

## **AMENDMENT NO. 8 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE I-77 HOT LANES PROJECT**

This AMENDMENT NO. 8 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE I-77 HOT LANES PROJECT (this "Amendment") is made and entered into as of December 21, 2018 ("Amendment No. 8 Date") by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, a department of the State of North Carolina ("NCDOT"), and I-77 MOBILITY PARTNERS LLC, a Delaware limited liability company ("Developer").

### **RECITALS**

**WHEREAS**, NCDOT and Developer entered into the Comprehensive Agreement Relating to the I-77 HOT Lanes Project, dated as of June 26, 2014, (as amended, the "Comprehensive Agreement") pursuant to which NCDOT granted to Developer the exclusive right, and Developer accepted the obligation, to finance, develop, design, construct, operate and maintain the Project, and to toll the HOT Lanes in accordance with the CA Documents; and

**WHEREAS**, NCDOT and Developer desire to amend their respective rights and obligations under the Comprehensive Agreement, on the terms set forth in this Amendment.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Each capitalized term used and not otherwise defined herein shall have the respective meanings assigned to such term in the Comprehensive Agreement.

2. Amendments to Section 3.1.1 and Section 3.1.2 of the Agreement. Section 3.1.1 and Section 3.1.2 of the Comprehensive Agreement are amended to read as follows:

**"3.1.1** Subject to and except as provided in this Article 3, Exhibit 4 and Exhibit 18, Developer shall have the exclusive right to (a) impose tolls upon the Users of the HOT Lanes and (b) establish, modify and adjust the rate of such tolls in accordance with Law, all in accordance with and subject to the terms and conditions contained in the CA Documents.

**3.1.2** Developer has no authority or right to impose any toll (a) on any HOT Lanes until the Substantial Completion Date for the applicable Project Section or (b) for use of any portion of the Project other than the HOT Lanes. Developer has no authority or right to impose any fee, charge or other amount for use of the Project other than the tolls specifically authorized by this Article 3. Prior to setting initial toll rates and a toll rate setting methodology on the HOT Lanes, Developer, in coordination with NCDOT, shall hold a public hearing as required by, and in accordance with, applicable Law."

3. Amendment to Section 3.2.2 of the Agreement. Section 3.2.2 of the Comprehensive Agreement is amended to read as follows:

“3.2.2 Developer understands and agrees that, notwithstanding anything to the contrary in this Agreement or any other CA Document, NCDOT does not, and will not be deemed to, guarantee collection or collectability of tolls to Developer or any Person; provided, however, that the foregoing will not limit NCDOT’s obligations to make Toll Payments or any other obligations or duties under Exhibit 18 or any other CA Documents.”

4. Amendment to Section 3.4.1 of the Agreement. Section 3.4.1 of the Comprehensive Agreement is amended to read as follows:

“3.4.1 Exempt Vehicles shall: (a) receive a discount of 100% of the applicable toll rate if equipped with a Transponder as provided in Section III of the Toll Regulation and (b) not be charged any Incidental Charges by Developer. Developer shall not be entitled to any reimbursement from NCDOT for such discount or Incidental Charges.”

5. Amendment to Section 8.6.1 of the Agreement. The last sentence of Section 8.6.1 of the Comprehensive Agreement is amended to read as follows:

“Such Electronic Toll Collection System shall meet all applicable NCDOT interoperability and compatibility standards, requirements and protocols, including any pertaining to any clearinghouse system NCDOT participates in, implements or operates, to enable a customer to have a single Transponder to pay for tolled travel on all State highways.”

6. Amendment to Section 8.7.4 of the Agreement. The following new sentence is added to the end of Section 8.7.4 of the Comprehensive Agreement:

“Notwithstanding the previous sentence, use of servers outside the State to hold such information shall be permitted.”

7. Amendment to Section 8.7.5 of the Agreement. The last sentence of Section 8.7.5 of the Comprehensive Agreement is amended to read as follows:

“In the event that Developer exercises its step in rights to perform the ETC Services on behalf of NCDOT in accordance with Exhibit 18, this provision shall not apply to Patron Confidential Information needed to bill, invoice, enforce and collect a toll transaction occurring prior to expiration or termination of this Agreement until the payment of the applicable tolls and any related Incidental Charges.”

8. Amendment to Section 11.2.3.8 of the Agreement. Section 11.2.3.8 of the Comprehensive Agreement is amended to read as follows:

“11.2.3.8 All rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or Transponders to purchase services or goods other than payment of tolls;”

9. Amendment to Section 13.1.4.1(d) of the Agreement. Section 13.1.4.1(d) of the Comprehensive Agreement is amended to read as follows:

“(d) The Relief Event adversely affects NCDOT’s payment of the Toll Payments or increases Developer’s costs that are not insured and not required to be insured under this Agreement.”

10. Amendments to Section 17.5.1 of the Agreement.

(a) Section 17.5.1.1 of the Comprehensive Agreement is amended to read as follows:

“17.5.1.1 Except with respect to Toll Payments due under Exhibit 18 of this Agreement, NCDOT fails to make any payment due Developer under the CA Documents when due; provided that such payment is not the subject of a Claim pending resolution pursuant to the Dispute Resolution Procedures;”

(b) Section 17.5.1 of the Agreement is amended to add the following new Section 17.5.1.5:

“17.5.1.5 NCDOT fails to make any Toll Payment due Developer under the CA Documents when due; provided that such payment is not the subject of a Claim pending resolution pursuant to the Dispute Resolution Procedures.”

11. Amendment to Section 17.5.2.1 of the Agreement. Section 17.5.2.1 of the Comprehensive Agreement is amended to read as follows:

“17.5.2.1 Respecting an NCDOT Default under Section 17.5.1.1, 17.5.1.4 or 17.5.1.5, a period of 30 days after Developer delivers to NCDOT written notice of the NCDOT Default; and”

12. Amendments to Section 19.9.4, Section 19.9.5 and Section 19.9.6 of the Agreement. Section 19.9.4, Section 19.9.5 and Section 19.9.6 of the Comprehensive Agreement are amended to read as follows:

“19.9.4 NCDOT shall maintain account holder funds separate and apart from State funds and shall cause all debits to Accounts with Transponders to be automatically transferred via the custodial accounts to the Project Trust Fund for deposit into the Toll Revenue Account; provided, however, that if NCDOT’s customary non-Discriminatory rules and procedures for its toll processing or clearinghouse functions, include deducting its Transaction Fee, Variable Fees and Pass Through Fees for such functions, then NCDOT may reduce the amount of each such transfer to the Project Trust Fund by such amounts.

19.9.5 NCDOT’s billing statements to non-Transponder Accounts shall instruct the User to make payments in the name of and to the address of either the trustee or the Project Trust Fund. NCDOT may invoice the trustee for the Transaction Fee and Variable Fees amount payable to NCDOT pursuant to Exhibit 18.

19.9.6 All Toll Revenues shall be deemed received by NCDOT merely as a bailee or agent and shall not constitute funds of NCDOT or the State; and NCDOT shall forthwith remit such payments to the trustee under the Project Trust Agreement for deposit into the Project Trust Fund.”

13. Amendment to Section 22.1.1 of the Agreement. Section 22.1.1 of the Comprehensive Agreement is amended to read as follows:

“22.1.1 Developer shall keep and maintain in Mecklenburg or Wake County, North Carolina, or in another location NCDOT approves in writing in its sole discretion, all books, records and documents relating to the Project, Project Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to NCDOT. Notwithstanding the previous sentence, use of servers and backup servers outside of Mecklenburg or Wake County, North Carolina to hold digital versions of such books, records and documents shall be permitted. Developer shall keep and maintain such books, records and documents in accordance with applicable provisions of the CA Documents, the Developer Management Plan, and in accordance with Good Industry Practice. Developer shall notify NCDOT where such records and documents are kept.”

14. Amendments to Exhibit 1 of the Agreement.

(a) The following new definitions are added to Exhibit 1 of the Comprehensive Agreement:

“Amendment No. 8 Date means December 21, 2018.”

“Change Order No. 7 means the Change Order executed between NCDOT and Developer related to the design and construction of the Lakeview and Hambright Direct Connectors.”

“First Responder Vehicle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.”

**“Lakeview and Hambright Direct Connectors** means the direct HOT Lane connections at Lakeview and Hambright Roads, as more fully described in Change Order No. 7.”

**“Level Two Customer Service Rules** means that certain NCTA and I77 Mobility Partners Level 2 Customer Service Rules as agreed between the Parties as of the Amendment No. 8 Date, as may be updated from time to time by mutual agreement between the Parties.”

**“NCTA Interface Control Document (ICD)** means that certain NCTA Back Office System RTCS File Exchange Interface Control Document as agreed between the Parties as of the Amendment No. 8 Date, as may be updated from time to time by mutual agreement between the Parties.”

**“Toll Payment** has the meaning set forth in Paragraph VII.B(2) of Exhibit 18 to the Agreement.”

**“Tolling Amendment Payment** shall mean \$6,980,000, which shall be added to the Public Funds Amount as of the Amendment No. 8 Date and payable pursuant to Part E.5, Exhibit 5 to the Agreement. The Tolling Amendment Payment includes payment for compensation owed to Developer relating to the Directive Letter dated December 30, 2016 for the “BOS Milestone 1 Work” as such Work is defined in such Directive Letter.”

**“Transaction Invoice** shall mean the invoice of all Transactions submitted to the NCDOT in accordance to and in compliance with Appendix D of Exhibit 18 to the Agreement and the NCTA Interface Control Document.”

**“Transponder Toll Rate** shall have the meaning set forth in Part VIII.A(1) of Exhibit 4 to the Agreement.”

**“Transponder Toll Rate Differential** means the portion of the toll charged or collected in excess of the Transponder Toll Rate.”

