

EXHIBIT 21

NONCOMPLIANCE POINTS SYSTEM, PERSISTENT DEVELOPER DEFAULT AND MEASURES OF LIQUIDATED DAMAGES

1. Noncompliance Points System

The table attached as Attachment 1 to this Exhibit 21 identifies Developer failures and breaches that may result in the assessment of Noncompliance Points, the number of Noncompliance Points that may be assessed for each such failure or breach, and the cure period available to Developer for each such failure or breach, other than for Developer's failure to submit a deliverable by its due date.

2. Trigger Points for Persistent Developer Default and Uncured Noncompliance Points

2.1 A Persistent Developer Default under clause (a) of the definition thereof shall exist on any date (whether before or after the last Service Commencement Date) that:

(a) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 365-day period (including any period prior to the last Service Commencement Date) equals or exceeds the following:

(i) For any consecutive 365-day period ending prior to the last Service Commencement Date, and for any consecutive 365-day period entirely within an Upgrade construction period, 140;

(ii) For any consecutive 365-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, 140; and

(iii) For any other consecutive 365-day period, 100.

(b) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 1095-day period (including any period prior to the last Service Commencement Date) equals or exceeds the following:

(i) For any consecutive 1095-day period ending prior to the last Service Commencement Date, and for any consecutive 1095-day period entirely within an Upgrade construction period, 270;

(ii) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, but includes not more than 365 days outside such periods, 270;

(iii) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, but includes more than 365 and not more than 730 days outside such period, 250;

(iv) For any consecutive 1095-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction

period, but includes more than 730 and not more than 1094 days outside such periods, 225; and

(v) For any other consecutive 1095-day period, 200.

For purposes of this Section 2.1 only, Tier 1 Noncompliance Points shall be assessed at 100% of the assigned number of points, Tier 2 Noncompliance Points shall be assessed at 50% of the assigned number of points and Tier 3 Noncompliance Points shall be assessed at 0% of the assigned number of points.

2.2 A Persistent Developer Default under clause (b) of the definition thereof shall exist on any date (whether before or after the Operating Period commences) that the cumulative number of breaches or failures to perform, cured or uncured, within clause (b) of the definition of Persistent Developer Default during any consecutive 365-day period equals or exceeds the following:

(a) For any consecutive 365-day period ending prior to the last Service Commencement Date, and for any consecutive 365-day period entirely within an Upgrade construction period, 90;

(b) For any consecutive 365-day period a portion of which includes any days prior to the last Service Commencement Date or any days of an Upgrade construction period, 90; and

(c) For any other consecutive 365-day period, 60.

2.3 The number of cured Noncompliance Points that would otherwise then be counted under this Section 2 is subject to reduction in accordance with Section 17.3.6.2 of the Agreement.

2.4 TxDOT shall be entitled to immediate and automatic commencement of liquidated damages under Section 17.4.2.2 of the Agreement, without further notice, on any date that the number of Uncured Noncompliance Points equals or exceeds the following:

(a) On any date occurring prior to three months after the last Service Commencement Date, 50; and

(b) On any date occurring on or after three months after the last Service Commencement Date, 35.

3. Liquidated Damage Amounts

3.1 For Late Service Commencement and Late Final Acceptance

(a) Liquidated damages for late Service Commencement for all Project Segments shall equal \$50,000 per day for each day that the last Service Commencement Date is later than the Service Commencement Deadline, as the Service Commencement Deadline may be extended pursuant to this Agreement.

(b) [RESERVED]

(c) Liquidated damages for late Final Acceptance for any Project Segment shall equal \$7,000 per day for each day that the date of Final Acceptance is later than the applicable Final Acceptance Deadline as the Final Acceptance Deadline may be extended pursuant to this Agreement. Such \$7,000 per day amount shall apply separately to each Project Segment. In no event, however, shall the cumulative amount of liquidated damages on any given day for failure to achieve Final Acceptance Deadlines exceed \$14,000.

(d) If liquidated damages would accrue simultaneously for failure to meet the Service Commencement Deadline and any Final Acceptance Deadline, then only the liquidated damages for failure to meet the Service Commencement Deadline shall accrue.

