OPERATIONS PERIOD NON-COMPLIANCE POINTS TABLES

Element is defined as the individual non-compliant category as listed below in the table. Each element has a corresponding Level of Severity as also indicated in Table 11-1 of the Agreement. These elements are indicated by the 50 numerical identifiers.

Cure Period is defined as the amount of time the Developer has to commence and remedy the specific element non-compliant condition. In the event the Developer fails to remedy the non-compliant condition within the cure period, the accumulation of uncured points and any associated liquidated damages will increase in accordance with Table 11-1 of the Agreement and a new cure period will commence. Continual failure to remedy the non-compliant condition over subsequent consecutive cure periods will ultimately accrue to the maximum amount of uncured non-compliant points and liquidated damage values.

Interval of Recurrence is defined as the period of time over which the Developer must demonstrate compliance and not have a recurrence of the same non-compliant condition that was originally noted as being non-compliant. In the event the Developer breaches the Interval of Recurrence, a new cure period will commence for the non-compliant condition causing the breach of the Interval of Recurrence. Subsequent breaches of the Interval of Recurrence will cause uncured non-compliant points and associated liquidated damages to accrue from the previous level of breach.

Cure Period Time commences from the moment of Department notice to the Developer of the non-compliant condition through the period indicated for the specific element. Excluding elements with hourly values, cure periods that expire after 5:00 P.M. EST will be extended to 10:00 A.M. the following day.

Impact of Accumulated Non-Compliance Points

Total Cumulative Number of Uncured Points	Total Cumulative Number of Cured and Uncured Points*	Implications
30	135	Increased Monitoring by the Department
45	200	Remediation Plan to be submitted to the Department
75	245	The Department may exercise its rights under § 19.01 of the Agreement

*Cumulative Non-Compliance points are measured on a 365-day rolling period.

Virginia Department of Transportation   - 1 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
1.	Operations	Systems Control	Technical Requirements § 1.11.2	The Developer fails to relinquish control to the Department of nominated ITS field devices within 10 minutes of receiving such request from an Authorized Officer of the Department.	C	N/A	30 Days
2.	Operations	Work Zone Management	Technical Requirements § 1.9.2	The Developer fails to meet requirements of IIM-LD-241 relative to work zone safety, management, Maintenance of Traffic and detour routes for regular maintenance during operations.	C	N/A	15 Days
3.	Communications	Public Information	Technical Requirements § 2	The Developer does not regularly include in its marketing and public relations materials information about how HOV users can access the facility and the HOV information is not approved by the Department prior to its public release.	A	7 Days	30 Days
4.	Communications	Public Information	Technical Requirements § 2.1.1	The Developer issues information to the public or in press releases whether through variable message signs or other means that is factually incorrect.	C	N/A	30 Days
5.	Operations	Information Sharing	Technical Requirements Various Sections	The Developer fails to transmit the following to the Department's Northern Virginia Public Safety Traffic Operations Center: (1) incident management data; (2) real time speed and volume data for the Express Lanes; and (3) streaming video from CCTV cameras with a view of the Express Lanes. The minimum refresh rates for such data transmissions shall be pursuant to the Technical Requirements.	A	5 Days	30 Days
6.	Inspections	Qualification of Inspectors	Technical Requirements § 4.2	The Developer fails to have all inspectors certified pursuant to the Department's Standards and Specifications.	A	14 Days	30 Days
7.	Inspections	Quality of Inspection	Technical Requirements § 4.2	The Developer fails to identify material defects in the inspection reports, life cycle maintenance plan, or work currently undertaken.	B	3 Days	15 Days

