

**AMENDMENT NO. 5 TO COMPREHENSIVE DEVELOPMENT AGREEMENT**  
**(North Tarrant Express Concession CDA)**

THIS AMENDMENT NO. 5 TO COMPREHENSIVE DEVELOPMENT AGREEMENT ("Amendment") is made as of 10-18, 2012, by and between NTE MOBILITY PARTNERS LLC ("Developer") and THE TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT").

Developer and TxDOT entered into that certain Comprehensive Development Agreement for a Concession North Tarrant Express Facility dated June 23, 2009 (as amended, the "CDA").

TxDOT and Developer have agreed upon certain modifications and clarifications of the CDA provisions concerning the payment and performance security to be provided in connection with the Developer's System Integration Agreement.

NOW, THEREFORE, for good and valuable consideration and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Developer and TxDOT hereby agree as follows:

1. Definitions. All capitalized terms used but not defined in this Amendment have the respective meanings set forth in the CDA.
2. Amendment of Section 16.2 of the CDA. Section 16.2 of the CDA is hereby amended by adding the following as a new Section 16.2.8:

16.2.8 Security for System Integration Work

Developer shall obtain payment and performance security for the Work performed pursuant to a System Integration Agreement between Developer and Kapsch TrafficCom IVHS Inc. ("System Integration Security"). The System Integration Security may be composed of a combination of P&P Letter of Credit, payment and performance bonds, and/or a parent guaranty or other corporate guaranty, all of which shall be in form and content acceptable to TxDOT, and which shall be equal in the aggregate to 100% of the amount of the Secured Work to be performed under the System Integration Agreement; provided, however, that for purposes of determining the System Integration Security amount, the Secured Work amount shall not include (a) routine maintenance including training, licensing and preparation of the manuals needed for operation activities; (b) design services;(c) project management planning services;(d) financing obligations; or (e) preliminary studies. Separate security equal to at least 10% of the System Integration Security amount shall be obtained by the Developer prior to releasing the System Integration Security, and shall remain in place for the duration of any warranty period under the System Integration Agreement.

3. Effectiveness of CDA Documents. Except as specifically amended hereby, the provisions of the CDA Documents (including all prior written amendments thereto) are hereby confirmed and remain in full force and effect without change.
4. Binding Effect of Amendment. This Amendment is entered into pursuant to Section 24.3 of the CDA, and shall be valid, effective and enforceable notwithstanding Section 24.13 of the CDA or any similar provision in any other CDA Document declaring that the CDA Document constitutes the sole, integrated agreement of the Parties.

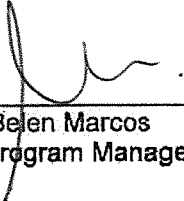
5. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date referenced above.


**Developer**

**NTE MOBILITY PARTNERS LLC**

By:   
Name: Ms. Belen Marcos  
Title: CEO/Program Manager

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By:   
Name: Phil Wilson  
Title: Executive Director

*Russell L. Zapata  
CPPD*

VIA DHL  
Mr. Ed Pensock, Jr.  
Texas Department of Transportation  
Texas Turnpike Authority Division  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701  
USA

Date 2012 09 10/UKP, tli

[ulrike.klemm-poettinger@kapsch.net](mailto:ulrike.klemm-poettinger@kapsch.net)  
[tanja.lichtneckert@kapsch.net](mailto:tanja.lichtneckert@kapsch.net)

**Parent Guarantee – NTE Mobility Partners LLC**



Dear Mr. Pittman,

Please find enclosed the original signed Parent Guarantee dated September 05, 2012.

Kind regards

  
**Kapsch TrafficCom AG**  
Tanja Lichtneckert  
Assistant

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## PARENT GUARANTY

This Parent Guaranty ("**Parent Guaranty**") is made effective as of Sep 5, 2012, and is made by Kapsch TrafficCom AG ("**Guarantor**"), a corporation (*Aktiengesellschaft*) validly existing under the laws of Austria, having its principle headquarters located at Am Europlatz 2, 1120 Vienna, Austria, in favor of the following: NTE Mobility Partners LLC ("**Developer**"), having its principal place of business at 9001 Airport Freeway, Suite 600, North Richland Hills, Texas, 76180.

- I. WHEREAS, Developer has entered into a certain Comprehensive Development Agreement dated June 23, 2009 (the "**CDA**"), in which the Texas Department of Transportation ("**TxDOT**") granted Developer the exclusive right, and Developer accepted the obligation, to finance, develop, design and construct the North Tarrant Express and all related structures and improvements as further defined in the CDA as the "**Facility**;" and
- II. WHEREAS, the CDA grants Developer the right to enter into a contract with a third party for management, direction, supervision, or performance of various aspects of the development and operation of the Facility under the CDA; and
- III. WHEREAS, Developer has procured that KapschTrafficCom IVHS Inc. ("**System Integrator**"), and System Integrator has agreed, to provide certain services required under the CDA, in each case on and subject to the terms of the System Integration Agreement (the "**System Integration Agreement**"); and
- IV. WHEREAS, Developer has agreed to accept, act in reliance upon, and to execute such System Integration Agreement subject to and in consideration of receiving this Parent Guaranty from the Guarantor, guaranteeing the obligations of System Integrator under the System Integration Agreement; and
- V. WHEREAS, Guarantor hereby agrees to guarantee the performance and/or satisfaction of the duties and obligations of System Integrator under the System Integration Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby covenants and agrees as follows:

### SECTION 1 INTERPRETATION

Capitalized terms used in this Parent Guaranty but not otherwise defined herein have the meaning specified in the System Integration Agreement.