3.2 For Single Noncompliance Point

Liquidated damages under Section 17.4.2.1 of the Agreement on account of the assessment of any single Noncompliance Point shall equal \$7,400 per point, subject to Sections 18.3.1.2 and 18.3.1.3 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.2 at 100% of the assigned number of points.

3.3 For Accumulated Uncured Noncompliance Points

Liquidated damages under Section 17.4.2.2 of the Agreement on account of the accumulation of assessed Uncured Noncompliance Points as provided in Section 2 above shall equal \$13,200 per day and shall continue as provided in Section 17.4.2.2 of the Agreement. For the avoidance of doubt, Tier 1, Tier 2 and Tier 3 Noncompliance Points shall be assessed under this Section 3.3 at 100% of the assigned number of points.

3.4 For Lane Rental Charges

(a) Subject to Sections 3.4(d) and (e) below, Lane Rental Charges shall be assessed for any period between the Operating Commencement Date and the applicable Service Commencement Date during which one or more General Purpose Lanes are closed beyond or have a width that is less than the minimum requirements set forth in Section 18.3.1 of the Technical Provisions.

(b) Lane Rental Charges shall apply to both scheduled and unscheduled occurrences. Lane Rental Charges shall be assessed for every quarter hour or part thereof. For the period between the Operating Commencement Date and the applicable Service Commencement Date, Developer shall report to the Independent Engineer on a daily basis any General Purpose Lane closures or reduced widths which give rise to Lane Rental Charges. Liquidated damages shall be applied according to Table 3.4.

Table 3.4 Lane Rental Charges

Number of General Purpose Lanes Closed Or Reduced In Width Below Minimum	Hourly Lane Rental Charge (Each Direction)			
	Period A	Period B	Period C	Period D
1	\$37,600	\$24,400	\$8,600	\$0
2	\$76,300	\$44,200	\$20,200	\$1,500
3	\$135,100	\$98,800	\$41,500	\$4,800
4	\$261,700	\$192,600	\$93,000	\$19,500

(c) The hours that apply to each period are as follows:

Period A: Monday through Thursday 6:00 a.m. – 9:00 a.m. and 3:00 p.m. – 8:00 p.m.; Friday 6:00 a.m. – 9:00 a.m. and 3:00 p.m. – 9:00 p.m.

Period B: Monday through Friday 9:00 a.m. – 3:00 p.m.

Period C: Saturday 10:00 a.m. – 7:00 p.m.; Sunday 12:00 noon – 8:00 p.m.

Period D: Monday 8:00 p.m. – Tuesday 6:00 a.m.; Tuesday 8:00 p.m. – Wednesday 6:00 a.m.; Wednesday 8:00 p.m. – Thursday 6:00 a.m.; Thursday 8:00 p.m. – Friday 6:00 a.m.; Friday 9:00 p.m. – Saturday 10:00 a.m.; Saturday 7:00 p.m. – Sunday 12:00 noon; Sunday 8:00 p.m. – Monday 6:00 a.m.

(d) Developer shall not be assessed Lane Rental Charges for rolling lane closures for the purpose of construction activities above operational General Purpose Lanes. In this context a rolling lane closure is defined as a lane closure of less than 15 minutes during the period of Period D provided that (i) the lanes are reopened such that queued traffic is dispersed and (ii) any rolling lane closures required on the main lanes of the Dallas North Tollway shall require the prior written approval of and coordination with NTTA.

(e) Developer shall only be required to pay to TxDOT Lane Rental Charges if any of the following clauses applies: (i) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D, if any, that exceeds \$15,000,000; (ii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B, if any, that exceeds \$3,000,000; or (iii) Developer shall be required to pay to TxDOT the portion of the cumulative Lane Rental Charges assessed during Period A and Period B, if any, to the extent that such assessment did not commence within Period C or Period D. To the extent that more than one such clause applies, Developer shall only be assessed Lane Rental Charges under one such clause. If the cumulative Lane Rental Charges assessed during Period A, Period B, Period C and Period D do not exceed \$15,000,000 or the cumulative Lane Rental Charges assessed during Period A and Period B do not exceed \$3,000,000, Developer shall not be entitled to receive any credit.