(b) The following definitions to Exhibit 1 of the Comprehensive Agreement are amended to read as follows:

**“Customer Service Center or CSC** means a customer service center meeting the requirements of North Carolina General Statutes §136-89.213(b) that will issue and provide services relating to the ETC system administration, account maintenance, and distribution of Transponders.”

**“Exempt Vehicle(s)”** means any of the following: (a) High Occupancy Vehicles; (b) Motorcycles; (c) Transit Vehicles; or (d) First Responder Vehicles.”

**“Irregular Transaction** means any transaction consisting of a digital record of a vehicle that has passed through a Toll Segment that (a) contains neither: (i) captured and usable Transponder information from an Account in good standing by the issuing jurisdiction or entity nor (ii) a captured image of the subject vehicle that contains legible plate information; or (b) is not transmitted in accordance with the ICD.”

**“Maximum Payment Curve** means the cap on the aggregate amount of payment of the Public Funds Amount which may be made at any specified time under the Agreement set forth in Attachment 3 to Exhibit 5 to the Agreement, except that the Maximum Payment Curve shall not apply to the Tolling Amendment Payment which is payable pursuant to Part E.5, Exhibit 5 to the Agreement.”

**“Open Road Tolling (ORT)** means that toll collection is conducted (a) exclusively via vehicle identification with Transponders and/or video capture of the license plate and (b) in an open multilane free-flow highway environment in accordance with the CA Documents.”

**“Toll Revenues** means all revenues actually received by Developer, either directly or when deposited into the Toll Revenue Account, in connection with the HOT Lanes or the tolling thereof, including:

- (a) Gross toll revenues received pursuant to Section 19.8 of the Agreement or pursuant to Developer’s exercise of its step in rights under Paragraph XI of Exhibit 18 to the Agreement (for the avoidance of doubt, clause (a) includes any gross toll revenues received on behalf of Developer, before any reductions thereto including reductions for Transaction Fees, Variable Fees and Pass Through Fees by NCDOT);
- (b) Other revenues received by Developer from the Project, the disposition of which is not specifically addressed by an agreement regarding Business Opportunities;
- (c) Incidental Charges, if any, imposed by and received by Developer pursuant to Developer’s exercise of its step in rights under Paragraph XI of Exhibit 18 to the Agreement;
- (d) Proceeds of business interruption or similar insurance against loss of revenues from operation of the Project;
- (e) Payments from NCDOT that it owes for Transactions;
- (f) Payments from NCDOT of Compensation Amounts in replacement of or substitution for any of the foregoing revenues;
- (g) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues pursuant to Developer’s exercise of its step in rights under Paragraph XI of Exhibit 18 to the Agreement; and
- (h) Amounts received as liquidated or other damages under contracts to which Developer is a party with respect to any of the foregoing revenues.

Toll Revenues exclude (i) capital contributions to Developer, (ii) proceeds of Project Debt, (iii) proceeds of capital asset dispositions, (iv) interest earned by Developer on Toll Revenues, (v) insurance proceeds, judgments, awards, and payments from NCDOT, to the extent they do not replace, reimburse, compensate or substitute for any of the foregoing revenues, (vi) the Transponder Toll Rate Differential, except to the extent the Transponder Toll Rate Differential is

charged or collected pursuant to Section 19.8 of the Agreement or pursuant to Developer's exercise of its step in rights under Paragraph XI of Exhibit 18 to the Agreement, and (vii) the Tolling Amendment Payment."

**"Transaction"** means a transaction consisting of a digital record of a vehicle that has passed through a Toll Segment that (a) contains (i) captured and usable Transponder information from an Account in good standing by the issuing jurisdiction or entity or (ii) a captured image of the subject vehicle that contains legible plate information; and (b) is transmitted in accordance with the ICD."

**"Video Transaction"** means each electronic record of a toll and set of contemporaneous video images that are properly transmitted to the back office respecting a vehicle that passes through a toll zone on the Project and (a) is not equipped with a Transponder issued by a Transponder Issuer, or (b) is equipped with such a Transponder but the Account associated with the Transponder is closed at the time of transmission. A Video Transaction must meet the requirements of a Transaction."

(c) The definitions of "Client Account", "ETC Prepaid Account", "Interface Control Document", "Trip", "Video Account", "Video Postpaid Account", and "Video Prepaid Account" are deleted from Exhibit 1 of the Comprehensive Agreement.

15. Amendment to Exhibit 4 of the Agreement. Exhibit 4 of the Comprehensive Agreement is amended and replaced with Attachment A of this Amendment.

16. Amendments to Exhibit 5 of the Agreement.

(a) The second paragraph of Part C, Section 1 to Exhibit 5 of the Comprehensive Agreement is amended to read as follows:

"Developer hereby agrees to remit to NCDOT the Toll Revenues generated by the Project that are specified in Part C, Section 2 (the Revenue Payment Amount), which shall be paid to NCDOT as provided herein."

(b) Part C, Section 2.1.6 to Exhibit 5 of the Comprehensive Agreement is amended to read as follows:

"2.1.6 Any Revenue Payment Amounts paid by Developer to NCDOT in previous calendar years; less"

(c) Part E, Section 1 to Exhibit 5 of the Comprehensive Agreement is amended to read as follows:

"1. Pursuant to Section 5.6.1 of the Agreement, NCDOT shall pay to Developer the Public Funds Amount. Except with respect to the NTP1 Work Payments and the Tolling Amendment Payment, the Public Funds Amount shall be paid to the Developer in monthly payments at no greater rate than on a pro rata basis with debt in

amounts not to exceed the cumulative amounts set forth in Attachment 3 to Exhibit 5 (each payment defined as a “Maximum Public Funds Payment”). Developer shall submit monthly Payment Requests in accordance with the procedures set forth in Attachment 2 to Exhibit 5 and shall include all supporting documentation detailing the services provided. NCDOT shall make payments requested by Developer on a monthly basis, subject to Developer submitting a Payment Request.

(d) The following new Part E, Section 5 is added to Exhibit 5 of the Comprehensive Agreement:

“5. Developer may submit a Payment Request for the Tolling Amendment Payment when Developer submits its notice pursuant to Section 7.7.1.4 of the Agreement for the first Project Section scheduled to achieve Substantial Completion. NCDOT shall pay the Tolling Amendment Payment to Developer no later than one day before NCDOT issues a Certificate of Substantial Completion pursuant to Section 7.7.1.6 for such Project Section.”

17. Amendment to Exhibit 18 of the Agreement. Exhibit 18 of the Comprehensive Agreement is amended and replaced with Attachment B of this Amendment.

18. Amendments to the Technical Provisions.

(a) The following new sentence is added to the end of Section 1.1.1 of the Technical Provisions:

“The Central Section includes the design and construction of the Lakeview and Hambright Direct Connectors.”

(b) Section 18.3.5 of the Technical Provisions is amended to read as follows:

“Developer shall design, provide, install, test, operate, and maintain dynamic messaging signs, in accordance with all requirements of the Manual on Uniform Traffic Control Devices (MUTCD) (the “Toll Rate Signs”). At a minimum, Developer shall provide dynamic message signs in advance of all Toll Segments to notify Project corridor motorists of the Toll Rates applicable at the time of passage. At a minimum, Toll Rate Signs and other information-related signs shall be based upon the current version of NCDOT’s English Drawing for Express Lane Signing Typical Layouts; provided that Developer may propose alternative designs based on Good Industry Practice subject to the review and approval by NCDOT, which such approval shall not be unreasonably withheld or delayed. Toll Rate Signs and other information-related signs shall also comply with applicable Release For Construction Signing Plans.

Toll Rate Signs shall display the Transponder Toll Rate in effect at any given time, as established in Exhibit 4 of the Agreement. Dynamic Toll Rate Signs shall also display when tolls are suspended in accordance with Section 3.5 of the Agreement.



Developer shall include details of all Toll Rate Signs in the signing Design Submittals as required by Section 2.9 of the Technical Provisions. Developer may combine equipment from multiple devices into a single standard cabinet if space allows. However Developer shall not install equipment into existing NCDOT cabinets.

Developer shall also design and install static signs to inform Project corridor motorists of the accepted methods of payment for use of the HOT Lanes and signs providing Project corridor motorists directions to the Charlotte area walk-in Customer Service Center, as required by Law.”

(c) The last paragraph of Section 24.1 of the Technical Provisions is amended to read as follows:

“The ETCS shall document and provide proof of use of the HOT Lanes for and corresponding tolls for all Users, prevent data and/or images from being tampered with after the fact, protect User privacy, and ensure the traceability of all operations necessary for the accurate generation of proof of passage and toll calculation by Transaction, by Toll Segment, as well as for billing and invoicing of tolls and Incidental Charges to Users by NCDOT.”

(d) Section 24.3.2.1 of the Technical Provisions is amended to read as follows:

“For each and every vehicle using the HOT Lanes, whether equipped with a Transponder or not, the ETCS shall at a minimum:

- provide ORT service to Users on the HOT Lanes;
- detect vehicles;
- inform Project corridor motorists in real-time of the applicable Toll Rate, including the suspension of tolls, using Toll Rate Signs before they use the HOT Lanes;
- classify vehicles per the User Classification;
- create a proof of passage by Toll Segment in accordance with applicable Law;
- generate accurate Transactions, for each Toll Segment, and maintain proper records of such Transactions and supporting information resulting in the creation of each Transaction;
- transmit accurate Transaction data to the CCH host server ;
- maintain a database of all the displayed Toll Rates by Toll Segment, direction, and time of day;
- accurately calculate and assign the toll for the use of the HOT Lanes;
- collect audit data by means of a Digital Video Auditing System (DVAS) with data and event logger attached to monitoring cameras and indexed to the Transactions;

- provide traffic counts sufficient to verify and audit the performance of the ETCS;
- manage Irregular Transactions;
- provide accurate accounting in U.S. dollars and according to U.S. GAAP;
- manage and store all data transfers among the ETCS functions and between ETCS and the NCDOT Central Clearing House (CCH);
- provide image management and verification system;
- provide Level Two Customer Service;
- measure and monitor ETCS performance;
- provide preventive and curative maintenance management systems;
- monitor, track, and control quality of ETCS maintenance performed;
- produce and provide Transaction Invoices with the information and data required by and in accordance with Exhibit 18; and
- produce and provide to NCDOT in acceptable format all reports in accordance with the CA Documents.