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
8.	Inspections	Quality of Inspection	Technical Requirements § 4.2	The Developer fails to include identified material defects to be repaired in the Developer's annually recurring maintenance and repair program.	B	14 Days	30 Days
9.	Level of Service	Degradation Assessment	Technical Requirements § 4.4.4	The Developer fails to manage appropriately the dynamic tolling mechanism to ensure the level of service of the I-66 Express Lanes Project does not become degraded as required by Law. In addition and to be measured separately, upon receiving notice of a problem with the dynamic tolling mechanism, the Developer fails to submit a rectification plan to the Department for approval.	B	7 Days	15 Days
10.	Maintenance	Performance Requirements	Technical Requirements § 4.5	The Developer fails to meet the performance requirements for each asset as defined in Attachment 4.5 of Exhibit C as measured in cycles adopted in the industry for each asset.	C	N/A	30 Days
11.	Maintenance	Performance Requirements	Technical Requirements § 4.5	The Developer fails to act in accordance with Attachment 4.5 of Exhibit C with regard to responding to safety hazard issues	C	N/A	15 Days
12.	Maintenance	Performance Requirements	Technical Requirements § 4.4.12	The Developer fails to perform snow and ice removal of the Express Lanes in accordance with the Severe Weather Plan as part of the O&M Plan.	B	2 Days	30 Days
13.	Operations	Incident Management	Technical Requirements § 4.4.7	The Developer fails to achieve an incident response time in accordance with the approved Operations and Maintenance Plan.	C	N/A	30 Days
14.	Project Management	Project Plans	Technical Requirements § 4.4.7, § 4.4.9 and Attachment 1.3	The Developer fails to produce, submit for approval, update as necessary, and comply with the Operations and Maintenance Plan.	A	30 Days	15 Days

Virginia Department of Transportation   - 3 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
15.	Tolling	Transactions	Technical Requirements § 4.7.3 B.	The Developer requests payment from an account not on the list of current active tags transmitted by the Department (to be determined on a per transmission basis).	C	N/A	15 Days
16.	Tolling	Tolling Requirement	Technical Requirements § 4.7.3 D.	The Developer transmits duplicate transactions or incorrect toll amounts to the Customer Service Center (CSC) (to be determined on a per transmission basis).	C	N/A	15 Days
17.	Tolling	Tolling Requirement	Technical Requirements § 4.7.3 F.	Upon notification of a duplicate transaction or an incorrect toll amount on a per transmissions basis, the Developer fails to reconcile or audit the data transmission within three (3) Business Day to identify any and all other duplicate transactions or incorrect toll charges that may have occurred (to be determined on a per transmission basis).	B	3 Days	15 Days
18.	Tolling	Tolling Requirement	Technical Requirements § 4.7.3 G.	Upon identification, the Developer does not transmit the correct information to the CSC for rectification including appropriate correspondence and crediting/debiting of accounts within five (5) days.	A	5 Days	15 Days

Virginia Department of Transportation   - 4 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
19. Tolling	Transactions	Technical Requirements § 4.7.3 H.	Developer transmits tag reads to the CSC from vehicles traveling in the general purpose (GP) lanes. Following receipt of two or more complaints within thirty (30) days of tag reads from vehicles traveling in the GP lanes emanating from a single toll point the Developer shall investigate the complaints. In the event that a cross-read occurred or reasonable doubt exists as to whether a cross-read occurred, the Developer shall, within fifteen (15) days of receipt of such second complaint within a thirty (30) day period, prepare correspondence that can be sent to all customers who have made such a complaint regarding the erroneous GP lane reads. The Developer shall provide information to the public outlining the issue with reads from tags in the GP lanes within fifteen (15) days of the receipt of such second complaint within a thirty (30) day period.	C	N/A	45 Days
20. Tolling	Tolling Requirement	Technical Requirements § 4.7.3 I.	Within seven (7) days of receiving notice that an incorrect toll amount has been charged (and provided that customer information has been provided) and that the incorrect charge has been validated, the Developer fails to provide the CSC correspondence to be sent to the customer informing the customer that his or her account will be credited for errors in excess of $0.25 (to be determined on a per transmission basis).	B	7 Days	30 Days
21. Tolling	Tolling Requirement	§ 4.7.3 J.	Within three (3) days of discovery or notice from the Department that an incorrect toll has been charged, the Developer fails to submit a plan to the Department for approval to rectify the billing problem.	B	3 Days	30 Days