3.5 Adjustments

Each of the foregoing amounts of liquidated damages shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the amount be less than the amount in effect during the immediately preceding year.

ATTACHMENT 1 TO EXHIBIT 21

NONCOMPLIANCE POINTS TABLE

Assessment Categories for Non-Compliance Cure Periods and Assessment of Points

	Cure Periods (Sections 18.2.2.2 and 18.2.2.3)	Assessment of Noncompliance Points (Sections 18.3.1.6, 18.3.1.7 and 18.3.1.8)
A	Cure period shall be deemed to start upon the date Developer first obtained knowledge of, or first reasonably should have known of, the breach or failure. For this purpose Developer shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial notice to Developer, as described in <u>Section 18.2.2.2</u> of the Agreement.	Provided that the breach or failure is not cured, Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in <u>Section 18.3.1.6</u> of the Agreement.
B	Cure period shall be deemed to start from the date on which the breach or failure occurred, whether or not an initial notice has been delivered to Developer, as described in <u>Section 18.2.2.3</u> of the Agreement.	Noncompliance Points shall first be assessed on the date of the initial notification under <u>Section 18.2</u> of the Agreement (the start of the first cure period). Provided that the breach or failure is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in <u>Section 18.3.1.7</u> of the Agreement.
C	No cure period applicable	Noncompliance Points shall be assessed on the date of the initial notification under <u>Section 18.2</u> of the Agreement, as described in <u>Section 18.3.1.8</u> of the Agreement.

