, required, permitted or agreed to be delivered, given, made or served by either party hereunder, shall be sufficiently delivered, given, made or served if (i) in writing and signed by the party delivering, giving, making or serving it and (ii) mailed by certified mail, return receipt requested, addressed to the other party as follows:

To Kapsch:                   Kapsch TrafficCom Transportation NA, Inc.  
8201 Greensboro Drive, Suite 1002  
McLean, VA 22102

Attention: Legal Counsel

To Licensee:                Department of Transportation  
Bureau of Turnpikes  
36 Hackett Hill Road  
Hooksett, NH 03106  
Tel: (603) 485-3806  
Fax: (603) 485-2107

or to such other address as Kapsch and Licensee, respectively, may from time to time designate by giving notice thereof in writing. Service and delivery shall be complete upon such mailing except in the case of a notice to change an address in which case service and delivery shall be complete when the notice is actually received by the addressee.

**16. Severability**

In the event that any provision set out in this License Agreement is determined by a court of competent jurisdiction to be unenforceable and/or void, that provision shall be deemed to be severed and the License Agreement shall be read and understood as if that provision did not form a part thereof.

**17. Survival**

The obligations set out in Section 5: *Kapsch Source Code*, Section 9: *Non-Disclosure and Security* and Section 10: *Termination* of this License Agreement shall survive termination of this License Agreement until the parties hereto mutually agree in writing to their release.

**18. Waiver**

No delay or failure of Kapsch in exercising any right under this License Agreement and no partial or singular exercise thereof is deemed to be or constitutes a waiver of the right or any other right. Any consent by Kapsch or any waiver of or breach of any express or implied term of the License Agreement does not constitute consent to or a waiver of or excuse any subsequent or other breach.

**19. Governing Law**

This License Agreement shall be governed by the laws of the State of New Hampshire, exclusive of its choice of law rules, and the parties attorn to the non-exclusive jurisdiction of the courts thereof.

**20. Enurement**

All covenants, License Agreements and conditions in this License Agreement are binding upon and enure to the benefit of the parties and their successors and permitted assigns.

**21. Entire License Agreement**

This License Agreement and the Contract contain the entire Agreement with respect to the subject matter as of the date of this License Agreement and supersede all prior proposals, License Agreements, understandings and negotiations, whether oral or written, of the parties with respect to the subject matter of this License Agreement.

**ATTACHMENT "B"**  
**SOFTWARE PRODUCT SCHEDULE**

1. Kapsch Software:

<b>Kapsch Product</b>	<b>Version</b>	<b>Product Type</b>	<b>Description</b>
APEX Lane Software	2.2.11	Source	Host Client
APEX Plaza Software	1.20	Source	Host Client
APEX Host Software	1.4.4	Source	Database
Kapsch ROMS	1.1.0.1 3.2.0	Source	Client Engine
Kapsch ISC Software		Source	Host Client
Kapsch OCR Software		Source	Host Client
E-Transit DSAS Software		Source	Client Engine

2. Facility/Facilities of Licensee: This Agreement is for all NHDOT Turnpike facilities (existing or new) for Open Road Tolling application, as long as Kapsch is implementing and maintaining the system and lanes. If Kapsch is not implementing or maintaining the system and/or lanes, NHDOT will be subject to licensing fees at Kapsch's current rate at the time the license granted.

3. Documentation:          X   [Yes]           [No]

4. Additional License Fee:        \$0.00