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
22.	Tolling	Signage	Technical Requirements § 4.7.3 K.	Upon notification of the display of an incorrect toll amount, the Developer fails to reconcile or audit the data transmission within one (1) Business Day to identify any and all other customer accounts that may have been impacted by the incorrect signage (to be determined on a per transmission basis).	B	1 Day	15 Days
23.	Tolling	Tolling Requirement	Technical Requirements § 4.7.3 F.	The Developer shall ensure that all contiguous tolling detection points in a single travel direction are incorporated into a single trip record 99.95% of the time.	B	14 Days	30 Days
24.	Tolling	Rating Adjustments	Technical Requirements § 4.7.3 N.	Any trip requiring a rating adjustment after being sent to the CSC for account posting shall be adjusted using the automated corrections interface identified by the CSC and such adjustment shall be initiated within forty-eight (48) hours of notification or discovery. Discretionary adjustments to trip pricing will be initiated within seven (7) days.	B	14 Days	30 Days
25.	Tolling	Transactions and Revenue Reports	Technical Requirements § 4.7.3 O.	The Developer shall provide monthly reports to the CSC regarding toll transactions and revenue to include: ETC transaction and revenue with HOV and non-revenue transaction breakout (transponder and license plate), and violation transactions and associated toll revenues.	A	30 Days	30 Days
26.	Tolling	Privacy	Technical Requirements § 4.7.3 L.	The Developer fails to comply with standards applicable to the retention of and use of customer records pursuant to applicable Law, including § 33.2-504 of the Code of Virginia.	C	N/A	60 Days
27.	Customer Service	Customer Outreach Program	Technical Requirements § 4.7.4 A.	The Developer shall develop a customer outreach and education program relating to facility operations for the Department's review and approval six (6) months prior to the commencement of tolling operations.	A	5 Days	N/A

Virginia Department of Transportation   - 6 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
28.	Customer Service	Public Information	Technical Requirements § 4.7.4 B.	Where contact details of customers have been provided, the Developer shall respond to customer inquiries and complaints about the Express Lanes within seventy-two (72) hours.	C	N/A	30 Days
29.	Customer Service	Answering Customer Calls	Technical Requirements § 4.7.4 C.	The Developer shall answer customer phone calls within 45 seconds 90% of the time with a live customer service representative. Reports showing call response performance shall be made available to the Department on a monthly basis.	B	7 Days	15 Days
30.	Customer Service	CRM Tool	Technical Requirements § 4.7.4 D.	The Developer shall implement a Customer Relations Management tool that tracks, at a minimum, customer interaction and resolutions by description, date and time.	B	15 Days	N/A
31.	Customer Service	Customer Service Assessment	Technical Requirements § 4.7.4 E.	The Developer shall annually perform a third party customer service assessment review and certification. Results of the review shall be provided in a report to the Department along with any necessary plans to address identified deficiencies.	B	30 Days	N/A
32.	Customer Service	Customer Service Call Recording	Technical Requirements § 4.7.4 F.	The Developer shall provide customer service call recordings upon Department request when approved by the affected customer.	A	7 Days	30 Days
33.	Customer Service	Mobile Application	Technical Requirements § 4.7.4 G.	The Developer shall develop an application for all mobile phone operating systems that provide customer access to real-time toll pricing and Missed-a-Toll feature.	B	15 Days	N/A

Virginia Department of Transportation   - 7 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
34.	Violation Processes	Re-try Process	Technical Requirements § 4.7.5 A.	For a trip record associated with a transponder owned by the Commonwealth that is not accepted by the CSC due to insufficient account balances, the Developer shall attempt to re-process the trip record in accordance with Virginia statute or the current ETC agreement. Failure to process the trip record through the re-try process will result in one final attempt to process the trip record using the vehicle's license plate prior to proceeding to a violation remedy process.	B	3 Days	30 Days
35.	Violation Processes	Audited Fees	Technical Requirements § 4.7.5 C.	The Developer, if requested by the Department, shall provide an audited basis for all customer-related fees associated with a violation trip record that is in addition to the actual toll amount.	B	7 Days	30 Days
36.	Violation Processes	Incorrect Address	Technical Requirements § 4.7.5 D.	Any mailed notice that is returned to the Developer as a result of an incorrect address shall require a re-start of the respective process once the proper mailing address has been confirmed.	B	7 Days	30 Days
37.	Violation Processes	Record of Mailed Notices	Technical Requirements § 4.7.5 E.	The Developer shall maintain a record of all mailed notices initiated by the back office solution and delivered to the United States Postal Service.	B	7 Days	60 Days
38.	Violation Processes	Caching of Addresses	Technical Requirements § 4.7.5 F.	Any caching of address information related to a vehicle's license plate shall be refreshed every 30 days or in the event of returned mail, whichever comes first.	B	7 Days	30 Days
39.	Violation Processes	Database Accuracy	Technical Requirements § 4.7.5 G.	The Developer shall ensure that any incorrect information returned from a lookup database, including license plates that are systematically misidentified, can be flagged for manual handling to prevent continued incorrect notices being sent to customers.	B	7 Days	30 Days
40.	CA Obligations	Suspension of Tolls	CA § 5.04	The Developer fails to suspend tolls upon receipt of the Department's request which will be delivered in accordance with the Agreement.	C	N/A	90 Days