List of Noncompliance Items, Assessment Categories and Cure Periods

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
1	General	General Requirements	Comply with any Technical Provision Section entitled "General Requirement," except where provided elsewhere in this Attachment 1.	1	B	14 Days	Tier 2
2	General	Governmental Approval	Deliver to TxDOT prior to beginning construction any executed copy of a Governmental Approval the Developer obtained as required by Section 6.2.1 of the Agreement.	1	B	7 Days	Tier 2
3	General	Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity as required by Section 6.2.2 of the Agreement.	1	A	7 Days	Tier 2
4	General	Governmental Approval	Comply with the provisions of Section 6.2.5 of the Agreement with respect to Additional Properties outside the Project Right of Way.	1	B	30 Days	Tier 1
5	Project Management	Meetings	Comply with a meeting requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1.	1	C	None	Tier 2
6	General	Notification of breach	Notify TxDOT and Independent Engineer of the occurrence of any breach or failure specified in this Attachment in accordance with Section 18.2.1 of the Agreement.	2	C	None	Tier 1
7	General	TxDOT and Independent Engineer access	Comply with any reasonable request of the provisions of Section 9.3.1.3 or 9.3.3.3 of the Agreement with respect to cooperation with, and access for, TxDOT's Authorized Representative(s) and or Independent Engineer to the Project, Developer's Project offices and operations buildings, and Developer's data.	1	A	1 Day	Tier 1
8	General	TxDOT and Independent Engineer comments to Submittals	Respond to TxDOT's or the Independent Engineer's comments or objections or modify a Submittal in accordance with Section 6.3.7.2 of the Agreement.	1	A	7 Days	Tier 2
9	General	TxDOT Facilities	Comply with a requirement of Section 2.1.3 of the Technical Provisions.	1	A	7 Days	Tier 3
10	Financial	Reports	Deliver to TxDOT an update of the audit and opinion obtained from the independent model auditor that provided to TxDOT an opinion on suitability of the Base Case Financial Model, as required by Section 5.4.5 of the Agreement.	1	A	7 Days	Tier 2
11	Insurance	Verification of coverage	Provide TxDOT with a copy of any insurance policy or evidence of payment of any premium all in accordance with Section 16.1.2.4 of the Agreement.	1	A	21 Days	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
12	Contracting and Labor Practices	Adoption of written ethical policies	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 10.7 of the Agreement.	2	B	30 Days	Tier 2
13	Contracting and Labor Practices	Affiliates	Submit a copy of the proposed contract with an Affiliate in accordance with Section 10.5.2 of the Agreement.	1	B	7 Days	Tier 2
14	Contracting and Labor Practices	Compliance with DBE plan	Comply with the requirements of Section 10.9 of the Agreement with respect to the Disadvantaged Business Enterprise provisions.	2	A	30 Days	Tier 2
15	Contracting and Labor Practices	Disclosure of Contracts and Contractors	Provide TxDOT and the Independent Engineer with a list of all Contracts, Contractors, guarantees of Key Contracts and the guarantors with each monthly report required under this Agreement or the Technical Provisions in accordance with Section 10.1.1 of the Agreement.	1	B	7 Days	Tier 2
16	Contracting and Labor Practices	Notification of Contractors	Comply with a requirement of Section 10.1.2 of the Agreement.	1	B	14 Days	Tier 2
17	Project Management	Audit	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Section 9.1.7 of the Agreement.	1	B	7 days	Tier 1
18	Project Management	Construction Quality Management	Construct the Works in accordance with the requirements of Section 2.2.10 of the Technical Provisions.	1	A	30 Days	Tier 1
19	Project Management	Contractors	Cause each of its Contractors (other than NTTA) at every level to comply with the applicable requirements of the approved Project Management Plan in accordance with Section 9.1.8 of the Agreement.	1	B	7 Days	Tier 2
20	Project Management	Contractors	Comply with the requirements of Section 10.2.1 of the Agreement.	4	A	7 Days	Tier 2
21	Project Management	Coordination	Comply with a requirement of any Technical Provision Section, entitled "Administrative Requirements" except where provided elsewhere in this Attachment 1.	1	B	7 Days	Tier 2
22	Project Management	Deliverables	Prepare, implement, maintain, update or submit a Plan, a report, a deliverable or a submittal required by, or compliant with, any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	1	B	7 Days	Tier 2
23	Project Management	Document Management	Manage documents in accordance with Section 2.1.2 of the Technical Provisions.	1	A	7 Days	Tier 2
24	Project Management	Inspection	Comply with a requirement of any Technical Provision Section or the Agreement with regard to inspection, except where provided elsewhere in this Attachment 1.	2	B	2 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
25	Project Management	ITS	Provide and maintain ITS interoperability over the Term of the Agreement and coordinate said ITS with the Electronic Toll Collection System (ETCS) such that the communication requirements of the ETCS are accommodated all in accordance with the requirements of Section 17 of the Technical Provisions.	1	B	90 Days	Tier 1
26	Project Management	Key Personnel	Comply with a requirement with regard to Key Personnel of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	14 Days	Tier 1
27	Project Management	Maintenance and inspection of records	Keep, maintain or make available to TxDOT and the Independent Engineer any book, record or document in accordance with Section 22.1.1, 22.1.2 or 22.1.3. of the Agreement.	1	A	7 Days	Tier 1