ETCS functional and Performance Requirements are further defined in this Section 24 of the Technical Provisions.”

(e) Section 24.3.2.2 of the Technical Provisions is amended to read as follows:

“The ETCS shall detect and classify according to the User Classification in Exhibit 4 of the Agreement all vehicles traveling in the HOT Lanes, identify in which lane the vehicle traveled, and produce the data necessary to accurately calculate the tolls necessary for NCDOT to bill and invoice Users, whether or not vehicles are equipped with a valid Transponder. Exempt Vehicles may be identified by Transponder, account plan type established by NCDOT or by the use of an HOV mobile declaration application in conjunction with an NC Quick Pass Transponder.

NCDOT CSC will distribute Transponders to motorists upon request. NCDOT shall be responsible for ensuring that such Transponders are equipped with a user-friendly and convenient means to self declare the occupancy of the vehicle and allow at a minimum the User to identify themselves as HOV or LOV Users. The use of Transponders with self declaration capabilities is acceptable.”

(f) Section 24.3.2.3 of the Technical Provisions is amended to read as follows:

“The ETCS shall create exactly one Transaction for each User passing through a toll zone. The ETCS shall transmit Transactions to the CCH in accordance with the ICD. A Transaction shall contain all information required by and be in compliance with the ICD.

Time shall be recorded for each Transaction to within a millisecond.

The ETCS shall have the capability to calculate Toll Rates dynamically in real-time in the HOT Lanes to meet the requirements set out in Exhibit 4 of the Agreement.

The ETCS shall assign the toll due based on:

- the User Classification;
- the User's time of passage through each Toll Segment; and
- the corresponding Toll Rate for the respective Toll Segment.

The system shall charge each User no more than the last toll displayed to the User prior to the User's entry into such Toll Segment of the HOT Lanes.

If a User passes a Toll Rate Sign and the rate increases prior to their passing through the tolling zone, the User shall be charged a toll that is equal to, or less than, the toll that was displayed to him on the Toll Rate Sign.

All Transactions for motor vehicles, other than Motorcycles, without trailers, not larger than 20 feet in length, eight and a half feet in width and twelve feet in height, which do not have occupancy declaration information shall be LOV Transactions.

The ETCS shall not create a Transaction for vehicles, whether equipped with a Transponder or not, traveling in the GP Lanes.

The ETCS shall maintain a record of all applicable Toll Rates (to the millisecond), to serve as evidence of applicable rate at time of passage for Users. The ETCS shall maintain a record of all Transactions for a minimum of 365 days. This information shall be available to the Customer Service Center (CSC) within 24 hours of request if such information has not been transmitted to the Central Clearing House (CCH) within the 24 hour period.

Developer shall implement a verification and management process with NCDOT and its CCH and CSC to properly address Irregular Transactions."

(g) Section 24.3.2.4 of the Technical Provisions is amended to read as follows:

"The system shall capture at a minimum images of the vehicle's license plate and rear of the vehicle. The system shall use Automatic License Plate Recognition (ALPR) software to identify the license plate number and jurisdiction of issue, supplemented with manual image review where the ALPR does not provide a result with sufficient confidence. For Transponder Transactions, Developer shall send images only if requested by NCDOT."

(h) Section 24.3.2.10 of the Technical Provisions is amended to read as follows:

"The primary Customer service shall be carried out by parties other than Developer, primarily NCDOT as outlined in Exhibit 18 of the Agreement. Customer service shall include Customer account and balance management, payment processing, voids and

adjustments (including those approved by Developer's Level Two Customer Service support), Transponder distribution and management, violation processing, and handling general User inquiries. NCDOT will provide portals of Customer service through a Charlotte area walk-in Customer Service Center in addition to phone, email, mail, and web support. Developer shall arrange for and provide all Transaction data sufficient and necessary for NCDOT to proceed with Financial Clearing of all Transactions, to respond to general User inquiries, and at a minimum the information required by and in accordance with Section 24.3.2.3 of the Technical Provisions.

Developer shall be responsible for Level Two Customer Service. Level Two Customer Service corresponds to those Customer services addressing a User disputing a Transaction. Pursuant to the Level Two Customer Service Rules, for any disputed toll charge that has been previously charged or billed to a User that must be adjusted, Developer's Level Two Customer Service support shall review NCDOT's customer service request and in return Developer shall notify NCDOT and approve or disapprove such adjustment prior to it being made as part of the Customer service.

Although the intent is that Developer will not have direct interaction with NCDOT's customers, the Level Two Customer Service support may be co-located at any established NCTA's Customer Service Center in the Charlotte area during the Term. At a minimum, Developer staff shall be available by a ticketing system to provide Level Two Customer Service during the same hours as the NCTA's CSC outside of the Charlotte area is open."

(i) Section 24.4.1 of the Technical Provisions is amended to read as follows:

"The ETCS Performance Requirements set forth in Table 23.2 shall apply at all times and throughout a vehicle speed range of one to 100 mph, with the exceptions of classification and image capture, for which the stated tolling Performance Requirements shall be achieved for a speed range of five to 100 mph. ETCS Performance Requirements shall apply to all vehicles whether they are traveling closely together or far apart.

For the purpose of assessing the license plate image, including temporary licence plate image, readability and reliability success rate as presented in Table 23.2, Ineligible Vehicles shall be those for which a video image is obtained that due only to one or more of the following conditions the license plate cannot be reliably read by the human eye:

- the vehicle either has no license plate or it is not mounted in the legally required position;
- the license plate is covered by dirt or snow rendering it unreadable;
- the license plate is willfully obstructed by Users by a film or other means;
- the license plate is damaged, bent, broken or in a condition rendering it unreadable;
- the license plate is blocked by an object carried by the vehicle (such as a plate frame, overhanging cargo or a trailer towing ball); or

- the license plate is blocked by something in the lane such as a Person or another vehicle.

NCDOT and Developer recognize that a temporary license plate may be on a vehicle for a short period of time awaiting issuance of a permanent license plate. Temporary license plate data may or may not be housed in a state vehicle registration agency's license plate database. NCDOT agrees to process Transactions sent from the Developer, which Transactions contain temporary license plate data housed in a state vehicle registration agency license plate database. As part of ongoing operations, NCDOT and Developer shall periodically coordinate with each other which state vehicle registration agencies provide such vehicle ownership information through temporary license plates. Ineligible Vehicles, for readability and reliability success rate as presented in Table 23.2, shall include those, which use temporary license plates."

(j) The third bullet of Section 24.5.1 of the Technical Provisions is amended to read as follows:

- “• supply the NCDOT with a monitoring terminal, at a location to be specified by NCDOT, to access the ETCS performance (including historical information and real time information), Transaction records, real-time display of vehicles passing through the Toll Segment, and real-time Toll Rates in every Toll Segment. NCDOT shall utilize a secure site to site VPN mechanism to access the secured network.”

(k) Section 24.8.1 of the Technical Provisions is amended to read as follows:

“From the first Substantial Completion Date, for the current month, the ETCS Activity Monthly Report shall be submitted to NCDOT and include the following components:

- detailed presentation and explanation of all activities undertaken to ensure Interoperability;
- detailed presentation and explanation of all instances of O&M Noncompliance Events respecting the ETCS performance, as required by Section 23 and Section 24 of the Technical Provisions, describing at a minimum: the corresponding name and ID number per Table 23.2, the commencement time, duration, entity who identified such events first, details regarding the cure of such O&M Noncompliance Events including the steps taken and the time it took to cure, applicable Cure Period, the reasons why the prescribed performance goals were not met, the status of such events as of the end of the month, Noncompliance Points incurred by Developer if any associated with each such O&M Noncompliance Event, and the changes (if any) made to the O&M Plan based upon such events;
- detailed calculations of Noncompliance Points associated with O&M Noncompliance Events related to the ETCS incurred by Developer and accrued for the past month and total balance for the past 365 days and 1095 days, and liquidated damages assessed, including details of each assessment;
- details on all instances of Noncompliance Events for Developer, the CCH and CSC pursuant to Exhibit 18 of the Agreement, describing at a minimum: the

corresponding name and ID, the commencement time, duration, the status of each event as of the end of the month, Noncompliance Points and liquidated damages if any associated with each event, and a description of any action taken by Developer as a consequence of such events; and

- detailed calculation of Noncompliance Points for the CCH and CSC pursuant to Exhibit 18 of the Agreement accrued for the past month and total balance for the past 365 days, and liquidated damages assessed, including details of each assessment; and
- summary of monthly ETCS maintenance activities, support activities for applications and databases, and Technology Enhancements if any.”

(l) The last sentence of Section 24.8 of the Technical Provisions is amended to read as follows:

“Developer shall submit each report required in this Section 24.8 for each calendar month to NCDOT not later than the 15<sup>th</sup> of the following month.”