### SECTION 2 GUARANTY

#### 2.1 Guaranty of Obligations under Agreement

Guarantor irrevocably and unconditionally, guarantees to Developer the payment and performance in full when due of all obligations, agreements and undertakings of System Integrator under the System Integration Agreement but within the limits set forth for the

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Parent Guaranty in section 4.4.a) of the Agreement (such obligations hereinafter collectively referred to as the "**Guaranteed Obligations**") without any obligation on the part of Developer to provide particular collateral. In the event that System Integrator fails to pay or perform in full when due for any reason other than as permitted under the System Integration Agreement (including, without limitation, the liquidation, dissolution, receivership, arrangement, composition or readjustment of, or other similar proceedings affecting the status, existence, assets or obligations of System Integrator) any of the Guaranteed Obligations, Guarantor shall pay and perform the same as stated in the System Integration Agreement, and at the place and otherwise in the manner required by the System Integration Agreement. This Parent Guaranty is an absolute, present and continuing guarantee of payment and performance and not collection and is not contingent upon the prior, good faith attempt by Developer to collect directly from System Integrator any unpaid amounts due; however Developer shall make a prior, good faith attempt to enforce performance by System Integrator under and within the parameters of the terms and conditions of the Agreement.

2.2 The Guaranteed Obligations shall be guaranteed by this Parent Guaranty notwithstanding that the entering into of the System Integration Agreement shall be in excess of the powers of System Integrator or of its officers, directors or agents or purporting to act on its behalf, or be in any way irregular or defective.

### 2.3 Guarantor Defenses

Notwithstanding any other provision of this Parent Guaranty, the liability of the Guarantor to Developer under this Parent Guaranty shall not be in excess of the liability of System Integrator to Developer as stated under the System Integration Agreement, and Guarantor shall have all the contractual protections, limitations, waivers, exclusions and rights that System Integrator has under the System Integration Agreement, and in particular, may assert as a defense to any claim by Developer for payment or performance hereunder in respect of any claim by Developer against System Integrator under the System Integration Agreement (a "**System Integrator Claim**"), any defense, claim, set-off or deduction which System Integrator could have asserted in respect of such System Integrator Claim other than any such defense, claim, set-off or deduction available to System Integrator under any bankruptcy, reorganization, insolvency, readjustment of debt, suspension of payments, dissolution, liquidation or similar law in any proceeding thereunder against System Integrator. Guarantor shall be entitled to the benefits of any modification of, amendment to, waiver of or consent to departure from the System Integration Agreement to the same extent, if any, that System Integrator would have been entitled to such benefits.

### 2.4 Amendments

The Guarantor agrees that Developer and System Integrator may modify, amend and supplement the System Integration Agreement and that Developer may delay or extend the date on which any act must be performed by System Integrator thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Parent Guaranty, notwithstanding any such act by Developer.

2.5 TxDOT

Guarantor acknowledges and agrees that TxDOT shall also constitute a guaranteed party under this Parent Guaranty, with the same protections and rights of notice, enforcement and collection as are available to Developer hereunder.

**SECTION 3 MISCELLANEOUS**

This Parent Guaranty shall remain in full force and effect until the payment in full of all sums payable hereunder or by System Integrator under the System Integration Agreement and performance in full of all obligations of Guarantor hereunder or of System Integrator in accordance with the terms and conditions of the System Integration Agreement. The obligations of Guarantor under this Parent Guaranty shall remain in full force and effect irrespective of any amendment or modification of or addition or supplement to or deletion from any of the terms of the System Integration Agreement. For so long as this Parent Guaranty is in effect, the obligations of Guarantor hereunder shall be assumed by any successor to the business or operations of Guarantor, whether by merger or sale or transfer of assets, and the Concession Companies shall be entitled to enforce this Parent Guaranty against such successor.

**SECTION 4 GOVERNING LAW, JURISDICTION, SERVICE OF PROCESS**

This Parent Guaranty shall be governed by the laws of the State of Texas without regard to the conflict of laws principles thereof. Jurisdiction and venue for any action brought to enforce this Parent Guaranty or relating to the relationship between either of the Parties shall rest exclusively in the state and federal courts seated in Travis County, Texas, and Guarantor acknowledges and accepts personal jurisdiction in Travis County for such specific purposes under this Parent Guaranty.

IN WITNESS WHEREOF, Guarantor has duly executed this Parent Guaranty the date and year first herein written.



Kapsch TrafficCom AG  
Am Europlatz 2 | 1120 Vienna

By: [Signature] [Signature]  
Name: Dr. Johann Bohn Ulrike Klemm-Pöttinger  
          Prokurist

Title: FINANCE