28	Project Management	Quality Management	Establish, maintain, update or comply with any requirement of a Quality Management Plan in accordance with Section 9.1 of the Agreement or Section 2.2 of the Technical Provisions.	2	A	7 Days	Tier 1
29	Project Management	Safety	Observe a requirement of the safety plan or to carry out any construction, operation or maintenance activity in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 2.7 of the Technical Provisions.	3	A	1 Day	Tier 1
30	Project Management	Safety	Comply with Section 24.3.4 of the Technical Provisions.	4	B	1 Day	Tier 1
31	Project Management	Schedule	Comply with a schedule requirement of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	7 Days	Tier 2
32	Project Management	Submission	Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance with Section 9.1.2 or 9.1.3 of the Agreement and Attachment 1 to the Technical Provisions.	1	B	14 Days	Tier 2
33	Project Management	Traffic Management	Provide a Lane Closure Notice in accordance with Section 18.2.1.3 of the Technical Provisions.	1	A	1 Day	Tier 3
34	Environmental Compliance	Air quality	Take measures to minimize or mitigate the effects of dust; or, within one hour adjust such measures; all in accordance with Section 4.7 of the Technical Provisions.	1	B	4 Hours	Tier 2
35	Environmental Compliance	CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Section 4.3 or 4.4 of the Technical Provisions.	2	A	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
36	Environmental Compliance	Contravention of Environmental Approvals	Follow the CEPP or any of its constituent parts for any work activity as required by Section 4.3 of the Technical Provisions.	1	B	1 Day	Tier 1
37	Environmental Compliance	Environmental Approvals	Comply with Section 4.2 of the Technical Provisions.	5	B	7 Days	Tier 1
38	Environmental Compliance	Mitigation	Comply with a requirement of Section 7.9.1 or 8.1.4 of the Agreement	3	B	7 Days	Tier 1
39	Environmental Compliance	Noise	Comply with Section 4.3.2 of the Technical Provisions with respect to noise.	1	B	1 Hour	Tier 1
40	Environmental Compliance	Notification	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 7.9.1 of the Agreement.	1	A	1 Day	Tier 1
41	Environmental Compliance	Property Access	Comply with Section 4.5 of the Technical Provisions.	1	A	4 Hours	Tier 1
42	Environmental Compliance	Public hearings	Organize a public hearing or meeting as required by Section 4.3 of the Technical Provisions.	4	A	30 Days	Tier 1
43	Utility Adjustments	Maintain service	Maintain a utility service fully operational in accordance with Section 6.4 of the Technical Provisions.	3	A	3 Days	Tier 1
44	Utility Adjustments	Record keeping	Maintain accurate records of utility work or to provide copies to TxDOT in accordance with Section 7.5.4.6 of the Agreement or Section 6.1.5 or 6.4.9 of the Technical Provisions.	1	A	7 Days	Tier 1
45	Utility Adjustments	Utility Information	Prepare and submit to TxDOT the utility information in accordance with Section 7.5.5 of the Agreement.	1	B	30 Days	Tier 1
46	Design and Construction	Construction Requirements	Comply with a construction requirement of any Technical Provision Section, except where provided elsewhere in this Attachment 1.	1	A	30 Days	Tier 1
47	Design and Construction	Construction warranties	Ensure extension of a third party warranty to TxDOT or failure to correct any defective Work that would void any such warranty all as required by Section 7.12.1 of the Agreement.	1	A	14 Days	Tier 2
48	Design and Construction	Design Requirements	Comply with a requirement of any Technical Provision Section, entitled "Design Requirements" except where provided elsewhere in this Attachment 1.	1	A	30 Days	Tier 1
49	Design and Construction	Haz-Mat	Comply with a requirement of Section 24.3.5 of the Technical Provisions	3	B	7 Days	Tier 1
50	Design and Construction	Implementation of Directive Letters	Implement a Directive Letter in accordance with Section 14.1.6 of the Agreement.	3	B	14 Days	Tier 1
51	Design and Construction	Land Surveys	Comply with Section 9 of the Technical Provisions except where provided elsewhere in this Attachment 1.	1	A	7 Days	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
52	Design and Construction	Punch list	Prepare, maintain or deliver a Punch List, or a modification thereto, to TxDOT and the Independent Engineer, all as required by Section 7.8.2.3 of the Agreement.	1	B	30 Days	Tier 2
53	Design and Construction	Records	Comply with a mapping or surveying requirement of Section 26.3.1, Section 26.3.2, Section 26.3.3 or Section 26.5.2 of the Technical Provisions.	7	C	None	Tier 1
54	Design and Construction	ROW (Generally)	Comply with a requirement of Sections 7.3 or 7.4 of the Technical Provisions.	7	A	7 Days	Tier 3
55	Design and Construction	Testing	Provide a test result or a report as required by Section 9.3.4 of the Agreement.	1	B	7 Days	Tier 2
56	Design and Construction	Traffic Management	Comply with a requirement of Section 18.4 of the Technical Provisions.	2	B	4 Hours	Tier 1
57	Tolling	Disclosure	Disclose a policy regarding privacy of Patron Confidential Information to Patrons in accordance with Section 8.8.8 of the Agreement.	1	A	7 Days	Tier 1
58	Tolling	Managed Lanes Speed	Gather vehicle speed data as set forth in Exhibit 4 to the Agreement, for every 3 hours or part thereof that such data is not gathered.	6	C	None	Tier 2
59	Tolling	Publicity of toll rates	Publicize and make available or otherwise provide the current or prevailing toll rate in accordance with Exhibit 4 to the Agreement.	2	C	None	Tier 1