(m) The first and fifth bullets of Section 24.8.2 of the Technical Provisions are amended to read as follows:

- “• for the current month and the previous three months, the Toll Rate Schedule for each period of the day in the format presented in Table 4-2 of Exhibit 4 of the Agreement. If dynamic tolling is in effect, minimum and maximum toll values shall replace the fixed schedule tolls values in Table 4-2 of Exhibit 4 of the Agreement. The dynamic tolls are presented with the appropriate number of tables to cover the month;”
- “• anticipated tolls charged to Users and actual tolls charged to Users for the current month and the previous three months, reported per direction, per Toll Segment, and per vehicle class as per the User Classification, per type of Transaction (Video Transaction and Transponder Transaction), per Transponder emitting authority, if applicable (per hour, per day, for average weekday and weekend day, and totals per week, per month, the month, and for the entire Project per direction and total.);”

(m) Table 23.2 of the Technical Provisions is amended and replaced with Attachment C of this Amendment.

19. Five Year Periodic Assessment. No later than 180 days prior to the commencement of tolling, NCDOT and Developer shall meet to discuss the rights and obligations set forth in this Amendment and determine, in good faith, if NCDOT, in its reasonable discretion, is being materially impacted by this Amendment. If NCDOT, in its reasonable discretion, determines that it is being materially impacted by this Amendment, NCDOT may submit proposed amendments to the Comprehensive Agreement and both Parties shall negotiate, in good faith, additional amendments. It is anticipated that this assessment will be performed every five years thereafter during the Term of the Comprehensive Agreement.

20. Enforceability and Validity. As of the Amendment No. 8 Date, the representations and warranties of NCDOT set forth in Section 15.2.1 and Section 15.2.4 of the Comprehensive Agreement are true and correct in all respects with respect to this Amendment.

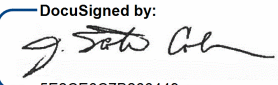
21. No Modification or Waiver. This Amendment is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision, right or obligation under the Comprehensive Agreement.

22. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.


*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Amendment on the date first written above.

**NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION**

DocuSigned by:  
  
By: 5E2CE6C7B266449...  
Scott Cole  
Authorized Representative

**I-77 MOBILITY PARTNERS LLC**

  
By: \_\_\_\_\_  
Javier Tamargo  
Authorized Representative



**Attachment A**

Exhibit 4 to the Comprehensive Agreement

[see attached]

## **EXHIBIT 4**

### **TOLL REGULATION**

#### **I. User Classifications**

For the purpose of defining User Classifications, the following definitions shall apply.

- “Low Occupancy Vehicles” or LOV means 2-axle motor vehicles, other than Motorcycles, without trailers, not larger than 20 feet in length, eight and a half feet in width and twelve feet in height, which do not have occupancy declaration information or that do not meet the occupancy requirement to declare HOV as defined in this Exhibit 4.
- “High Occupancy Vehicles” or HOV means motor vehicles without trailers, not larger than 20 feet in length, eight and a half feet in width and twelve feet in height, with three persons or more as occupants that have Transponders that: (a) have declared as high occupancy vehicles through switchable Transponders; (b) have HOV-only Transponders; or (c) have declared as high occupancy vehicles through NCDOT-approved mobile applications where Developer has received such HOV status declaration no later than 5 minutes prior to entering a Toll Segment.
- “Motorcycles” means motor vehicles with two or three wheels not larger than a Low Occupancy Vehicles.
- “Transit Vehicles” means recognized, non-profit transit agency buses, rubber-wheeled trolleys, and vans used for mass transportation under applicable Laws. The current recognized transit agency in the Charlotte Area is Charlotte Area Transit System (CATS).
- “First Responder Vehicles” means law enforcement vehicles, emergency fire and rescue vehicles and emergency medical service vehicles, and as set forth in North Carolina General Statutes §136-89.211(2).

#### **II. Toll Segments**

- A. The HOT Lanes are divided into Toll Segments measured between defined points. Toll Segment lengths are calculated along the centerline of the HOT Lanes and do not incorporate dedicated ramp lengths that may be used for entrance and exit. The Toll Segments are identified under Table 4-1, and include Toll Segment Identification Number, Description of Segment, Initial Point / Mile Station, Ending Point / Mile Station, Length (Miles), and Direction.

**Table 4-1**

Toll Segment	Description	Initial Point (Station)		Ending Point (Station)	Length (mile)	Direction (NB/SB)	Toll Zone / Gantry
		Alignment	Station Range				
ON	From eastern end of westbound HOT Lanes on I-277 (PB-ON) to entry/exit zone located between Cindy Lane and Sunset Rd on I-77 (TA-2N)	I277RPDH	4+50 to 35+00	378+09	3.56	N	ON
		L2NBI	221+16 to 260+00				
		L2NBHOT	260+00 to 355+00				
		L3NB	354+44 to end STA				

1N	From southern entrance ramp from I-77 GPL to I-77 HOT Lanes (PB-1N) to entry/exit zone located between Cindy Lane and Sunset Rd on I-77 (TA-2N)	L2NBI L2NBHOT L3NB	213+40 to 260+00 260+00 to 355+00 354+44 to end	378+09	3.13	N	1N
9N	From eastern end of westbound HOT Lanes on I-277 (PB-0N) to exit-only ramp located on I-85 (DC-ExO-10N)	I277RPDH L2NBI L2NBHOT	4+50 to 35+00 221+16 to 260+00 260+00 to end	297+60	2.03	N	0N, 10N
10N	From southern entrance ramp from I-77 GPL to I-77 HOT Lanes (PB-1N) to exit-only ramp located on I-85 (DC-ExO-10N)	L2NBI L2NBHOT	213+40 to 260+00 260+00 to end	297+60	1.59	N	1N, 10N
2N	From entry/exit zone located between Cindy Lane and Sunset Rd (TA-2N) to Lakeview Rd	L3NB	398+07 to end	523+20	2.37	N	2N
3N	From Lakeview Rd to entry/exit zone located between Hambright & Mt. Holly- Huntersville Rd (TA-4N)	L3NB L2NBHOT L3NB L2NBHOT L3NB	543+30 to 575+00 574+95 to 600+00 599+95 to 625+00 624+94 to 655+00 655+33 to end	735+30	3.63	N	3N
4N	From entry/exit zone located between Hambright & Mt. Holly-Huntersville Rd (TA-4N) to entry/exit zone located between Stumptown Rd and Sam Furr Rd (TA-5N)	L3NB	755+80 to end	875+60	2.27	N	4N
11N	From entry-only ramp at Hambright Rd Direct Connector (DC-EO-9N) to entry/exit zone located between Stumptown Rd and Sam Furr Rd (TA-5N)	L3NB	709+68.5 to end	875+60	3.14	N	9N, 4N
12N	From entry-only ramp at Hambright Rd Direct Connector (DC-EO-9N) to entry/exit zone located between Hambright & Mt. Holly-Huntersville Rd (TA-4N)	L3NB	709+68.5 to end	735+30	0.49	N	9N
6N	From entry/exit zone located between Stumptown Rd and Sam Furr Rd (TA-5N) to entry/exit zone located between Catawba Av and Griffith St (TA-7N)	L3N B NB L	895+65 to 975+00 974+81.57 to 1085+60 1084+83.5 to end	1114+60	4.16	N	6N
7N	From entry/exit zone located between Catawba Av and Griffith St (TA-7N) to entry/exit located between Langtree Rd and Charlotte Highway (US-21) (TA-8N)	L	1136+60 to end	1325+65	3.2	N	7N
8N	From entry/exit zone located between Langtree Rd and Charlotte Highway (US-21) (TA-8N) to the northern end of I-77 HOT Lanes (PE-8N)	L	1325+65 to end	1420+00	1.79	N	8N
0S	From the northern end of I-77 HOT (PE-0S) to entry/exit zone located between Williamson and Langtree Rd (TA-1S)	L	1420+00 to end	1327+00	1.77	S	0S
1S	From entry/exit zone located between Williamson Rd and Langtree Rd (TA-1S) to entry/exit zone located between Griffith St and Catawba Av (TA-2S)	L	1307+00 to end	1141+40	3.14	S	1S

2S	From entry/exit zone located between Griffith St and Catawba Av (TA-2S) to entry/exit zone located between Sam Furr Rd and Stumptown Rd (TA-4S)	L SB L3SB	1121+40 to 1083+46 1085+40 to 975+31.23 975+00 to end	895+20	4.31 \$	2S
4S	From entry/exit zone located between Sam Furr Rd and Stumptown Rd (TA-4S) to entry/exit zone located between Mt. Holly-Huntersville Rd & Hambright Rd (TA-5S)	L3SB	875+20 to end	755+70	2.26 \$	4S
9S	From entry/exit zone located between Mt.Holly Huntersville Rd and Hambright Rd (TA-5S) to exit-only ramp at Hambright Rd Direct Connector (DC-ExO-9S)	L3SB	735+70 to end	709+50	0.5 \$	9S
5S	From entry/exit zone located between Mt.Holly Huntersville Rd and Hambright Rd (TA-5S) to Lakeview Rd	L3SB L2SBHOT L3SB L2SBHOT L3SB	735+70 to 665+00 665+29.5 to 625+00 625+01 to 600+00 599+99 to 570+08 570+00 to end	542+91	3.66 \$	5S
6S	From Lakeview Rd to entry/exit zone located between Sunset Rd and Cindy Lane (TA-7S)	L3SB	522+91 to end	388+65	2.54 \$	6S
7S	From entry/exit zone located between Sunset Rd and Cindy Lane (TA-7S) to the southern exit ramp from I-77 HOT Lanes to I-77 GPL at the southern end of the I-77 Corridor (ExO-8S)	L3SB L2SBHOT L2SB	368+65 to 340+00 340+86 to 292+08 292+00 to end	211+80	2.99 \$	7S
8S	From entry/exit zone located between Sunset Rd and Cindy Lane (TA-7S) to the eastern end of HOT Lanes on I-277 (PE-8S)	L3SB L2SBHOT L2SB I277RPAH	368+65 to 340+00 340+86 to 292+08 292+00 to 220+00 44+06.5 to end	0+00	3.66 \$	7S, 8S
10S	From entry-only ramp located on I-85 (DC-EO-10S) to the southern exit ramp from I-77 HOT Lanes to I-77 GPL at the end of the I-77 Corridor (ExO-8S)	L2SBHOT L2SB	300+68.5 to 292+08 292+00 to end	211+80	1.68 \$	10S
11S	From entry-only ramp located on I-85 (DC-EO-10S) to the eastern end of HOT Lanes on I-277 (PE-8S)	L2SBHOT L2SB I277RPAH	300+68.5 to 292+08 292+00 to 220+00 44+06.5 to end	0+00	2.36 \$	10S, 8S

### III. Toll Operations

- A. Users of the HOT Lanes shall be tolled according to the User Classification defined in Section I. Exempt Vehicles shall receive a discount of 100% of the applicable Toll Rate. However, Developer may charge a toll at the applicable Toll Rate without discount for an HOV if the vehicle is not equipped with a Transponder, regardless of occupancy, except if the vehicle is (a) a Transit Vehicle; (b) a Motorcycle; or (c) a law enforcement vehicle, emergency fire and rescue vehicle or emergency medical service vehicle, and as set forth in North

Carolina General Statutes §136-89.211(2). Users may be charged Incidental Charges for the issuance of Transponders to such Exempt Vehicles.