Virginia Department of Transportation   - 8 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
41.	CA Obligations	Updates to Financial Model	CA § 6.02	The Developer fails to provide the Department with an updated Financial Model within the following time frames: (i) 150 days within the end of the fiscal year; (ii) sixty (60) days after the occurrence of a compensation event; (iii) sixty (60) days after agreement for amendments to the Project; or (iv) concurrently with written notice of a proposed refinancing.	B	7 Days	N/A
42.	CA Obligations	Refinancing	CA § 7.08	The Developer fails to provide the Department with written notice of any proposed refinancing at least seventy-five (75) days, or such notice as possible in accordance with the Agreement, prior to the proposed date of closing of the refinancing along with supporting documents.	B	7 Days	60 Days
43.	CA Obligations	Annual Budget	CA § 9.07	The Developer fails to file annually with the Department an annual budget in the required form in accordance with the Agreement.	B	7 Days	N/A
44.	CA Obligations	Department Access and Inspection	CA § 10.03, § 18.07	The Developer fails to grant access to the Project Assets within forty-eight (48) Hours of receiving a request for such access from the Department, FHWA, and their respective authorized agents.	B	3 Days	30 Days
45.	CA Obligations	Discrimination	CA § 24.01	The Developer is found to have engaged in discriminatory employment practices which violate state or federal Law or the Developer admits to having engaged in such practices.	C	N/A	90 Days
46.	CA Obligations	Contracting	CA § 24.01	The Developer fails to include provisions in all of its subcontracts requiring its subcontractors to refrain from discrimination as described in § 24.01 of the Agreement.	C	N/A	90 Days
47.	CA Obligations	O&M Contractor	CA § 24.02 (d)	The Developer fails to seek approval from the Department before engaging an O&M Contractor other than the initial O&M Contractor identified in the Operations and Support Services Agreement as of the date of the Agreement.	B	7 Days	45 Days

Virginia Department of Transportation   - 9 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table

	Element	Description	§ Reference	Breach or Failure	Category	Cure Period	Interval of Recurrence
48.	CA Obligations	Contracting	CA § 24.02 (f)	The Developer enters into a subcontract with any Person (as defined by the Agreement) debarred or prohibited from participating in state or federally-funded projects or any Person who has been indicted, convicted, pled guilty, or pled *non contendere* to a violation of any Law (as defined by the Agreement) involving fraud, conspiracy, collusion, bribery, or any other act showing a similar lack of moral or ethical integrity.	C	N/A	90 Days
49.	CA Obligations	Contracting	CA § 24.02 (k)	The Developer enters into a contract or subcontract with an Affiliate (as that term is defined by the Agreement) without providing notice and obtaining consent from the Department (to the extent that such notice and consent is required by the Agreement).	A	30 Days	90 Days
50.	CA Obligations	Permit Fee	CA Exhibit J §1.1	The Developer fails to deliver audited calculations of the Permit Fee on or before 120 days following the end of each Agreement Year following the Service Commencement Date and continuing until 120 days following the end of the year in which the Term ends, or the termination of the Agreement.	B	14 Days	N/A
51.	CA Obligations	Permit Fee	CA Exhibit J §1.4	The Developer fails to deliver requested additional information or clarifications to audited calculations within thirty (30) days of receiving a request for such information from the Department.	B	14 Days	60 Days

Virginia Department of Transportation   - 10 -   Comprehensive Agreement
Transform 66 P3 Project   Exhibit U-2
Execution Version   Operations Period Non-Compliance Points Table