60	Tolling	Toll pricing	Comply with the Toll Segment tolling methodology in accordance with Exhibit 4 to the Agreement, other than as provided elsewhere in this Attachment 1.	4	C	None	Tier 1
61	Tolling	Tolling Operations	Comply with a requirement of Section 21.3 or 21.5 of the Technical Provisions.	3	B	7 Days	Tier 1
62	Tolling	Toll discounts	Deliver a monthly report to TxDOT and/or Independent Engineer that includes: (i) for each valid transponder account holder that self-declares (or is otherwise identified) as an HOV or Motorcycle during Peak Periods during the HOV Discount Period, the date, time and amount of the undiscounted toll and a unique transaction identifier; and (ii) the total HOV discount for the month that is potentially eligible for reimbursement to Developer, all in accordance with the requirements of Exhibit 4 to the Agreement.	1	B	14 Days	Tier 1
63	Tolling	User privacy	Comply with Section 8.8.1 of the Agreement.	2	A	7 Days	Tier 1
64	Tolling	User privacy	Comply with Section 8.8.4 of the Agreement, other than as provided elsewhere in this Attachment 1.	2	A	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
65	Tolling	User privacy	Protect Patron Confidential Information as required by Section 8.8.4 of the Agreement with respect to one or more individuals in an isolated incident as opposed to a systematic or repetitive breach.	2	C	None	Tier 1
66	Operations and Maintenance	Access	Provide access to a system in accordance with Section 22.3.4 of the Technical Provisions	1	C	None	Tier 1
67	Operations and Maintenance	Accident reduction program	Implement an accident monitoring and reduction program in accordance with Section 19.2.3 of the Technical Provisions	2	B	14 days	Tier 1
68	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Element Category with a mean Asset Condition Score of less than 3.5 and greater than 2.	6	C	None	Tier 1
69	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Element Category with a mean Asset Condition Score of 2 or less and greater than 1.	9	C	None	Tier 1
70	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.	12	C	None	Tier 1
71	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.5.8 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 2 or less.	6	C	None	Tier 1
72	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category as described in Section 19.5.8 of the Technical Provisions: c) For each Element Category with a mean Asset Condition Score of 1 or less.	9	C	None	Tier 1
73	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: a) For each Asset Condition Score of 2.	6	C	None	Tier 1
74	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19 of the Technical Provisions: b) For each Asset Condition Score of 1.	9	C	None	Tier 1
75	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 2 or more as described in Section 19.5.8 of the Technical Provisions.	6	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
76	Operations and Maintenance	Asset Condition	Improve within one month to a condition at or above the Asset Condition score at initial inspection, any Element that has deteriorated below the Asset Condition score at initial inspection.	1	B	14 Days	
77	Operations and Maintenance	Category 1 Defect	Address a Category 1 defect within the time period shown in the Performance and Measurement Table.	3	B	Stated in column entitled "Response to defects" in Performance and Measurement Table	Tier 1
78	Operations and Maintenance	Category 2 Defect	Address a Category 2 defect within the time period shown in the Performance and Measurement Table.	1	B	Stated in column entitled "Response to defects" in Performance and Measurement Table	Tier 1
79	Operations and Maintenance	Fire Life Safety	Comply with Section 24.2 of the Technical Provisions.	3	B	7 Days	Tier 2
80	Operations and Maintenance	Handback Provisions Reserve	Establish and fund the Handback Provisions Reserve when required and provide appropriate account information in accordance with Section 8.11 of the Agreement or Exhibit 14 to the Agreement.	2	B	30 Days	Tier 2
81	Operations and Maintenance	Incident Management Plan	Comply with a requirement in respect of the Incident Management Plan as required by Section 8.9.2.4 of the Agreement or Section 22.3.5 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation	4	B	7 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
82	Operations and Maintenance	Lane Closures	Maintain a General Purpose Lane open in accordance with Section 18.4.4 of the Technical Provisions.	3	C	None	Tier 1
83	Operations and Maintenance	Traffic Management	Comply with Section 18.3.1(d) of the Technical Provisions with the exception of requirements therein in respect of the General Purpose Lanes; or comply with Section 18.4.4 of the Technical Provisions; all except where provided elsewhere in this Exhibit 21.	3	B	1 Day	Tier 1
84	Operations and Maintenance	Maintenance Management	Coordinate with TxDOT to achieve a smooth transition of maintenance activities from TxDOT in accordance with Section 19.1.4 of the Technical Provisions.	2	B	4 Days	Tier 1
85	Operations and Maintenance	Maintenance Management Plan	Comply with a requirement in respect of the Maintenance Management Plan as required by Section 19.2 of the Technical Provisions except where provided elsewhere in this Attachment 1.	2	B	7 Days	Tier 1
86	Design and Construction	Meetings	Conduct a progress meeting with TxDOT at least once a month or other requested meeting during the course of design and construction in accordance with Section 7.11.3 of the Agreement; or at TxDOT's request conduct a regular quarterly meeting or otherwise meet with TxDOT in accordance with Section 8.4.4 of the Agreement.	1	A	7 Days	Tier 2