- B. During the initial 180 days after the Substantial Completion Date for the Project Section which is first to achieve Substantial Completion, Developer shall operate the HOT Lanes in Schedule Mode. After the initial 180 days after the Substantial Completion Date, Developer may operate the HOT Lanes in Dynamic Mode.
- C. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged a toll more than any of the following:
  - (1) A toll based on the latest published Toll Rate Schedule (when in Schedule Mode) for the prevailing day of the week, time of day and direction of travel;
  - (2) A toll based on the latest published toll discounts (if any); and
  - (3) A toll no more than the last toll displayed to the User on the Toll Rate Sign prior to the User's entry into a Toll Segment of the HOT Lanes if the toll displayed on the Toll Rate Sign is applicable to the User.
- D. In addition to the requirements set forth in Section VIII, if Developer desires to establish or cancel a discount with respect to any toll, it shall give written notice of the establishment or cancellation to NCDOT at least 60 days prior to implementation or withdrawal thereof. Developer shall also notify the public at least 30 days prior to the change, taking all necessary measures to communicate it to the public, including through the use of a public Internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication.
- E. Developer shall, at its own cost, take all necessary measures to communicate to the public the then-current Toll Rate Schedule (when in Schedule Mode) for non-Exempt Vehicles, toll discounts (if any), and schedule of toll discounts, including through the use of a public Internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication.
- F. If a vehicle that is not an Exempt Vehicle travels on the HOT Lanes and a toll is not paid prior to travel or at the time of travel, NCDOT shall send a bill to the registered owner of the motor vehicle for the amount of the unpaid toll and any Incidental Charges in accordance with Exhibit 18 of the Agreement.
- G. Developer shall not levy a toll on vehicles traveling on the GP Lanes, whether equipped with a Transponder or not.

#### **IV. Schedule Mode**

The requirements set forth in this Section IV shall apply only while in Schedule Mode.

- A. The Toll Rate Schedule when in Schedule Mode may change no more frequently than once every 24 hours, subject to all other requirements set forth in this Exhibit 4.
- B. No later than 90 days before the applicable Substantial Completion Date, Developer shall prepare and submit to NCDOT, for review and comment, a schedule showing the Toll Rates for each Toll Segment and direction for every half hour of the day, every day of the week in the format set forth in Table 4-2 below (the "Toll Rate Schedule"), any toll discounts in accordance with Section III.C, a schedule of toll discounts in accordance with Section VIII.

**Table 4-2 Sample Toll Segment Toll Rate Schedule**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
6:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
9:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
9:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
10:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
10:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
11:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
11:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
12:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
12:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
1:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
1:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
2:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
2:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
3:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
3:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
4:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
4:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
5:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
5:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX

6:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
6:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
9:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
9:30 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
10:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
11:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
12:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
1:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
2:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
3:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
4:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
5:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX

- C. Not later than 30 days before the applicable Substantial Completion Date, Developer shall publish the initial Toll Rate Schedule, and toll discounts (if any) in accordance with Section III.E.
- D. Developer may implement a change to the Toll Rate Schedule, so as to maintain performance requirements as established in Section VII. At least one Business Day prior to the effective date of any change, Developer shall provide NCDOT with a written revised Toll Rate Schedule for review and comment and shall publish such schedule in the same manner as set forth in Section III.E.

## V. Dynamic Mode

The requirements set forth in this Section V shall apply while in Dynamic Mode.

- A. Developer shall monitor, document, and report the volume and speed of traffic in the HOT Lanes and alter the Dynamic Mode Toll Rate to maintain performance requirements as described in Section VII.
- B. Developer shall increase or decrease the Toll Rate in Dynamic Mode as often as needed, but not more frequently than every five minutes, to maintain the Average Speed for each Toll Segment, in order to manage the demand on the HOT Lanes.
- C. Developer shall display the prevailing Dynamic Mode Toll Rate for each Toll Segment and direction using the Toll Rate Sign system. A schedule of toll discounts (if any) shall be communicated pursuant to Sections III.D and III.E.

- D. Developer shall maintain indicative averages of Toll Rates and maximum Toll Rates, traffic volume, and Average Speed for a minimum of the previous 180 days (or such lesser period if less than 180 days of Dynamic Mode have elapsed), broken out by Toll Segment and direction to at least every hour during non-Peak Periods and every fifteen (15) minutes during Peak Periods, of Toll Rates on the HOT Lanes. Developer shall make such indicative averages of Toll Rates and maximum Toll Rates available, to any member of the public, on a public Internet website, through a telephonic request, upon request at Developer's Customer Service Center during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope, or by any other reasonable means of communication.

## **VI. Toll Calculation**

- A. The "Toll Rate" with respect to a Toll Segment means the toll applied to that Toll Segment. The Toll Rate shall be rounded to the nearest cent (\$0.01).
- B. Developer may elect to charge a User who travels less than the complete length of a Toll Segment a reduced toll based on the actual portion of the Toll Segment traveled or a toll based on the complete length of the Toll Segment.
- C. During Dynamic Mode, Developer shall set the Toll Rates for each Toll Segment and direction in order to manage the demand on the HOT Lanes while maintaining Average Speed at or above a level that is no less than 80% of the posted speed limit on that Toll Segment of the HOT Lanes, but at no time less than 45 miles per hour.
- D. During Dynamic Mode, Developer shall design the Project and set the Toll Rates for each Toll Segment and direction to prevent queuing into the HOT Lanes that may be caused by vehicles exiting the HOT Lanes. Developer shall be excused from its obligation to meet the Operating Speed Performance Standard (OSPS) if such failure is directly caused by events that are beyond Developer's control and are not due to any culpable act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by any Developer-Related Entity.

## **VII. HOT Lanes Performance Standards and Degradation Assessment**

- A. Developer shall maintain Average Speed records for all Traffic Monitoring Stations at all times after the Substantial Completion Date in order to assess the OSPS, the Federal Minimum Average Speed Standard, and any Degradation of these standards, for the HOT Lanes.
- (1) Developer shall measure the instant speed of every vehicle for each HOT Lane of each Toll Segment, at least once every half mile (the "Traffic Monitoring Station"). The locations of the Traffic Monitoring Stations shall be proposed by Developer as part of the ETCS Design Documents Submittal and are subject to NCDOT's prior written approval, which shall not be unreasonably withheld.



- (2) Average Speed shall be calculated as the median speed for each Traffic Monitoring Station each 15 minute period.
- B. Developer shall calculate the Percentage of Degradation in Average Speed for Degradation assessment as described below:
- (1) Developer shall utilize useable, non-corrupt traffic volume and speed data for each mainline Traffic Monitoring Station.
  - (2) For each Traffic Monitoring Station, the Average Speed shall be calculated for each 15 minute period. If the calculated Average Speed in any 15 minute period during a Peak Period (AM Peak Period or PM Peak Period, as applicable) falls below the OSPS or the Federal Minimum Average Speed, as applicable, then the Traffic Monitoring Station shall be considered Degraded for that Peak Period and direction.
  - (3) For a consecutive 180 day period, for each Toll Segment of the HOT Lanes, Developer shall calculate the Percentage of Degradation in Average Speed for the measurement on weekdays only as shown in the formula below:

*Percentage of Degradation in Average Speed*

$$= \left[ \frac{\sum_{i=1}^{180} \text{Number of Degraded Traffic Monitoring Stations}}{(\text{Number of Traffic Monitoring Stations} \times \text{Number of Weekdays within the 180 Day Period})} \right] \times 100$$

- (a) The numerator equals the summation of all Degraded Traffic Monitoring Stations within the 180 day period for weekdays only.
- (b) The denominator equals the number of Traffic Monitoring Stations multiplied by the number of weekdays within the 180 day period.
- (c) For the purpose of the calculation of the Percentage of Degradation in Average Speed, the Traffic Monitoring Stations located two miles upstream of a traffic shift and one-half mile downstream of the end of a traffic shift as described in Section 23.2.1.3 of the Technical Provisions shall be excluded. The average speed measures at these locations shall be collected and reported separately but concurrently with the Percentage of Degradation in Average Speed in accordance with Section VII.E.
- (d) For the purpose of the calculation of the Percentage of Degradation in Average Speed, the Traffic Monitoring Stations located within the vicinity of the I-277 direct connection, if any, shall be excluded. The average speed measures at these locations shall be collected and reported separately but

concurrently with the Percentage of Degradation in Average Speed in accordance with Section VII.E.

- (4) Developer shall calculate the Percentage of Degradation in Average Speed separately for AM Peak Period and PM Peak Period and for northbound and southbound directions, respectively. For the avoidance of doubt, the Degradation assessment shall result in eight (8) different values being calculated for each reporting cycle for the entire HOT Lanes. This is made up of four (4) different values for the Federal Degradation Standard (i.e. AM NB, AM SB, PM NB, and PM SB) and four (4) different values for OSPS (i.e. AM NB, AM SB, PM NB, and PM SB).
- (5) Should NCDOT, at its sole discretion, decide to change the AM Peak Period and PM Peak Period, NCDOT will provide Developer with 90 days advance written notice and consider any written comments provided by Developer prior to implementing such change.

**C. Degradation Assessment Standards**

**(1) Federal Minimum Average Speed Standard**

- (a) Per Title 23, United States Code (USC) Section 166. (d) (2), a "Degraded facility" for the purpose of determining which classes of vehicles are permitted to use the HOV lanes, is defined below. Developer shall comply with the provisions of any amendment or supplement to, or replacement or substitution of, the provisions governing "Degraded facility" as defined by federal law.
- (b) The HOT Lanes is in compliance for purposes of assessing the Federal Minimum Average Speed Standard if the Percentage of Degradation in Average Speed is below or equal to 10 percent and is considered Degraded for the purpose of assessing the Federal Minimum Average Speed Standard if the Percentage of Degradation in Average Speed is greater than 10 percent, where:
  - i) Degraded Traffic Monitoring Stations means: Traffic Monitoring Stations with Average Speed less than 45MPH.
  - ii) Percentage of Degradation in Average Speed will be calculated for the Peak Periods per direction for the mainline HOT Lanes.

**(2) Operating Speed Performance Standard**

- (a) Developer shall meet or exceed the OSPS starting 180 days after the Substantial Completion Date of the applicable Project Section. The OSPS is in addition to the Federal Minimum Average Speed Standard as per Section VII.C(1).

- (b) The HOT Lanes is in compliance for purposes of assessing the OSPS if the Percentage of Degradation in Average Speed is less than or equal to 10 percent and is considered Degraded for the purpose of assessing the OSPS if the Percentage of Degradation in Average Speed is greater than 10 percent, where:
    - i) Degraded Traffic Monitoring Stations means: Average Speed less than 80% of the posted speed limit or less than 45 MPH, whichever is higher.
    - ii) Percentage of Degradation in Average Speed will be calculated for the Peak Periods per direction for the HOT Lanes.
  - (c) The impact of Developer's failure to meet the OSPS in any calendar month shall be governed by the Agreement.
- D. For the purpose of determining whether or not the HOT Lanes is Degraded, data from time periods corresponding to events that (i) are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval of any of the Developer-Related Entities, and (ii) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Developer, shall be excluded upon providing to written evidence thereof that is satisfactory to NCDOT. Examples of events that may be beyond Developer's control include:
  - (1) An Incident within the HOT Lanes or General Purpose Lanes that is timely responded to by Developer as required by the CA Documents and reasonable consequential actions by Developer to clear the Incident and return lane availability as required under the Comprehensive Agreement and the Incident Management Plan. Documentation of corrective action includes still photos and video with time stamps, operations records, and auditable data records provided from automated dispatch records.
  - (2) An Incident within the HOT Lanes or General Purpose Lanes that is responded to by authorized emergency vehicles. Documentation of corrective action include official police reports showing dates and times dispatched, time arrived, time cleared.
  - (3) Severe or inclement weather or other unsafe travel conditions. Documentation of corrective action include still photos and video with time/date stamps, weather radar snapshots with time/date stamps, vehicle volumes, etc.
  - (4) NCDOT suspends tolling under Section 3.5 of the Agreement.
  - (5) The occurrence of a Permitted Closure where the decrease in Average Speed of traffic passing through a Planned Maintenance activity measured from a point 200 feet in advance of the first full Lane Closure

to the midpoint of the Planned Maintenance activity not in excess of 50% of the posted speed limit, averaged over any 15 minute period.

E. Monitoring and Reporting

- (1) Developer shall collect and archive all collected speed and traffic volume data and Average Speed calculations for each Traffic Monitoring Station, and make the data available for the generation of reports and for audits of data by any persons permitted by the NCDOT for this purpose, in accordance with the Agreement.
- (2) Developer shall commence delivery of the report to the NCDOT after the second full month following the Substantial Completion Date for the first Project Section. Thereafter, reporting shall occur on a calendar monthly basis, unless as otherwise specified in Section VII.E(7).
- (3) Data shall be compiled between the northern and southern termini of each Project Section until such time that all Project Sections have reached Substantial Completion, and between the northern and southern termini of the Project thereafter,
- (4) Data compilation shall include 180 days of Peak Periods traffic volumes and Average Speed on the HOT Lanes at each Traffic Monitoring Station by lane and for every fifteen (15) minutes.
- (5) The report shall include, at a minimum:
  - (a) Degradation report indicating Percentage of Degradation in Average Speed in order to assess the HOT Lanes Operating Speed Performance Standard and the Federal Minimum Average Speed Standard, as defined in this Exhibit.
  - (b) Speed exception report showing Traffic Monitoring Stations, days, and time periods where the Percentage of Degradation in Average Speed fell below the defined threshold for the respective standards.
  - (c) Documentation of any periods that were impacted by incidents or activities outside of the control of Developer where the Percentage of Degradation in Average Speed fell below the defined threshold for the respective standards.
- (6) If the monthly report identifies Degradation, Developer shall submit concurrently a rectification plan to the NCDOT for approval.
- (7) If two consecutive monthly reports identify Degradation, then the frequency of reporting shall be increased to every seven days. This increased frequency of reporting shall continue until such time when no Degradation is identified for 12 consecutive reports.

## **VIII. Toll Discount**

- A. Developer may, at its own discretion, offer toll discounts, subject to the following limitations:
- (1) Developer shall not set Toll Rates that vary for the same User class (as defined in the User Classification) depending on the method by which Developer identifies a vehicle that drives on the Project. This does not preclude Developer from allowing a discounted Toll Rate for Users equipped with a Transponder or a User that has prepaid its toll ("Transponder Toll Rate"). The Transponder Toll Rate shall equal 65% of the Toll Rate (which results in a 35 percentage discount from the Toll Rate), subject to adjustment pursuant to this Exhibit 4.
  - (2) Developer shall not exempt a User that is not an Exempt Vehicle from paying toll.
  - (3) The percentage discount associated with the Transponder Toll Rate shall be set by NCDOT, but such percentage discount shall in no event be greater than the average percentage discount offered to Transponder Users on all express lane toll facilities in the State. NCDOT shall provide Developer 60 days prior notice of any adjustments to the discount associated with the Transponder Toll Rate. For purposes of determining the average percentage discount calculation under this Section VIII.A(3) only, the percentage discount for the Project shall be deemed to be 35 percent.
- B. If Developer desires to implement a change in the toll discount (excluding discounts related to the Transponder Toll Rate which shall be set by NCDOT), at least 15 days prior to the effective date of any change, Developer shall provide NCDOT with a written revised schedule of toll discounts and shall publish such schedule in the same manner as set forth in Section III.D.
- C. Developer shall not charge any toll premium to Users for any reason.

**Attachment B**

Exhibit 18 to the Comprehensive Agreement

[see attached]

## **EXHIBIT 18**

### **ALL ELECTRONIC TOLL COLLECTION SERVICES FOR I-77 HOT LANES**

#### **I. GENERAL**

- A.** The I-77 High Occupancy Toll (HOT) Lanes will be an Open Road Tolling operation ("ORT"). North Carolina Department of Transportation ("NCDOT") and Developer shall provide the required ETC Services for the HOT Lanes in accordance with this Exhibit 18 and the CA Documents. NCDOT shall perform all of its ETC Services through the North Carolina Turnpike Authority ("NCTA"). NCDOT operates toll collection services through a single, statewide system commonly referred to as NC Quick Pass. NC Quick Pass includes a (1) Central Clearing House ("CCH") serving as the account management system and (2) Customer Service Center ("CSC") back office system for all NCTA toll facilities within the State. In addition, NCDOT provides NC Quick Pass storefronts near State toll facilities for walk-in customer service. The CCH is designed to be interoperable with all in-state toll facilities and all out-of-State toll facilities with which NCDOT has established or will establish Reciprocity Agreements, including E-ZPass® Group ("EZG"), Florida's Turnpike Enterprise or their respective successors. The CCH and CSC interface with all such toll facilities to distribute the status of active Transponders and Accounts and to receive and process Transactions carried out by any user of the toll facilities.
- B.** Developer and NCDOT may perform all or part of their respective ETC Services through one or more ETC Servicers in accordance with this Exhibit 18 and the CA Documents.
- C.** Developer shall give NCDOT at least 12 months prior written notice of the anticipated date of Substantial Completion of the first Project Section and provide a workplan for implementation of ETC Services so that NCDOT may plan for any required interface work and testing in accordance with Section 24.6.2 of the Technical Provisions. NCDOT shall cooperate with Developer to conduct and satisfy all testing required pursuant to Section 24.6.1 of the Technical Provisions.

#### **II. NCDOT AND DEVELOPER BUSINESS POLICIES AND PROCEDURES**

- A.** NCDOT standard operating procedures for CCH and CSC services as of the Effective Date are set forth in the NCTA Business Policies. NCDOT may modify the NCTA Business Policies at any time during the Term; and Developer is subject to those modifications in accordance with this Exhibit 18 and the CA Documents. All modifications to the NCTA Business Policies or other future NCDOT CCH and CSC policies and procedures that affect Developer's ETC Services after the Effective Date are subject to review by Developer.