87	Operations and Maintenance	Operations Management Plan	Comply with a requirement in respect of the Operations Management Plan as required by Section 22.2 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation, except where provided elsewhere in this Attachment 1.	3	B	7 Days	Tier 2
88	Operations and Maintenance	Patrolling	Conduct a patrol in accordance with Section 22.3.3 of the Technical provisions.	5	C	None	Tier 2
89	Operations and Maintenance	Record keeping	Create an O&M Record in accordance with Section 19.2.2 of the Technical Provisions.	1	A	2 days	Tier 1
90	Operations and Maintenance	Record keeping	Use, maintain or update the Maintenance Management Information System in accordance with Section 19.3.3 of the Technical Provisions.	1	A	2 Days	Tier 1
91	Operations and Maintenance	Record keeping	Implement a Maintenance Management Information System in accordance with Section 19.3.3 of the Technical Provisions.	2	A	14 Days	Tier 1
92	Operations and	Safety	Implement and perform Safety Compliance work in accordance with Section 12.4.2 of the Agreement.	2	B	3 Days	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
	Maintenance						
93	Operations and Maintenance	Safety	Formally establish or adhere to a policy, procedure, process, or guideline as required by Section 24.1.1 of the Technical Provisions.	3	B	7 Days	Tier 2
94	Operations and Maintenance	Technology Enhancements	Make a technology enhancement as and when necessary in accordance with Section 12.1.3 of the Agreement.	2	A	30 Days	Tier 1
95	Operations and Maintenance	Traffic Control Plans	Submit a Traffic Control Plan to TxDOT 10 days before its planned implementation as required by Section 18.3.1 of the Technical Provisions.	1	B	1 Day	Tier 2
96	Operations and Maintenance	Traffic Control Plans	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	3	B	1 Day	Tier 2
97	Operations and Maintenance	Traffic Management	Maintain a minimum of 96% Lane availability during Period D on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
98	Operations and Maintenance	Traffic Management	Maintain a minimum of 98% Lane availability during Period C on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
99	Operations and Maintenance	Traffic Management	Maintain 100% Lane availability during Period B or Period A on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	13	C	None	Tier 1
100	Operations and Maintenance	Traffic Management	Maintain a minimum of 50% Lane availability during snow and ice events on General Purpose Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 1
101	Operations and Maintenance	Traffic Management	Maintain a minimum of 98% Lane availability during Period C on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions	3	C	None	Tier 1
102	Operations and Maintenance	Traffic Management	Maintain a minimum of 96% Lane availability during Period D on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
103	Operations and Maintenance	Traffic Management	Maintain 100% Lane availability during Period A or Period B on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions	7	C	None	Tier 1
104	Operations and Maintenance	Traffic Management	Maintain a minimum of 50% Lane availability during snow and ice events on Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions in accordance with Section 18.5 of the Technical Provisions.	3	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
105	Operations and Maintenance	Traffic Management	Maintain the minimum required Lane availability during Period A, Period B, Period C or Period D on all trafficked areas other than General Purpose Lanes and Managed Lanes in accordance with Section 18.5.1 of the Technical Provisions.	7	C	None	Tier 2
106	Operations and Maintenance	Traffic Management	Maintain maximum distance of any single continuous General Purpose Lanes closure of 2.0 miles in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
107	Operations and Maintenance	Traffic Management	Maintain the minimum distance between successive closures of General Purpose Lanes of 5.0 miles in accordance with Section 18.5.1 of the Technical Provisions.	3	C	None	Tier 1
108	Operations and Maintenance	Traffic Management	Limit closures to on-ramps and off-ramps from General Purpose Lanes to Frontage Roads such that at any one time, in either roadway direction, there shall be a maximum of one on-ramp and/or off-ramp closure within a 1.5 mile distance in accordance with the requirements of Section 18.5.1 of the Technical Provisions	13	C	None	Tier 1
109	Operations and Maintenance	Traffic Management	To arrange or ensure that, for periodic maintenance and routine maintenance, no more than two General Purpose Lanes shall be closed at any one time, in one roadway direction during B and D Hours in accordance with Section 18.5.1 of the Technical Provisions.	10	C	None	Tier 1
110	Operations and Maintenance	Traffic Management	Arrange or ensure that, for activities associated with response to a Category 1 Defect, no more General Purpose Lanes shall be closed at any one time, in either roadway direction, than is absolutely necessary to undertake the work; that at least two General Purpose Lanes shall be available at any one time, in either roadway direction, unless the reason for the work activity is such as to make this obligation impractical; and that the Managed Lanes shall be operational and toll free during this period in between appropriate ramps; and ramp access between Frontage Roads and General Purpose Lanes shall be maintained; all in accordance with Section 18.5.1 of the Technical Provisions.	10	C	None	Tier 1