- B. No later than 12 months prior to the anticipated date of Substantial Completion of the first Project Section, Developer shall submit to NCDOT proposed modifications to the NCTA Business Policies. After receipt by NCDOT of such proposed modifications, the Parties shall engage in discussions on the NCTA Business Policies to mutually agree on any Developer proposed modifications to such policies and procedures for the HOT Lanes.
- C. No later than 12 months prior to the anticipated date of Substantial Completion of the first Project Section, NCDOT shall submit to Developer a proposed plan for Developer's monitoring of the CCH and CSC services provided by NCDOT under Paragraph IV. After receipt by Developer of such plan, the Parties will engage in discussions on the proposed plan to reach mutual agreement on the plan no later than 90 days prior to Substantial Completion of the first Project Section.
- D. All Developer policies and procedures that affect NCDOT CCH and CSC operations are subject to review and approval by NCDOT (such approval not to be unreasonably withheld or delayed).

### **III. ETC SERVICES FURNISHED BY DEVELOPER**

- A. Developer shall be responsible for the performance of the following ETC Services for the HOT Lanes:
  - (1) provide ORT service to Users which allow the collection of the toll without the vehicle stopping or slowing down;
  - (2) detect vehicles;
  - (3) enforcement of the HOT lanes in accordance with Section 24.3.2.6 of the Technical Provisions;
  - (4) inform Users in real-time of the applicable Toll Rates using Toll Rate Signs in accordance with Section 18.3.5 of the Technical Provisions;
  - (5) classify each vehicle per the User Classification pursuant to Exhibit 4 of the Agreement;
  - (6) create a proof of passage by Toll Segment, including by video image review, in accordance with the CA Documents and applicable Law;
  - (7) generate Transactions for each Toll Segment and maintain proper records of such Transactions with the proper records available to the CSC for 24 months for all such Transactions sent to the CSC;
  - (8) maintain a database of all the displayed Toll Rates by Toll Segment, direction, and time of day;



- (9) accurately calculate and assign the applicable toll for the use of the HOT Lanes, in accordance with Exhibit 4 of the Agreement and Section 24 of the Technical Provisions;
  - (10) check proof of passage records, including Transponder reads and video images, against the most recent valid Transponder status list provided each business day by NCDOT;
  - (11) transmit each day all Transactions and video records for Video Transactions from the roadside host/computer/router/server for a User to the CCH. During periods when communications with the CCH is not available, Developer shall resend such Transactions and records when communications are restored;
  - (12) maintain records of Transactions by vehicle in accordance with applicable Law
  - (13) assist in the promotion and marketing of Transponders in cooperation and coordination with NCDOT;
  - (14) establish, administer, and operate the necessary ETCS data and communication lines, software, hardware, and equipment to send Transaction information to the CCH; and
  - (15) other ETC Services set forth in Section 24 of the Technical Provisions.
- B.** In performing all of its ETC Services, Developer shall be responsible for meeting the requirements set forth in the CA Documents, including those for an ETCS as required in Section 24 of the Technical Provisions and Exhibit 4 of the Agreement.
- C.** Developer's performance of its ETC Services shall comply with the requirements set forth in Table 23.2 and Table 23.3 of the Technical Provisions. Failure to comply with such requirements may result in Noncompliance Points and trigger the remedies set forth in the CA Documents.
- D.** Developer shall take no actions that violate or affect any of the terms of any Reciprocity Agreement that is incorporated as part of the CA Documents and that a copy has been provided to the Developer by NCDOT at least 60 days prior to its incorporation as part of the CA Documents; provided, however, that Developer shall not be required to comply with the terms of any Reciprocity Agreement that is in violation of applicable Law.
- E.** In addition, pursuant to Section 24 of the Technical Provisions, Developer shall provide Level Two Customer Service to NCDOT for the HOT Lanes usage. The Level Two Customer Service may be provided by Developer, its Affiliates, an ETC Servicer, or combination thereof. Developer may enter into an agreement with NCDOT to perform all or a portion of such services on behalf of Developer from time to time under separate agreement from the CA Documents.

Furthermore, Developer shall provide on-site personnel and information to NCDOT from time to time for purposes of training NC Quick Pass personnel to respond to customer inquiries concerning Developer's Toll Regulation set forth in Exhibit 4 of the Agreement.

#### **IV. ETC SERVICES FURNISHED BY NCDOT**

**A. NCDOT shall be responsible for the performance of the following ETC Services for the HOT Lanes:**

- (1) establish, administer, and operate the CCH, including but not limited to the necessary data and communication lines, facilities, office supplies, software, hardware, Transponders and equipment, and necessary personnel.
- (2) establish, administer, and operate the CSC, including, but not limited to, the necessary data and communication lines, office supplies, software, hardware and equipment and providing the necessary personnel as set forth in Section 24 of the Technical Provisions. CSC operations include:
  - (a) the establishment of a walk-in customer service center in the Charlotte area only as required by North Carolina General Statutes § 136-89.213 as of the Effective Date;
  - (b) the activities described in Paragraph V;
  - (c) provide customer relationship management including the following services for the HOT Lanes:
    - interface with Level Two Customer Service to resolve customer complaints;
    - open, set up, and close accounts to receive ETC Services;
    - accurately manage Accounts, including invoicing and billing, research, mailing or posting of statements, and receipt of payment and posting of such payment;
    - generate requests for payment including bill by mail escalation in accordance with the NCTA Business Policies;
    - determine and impose Incidental Charges;
    - monitor and manage the payment of outstanding tolls and any Incidental Charges, including adjudication of the outstanding amount in accordance with applicable Law;

- manage and respond to customer correspondence and inquires; and
  - provide courteous customer dispute resolution services including the appropriate resolution with Developer for Level Two Customer Service for those User inquiries related to a User disputing a toll that may require an adjustment to the toll previously charged to a User; and
  - accept cash payment of the toll and Incidental Charges in accordance with applicable Law.
- (3) transmit Transponder status lists and video pre-paid status lists (if applicable) at least once every 24 hours pursuant to the ICD;
  - (4) establish, administer, operate and maintain a call center in which employees will perform all customer relationship management activities including enrollment of Customer to receive ETC Services;
  - (5) establish, operate and maintain a self-service website which, at a minimum, will allow the User to:
    - (a) make a service request;
    - (b) enroll for ETC Services;
    - (c) maintain an Account;
    - (d) make a payment, including a one-time payment;
    - (e) view and print financial and Transaction history;
    - (f) view and print statements;
    - (g) report lost/ stolen Transponders;
    - (h) request additional Transponders; and
    - (i) request an Account closure.
  - (6) establish, operate and maintain an Interactive Voice Response ("IVR") phone system which, at a minimum, will allow the Customer to:

- (a) obtain NC Quick Pass information;
    - (b) make a payment, including a one-time payment;
    - (c) maintain an Account;
    - (d) query Account balance;
    - (e) receive most recent payment information; and
    - (f) obtain Transponder status;
  - (7) procure and distribute Transponders in accordance with Paragraph V;
  - (8) establish, administer and maintain a plate type code table in the ICD for all states that require a plate type code in order to return the owner's information for billing purposes. If, at any time, there are plate type codes identified by Developer as having no identifiable characteristics listed within the associated States plate guide, Developer shall notify NCDOT. NCDOT shall then either (a) remove the plate type code from the ICD or (b) provide the resource necessary to properly identify that plate type code; and
  - (9) promote the use of Transponders to the general public at a level similar to the level that NCDOT uses to promote the use of transponders on other toll roads in the State.
- B.** NCDOT shall perform its ETC Services in accordance with the NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Appendix B of this Exhibit 18.
- C.** NCDOT's performance of its CCH and CSC Services shall comply with the minimum performance requirements set forth in Appendix B of this Exhibit 18. Noncompliance with the minimum performance requirements identified in Table B-1 of Appendix B shall result in CCH/CSC Noncompliance Points and trigger the remedies set forth in Appendix B. Metrics and format of the reports for reporting on the performance requirements will be mutually agreed upon between NCDOT and Developer.
- D.** NCDOT will provide a minimum of 60 days advance notice to Developer of any planned changes to any CSC operations that may materially affect Developer and will, with good faith cooperation, seek Developer's comments on any such changes and incorporate any mutually agreeable proposals to the changes. Further, NCDOT will provide written notice to Developer prior to the renewal/exercising of an option for any ETC Servicer contracts in effect as of the Effective Date and seek comments from Developer prior to the preparation of any solicitations for an ETC Servicer during the Term.

## **V. PROCUREMENT AND DISTRIBUTION OF TRANSPONDERS**

- A.** NCDOT shall maintain an inventory of Transponders to meet its obligations under Table B-1 of Appendix B to this Exhibit 18.
- B.** The NCDOT CSC shall manage and distribute Transponder inventory. Developer shall reimburse NCDOT the purchase price of Transponders damaged or destroyed while the Transponders are within the care, custody and control of Developer if replacement for such Transponders is required by NCDOT.

## **VI. SYSTEMS**

### **A. General**

- (1) Developer and NCDOT acknowledge that each shall operate independent but compatible systems for the electronic tolling of Users. NCDOT and Developer will each continue to be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of all equipment, including any communications links, for their respective systems. Specifically, Developer will be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of all necessary roadside, in-lane and computer equipment for its ETCS through and including any equipment required to transmit and deposit Transaction files to the CCH host server. NCDOT will be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of its NC Quick Pass system commencing from the CCH host server and extending through and including NCDOT telephone lines, routers, black boxes and the CSC as well as to all out-of-State toll facilities with which NCDOT has established Reciprocity Agreements.
- (2) Developer shall design, fabricate, construct, operate and maintain the HOT Lanes ETCS in accordance with the CA Documents, including Section 24 of the Technical Provisions and all applicable NCDOT standards. Specifically, Developer will maintain its ETCS to perform and transmit Transaction information to NCDOT.
- (3) Developer and NCDOT acknowledge and agree that the parameters and requirements for the exchange of the Transaction file at the CCH host server shall be compatible with the parameters and requirements used by NCDOT. NCDOT will provide data formats, documentation, interface requirements and any other necessary design information to Developer at no additional cost to Developer. Such information shall include, but not be limited to, the standard protocol for daily Transaction reports as well as transmission, adjustment, reconciliation, and post Financial Clearing files and records. NCDOT shall provide such information so that the Developer can incorporate it into the ETCS Testing Plan pursuant to Section 24.5 of the Technical Provisions.