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
111	Operations and Maintenance	Traffic Management	Arrange or ensure that, during Renewal Work, no more General Purpose Lanes shall be closed at any one time, in either roadway direction, than is absolutely necessary to undertake the work; that at least two General Purpose Lanes shall be available at any one time, in either roadway direction, unless the reason for the work activity is such as to make this obligation impractical; and that the Managed Lanes shall be operational and toll free during this period in between appropriate ramps; and ramp access between Frontage Roads and General Purpose Lanes shall be maintained; all in accordance with Section 18.5.1 of the Technical Provisions.	13	C	None	Tier 1
112	Operations and Maintenance	Traffic Management Plan	Comply with the Traffic Management Plan as required by Section 18.2 of the Technical Provisions where the failure impacts or has the potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	3	B	1 Day	Tier 1
113	Operations and Maintenance	Updated Standards	Submit a proposed schedule for completing the new improvements, all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	1	B	14 days	Tier 1
114	Operations and Maintenance	Updated Standards	Complete construction and installation of the new improvements all in accordance with the requirements of Section 8.1.2.4 of the Agreement.	1	B	30 Days	Tier 1
115	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is less than 35 miles per hour.	3	C	None	Tier 1
116	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 35 miles per hour and less than 40 miles per hour.	2	C	None	Tier 1
117	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be	1	C	None	Tier 2

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period	Tier
			excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 40 miles per hour and less than 45 miles per hour.				
118	Tolling	Managed Lanes Speed	Maintain the average of Average Speeds at or above 50 miles per hour in the Managed Lanes for each Toll Segment and for every consecutive 15 minute period, beginning at the top of the hour, in accordance with (and except as may be excused under) Exhibit 4, Section G of the Agreement; such that for each 15 minute period the average of Average Speeds is greater than or equal to 45 miles per hour and less than 50 miles per hour; for every fifth occurrence of such failure.	1	C	None	Tier 3