- (4) If NCDOT notifies Developer that Developer's ETCS is not operating in accordance with Section 24 of the Technical Provisions, NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Table 23.2 of the Technical Provisions, Developer will promptly initiate appropriate corrective action in accordance with the CA Documents.
- (5) If Developer notifies NCDOT that NCDOT's ETCS is not operating in accordance with Section 24 of the Technical Provisions, NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Table B.1 of Appendix B of this Exhibit 18, NCDOT will promptly initiate appropriate action in accordance with the CA Documents.

**B. Notification of Modifications to Systems**

- (1) Each Party will notify the other in writing at least 120 days in advance of any change or modification to such Party's system that may affect the other Party's system in any material respect. Except as provided in the CA Documents, each Party shall be responsible for its own cost associated with the installation and testing of any system modification. At NCDOT's request, Developer may participate in the installation of upgrades or other modifications to NC Quick Pass. In any such event, each Party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party at least 60 days in advance of testing.
- (2) Should NCDOT notify Developer that data formats, documentation, interface requirements and/or NC Quick Pass design will change prior to 365 days after Final Completion, Developer shall have the rights and remedies set forth in Section 12.1.2 of the Agreement.

**C. Developer Modifications to ETCS**

As tolling technology changes, Developer may modify or upgrade the ETCS in keeping with Good Industry Practice and as set forth in Section 12.1.1 of the Agreement. In such cases, Developer will cause the ETCS to be compatible with NC Quick Pass system. Any agreed upon modifications necessary to the NC Quick Pass due to a request by or modification made by Developer shall be at the expense of Developer.

**D. NCDOT Modifications to NC Quick Pass**

- (1) As toll technology changes, NCDOT may modify or upgrade the statewide NC Quick Pass system, including modifications and upgrades to accommodate Transponder equivalent or supplemental technology. Such modifications and upgrades include the development of mobile application to declare User HOV status in accordance with Exhibit 4 of the Agreement and Section 24 of the Technical Provisions. In all such cases,

Developer will cause the ETCS to be compatible with the statewide NCDOT Quick Pass system pursuant to Section 12.1.1 of the Agreement and in accordance with applicable Law.

- (2) NCDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its statewide system at levels which are reasonable given the schedule, scope and budget for the system and will not exceed what is considered customary and reasonable for hardware and software processing systems.
- (3) NCDOT does not guarantee against adverse impacts to the performance of the hardware or software in Developer's or others' systems due to modifications, upgrades and associated testing of its statewide system. While precautions will be taken by NCDOT to help mitigate the risk of occurrence of such adverse impacts, NCDOT will not, except as otherwise provided in the CA Documents, be financially responsible for the occurrence of adverse impact to Developer or other third parties affected during such modifications, upgrades and associated testing.

**E. System Performance Failures and Delayed Transactions**

- (1) Except as otherwise provided in this Exhibit 18 and Section 24 and Table 23.2 of the Technical Provisions, both Developer and NCDOT will report as promptly as possible and no later than 18 hours from when the Parties received notice thereof, of any system failure or degradation that may affect ETC operations.
- (2) In the event that Developer is unable to send Transactions for the HOT Lanes for periods in excess of 24 hours, Developer shall notify NCDOT prior to sending any backlogged Transactions for the HOT Lanes. Such backlogged Transactions shall be included in performance measurements of Developer in accordance with Table 23.2 of the Technical Provisions (unless such event is beyond the control of Developer), but shall not be considered in performance measurements of NCDOT in accordance with Appendix B of this Exhibit 18.

**F. Transponder Equivalent or Supplemental Technology Proposed by Developer**

From time to time during the Term, Developer may propose a Transponder equivalent or supplemental technology which has the capability to classify each vehicle in accordance with the User Classification set forth in Exhibit 4 of the Agreement, as well as generate Transactions and maintain proper records of such Transactions using such Transponder equivalent or supplemental technology. Such proposal shall identify any proposed modifications to the CA Documents, including those modifications related to NC Quick Pass, the ETCS and Proprietary Intellectual Property. NCDOT, in its sole discretion, may accept or reject such proposal.

## **VII. PAYMENT TERMS**

### **A. Account Types**

NCDOT shall establish and maintain Account types consistent and in accordance with the NCTA Business Policies.

### **B. Toll Payments**

- (1) Developer agrees to send Transactions to the CCH at least once every 24 hours by an agreed upon time and to meet the performance requirements set forth in Section 24 and Table 23.2 of the Technical Provisions.
- (2) Upon Substantial Completion of the first Project Section, NCDOT agrees to begin processing Transactions transmitted by Developer for Financial Clearing. For each Transaction, NCDOT shall pay Developer, through the trustee under the Project Trust Agreement, an amount equal to the Transponder Toll Rate less discounts applied by Developer in the Transaction file applicable to the Toll Segment associated with the Transaction, regardless of Transaction type and regardless of NCDOT's ability to collect the toll from the User ("Toll Payment"). Notwithstanding anything to the contrary in the CA Documents, Developer shall not be entitled to any Toll Payments for Transactions involving Exempt Vehicles or for Irregular Transactions.
- (3) Beginning on the fifth Business Day after receipt by NCDOT of a Transaction Invoice submitted by Developer in accordance with and in compliance with Appendix C of this Exhibit 18, NCDOT agrees to initiate payment of the Toll Payment for each Transaction listed in such Transaction Invoice by ACH or other method agreed upon between NCDOT and Developer to the trustee under the Project Trust Agreement, less payment of the applicable Transaction Fee, Variable Fees and any Pass Through Fees owed by the Developer to NCDOT pursuant to this Exhibit 18.
- (4) NCDOT will not aggregate Transaction Invoices, but will pay each Transaction Invoice separately.
- (5) Developer will receive emails from NCDOT's AP system providing notification of the electronic funds transfer (EFT) payment being processed by NCDOT and the specific Transaction Invoice(s) to which a payment is related. Developer will complete the ACH email form, provided by NCDOT, to list up to 10 email addresses that Developer wants to receive the notifications of the Toll Payments.
- (6) Toll Payments shall be subject to reconciliation and adjustment pursuant to Appendix C of this Exhibit 18.



**F. Transaction Fees, Variable Fees and Pass Through Fees**

- (1) The Transaction Fee is set forth in Appendix A of this Exhibit 18. Developer agrees to pay the required Transaction Fee based upon the number and type of Transactions and Irregular Transactions processed by NCDOT, excluding Transactions for Exempt Vehicles. Each Transaction Fee shall be for one Toll Segment.
- (2) The Transaction Fees do not include the Variable Fees or Pass Through Fees, and Developer agrees to pay the Variable Fees and Pass Through Fees (if any) assessed with respect to a Transaction.
- (3) NCDOT will manage the assessment of Transaction Fees, Variable Fees and Pass Through Fees in accordance with this Exhibit 18.
- (4) NCDOT shall deduct the required Transaction Fee, Variable Fees and any Pass Through Fees from the payment to the trustee under the Project Trust Agreement in accordance with this Exhibit 18. NCDOT shall cause the amount owed, if any, to other entities from the required Transaction Fee, Variable Fees and Pass Through Fees to be promptly deposited into the accounts of such entities as agreed to with those entities.

**G. ETC Services Change Orders**

- (1) The Transaction Fees, Variable Fees, Pass Through Fees and Incidental Charges (if any) are for the ETC Services furnished by NCDOT under this Exhibit 18 as of the Effective Date.
- (2) During the Term, Developer and NCDOT may agree on changes to the ETC Services furnished by NCDOT. Such changes shall be by an ETC Services Change Order executed by both Parties, setting forth the changes to the ETC Services furnished by NCDOT, the compensation and payment terms for such changes, and any other matters applicable to such changes.

**H. Incidental Charges**

- (1) In accordance with applicable Law, Incidental Charges shall be charged by and paid to NCDOT.
- (2) Developer shall have the authority to charge and collect Incidental Charges only in the event that Developer exercises its rights to perform NCDOT's ETC Services pursuant to Paragraph XI of this Exhibit 18. Developer shall comply with and be subject to all applicable Law regarding Incidental Charges.
- (3) Should a change in Law revise the amount of Incidental Charges, NCDOT and Developer shall notify the public using all necessary measures to communicate to the public the schedule of NCDOT imposed

Incidental Charges, including through the use of a public internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication.

## **VIII. MARKETING**

Developer will develop and coordinate marketing for the HOT Lanes with NCDOT in accordance with Section 3 of the Technical Provisions. Developer will be responsible for all costs incurred by Developer for the marketing of the HOT Lanes as included in the most recent annual update of the Communication, Public Outreach and Community Education Plan pursuant to Section 3.3 of the Technical Provisions, except that NCDOT shall provide the marketing for NCDOT's HOV mobile application and be responsible for the costs thereof. The most recent annual update will be the Communication, Public Outreach and Community Education Plan approved by NCDOT on the date closest to the first Substantial Completion Date. If Developer requests NCDOT's assistance to implement the Communication, Public Outreach and Community Education Plan, Developer shall reimburse NCDOT for the NCDOT Recoverable Costs incurred for such assistance. NCDOT will, in good faith cooperation, include Developer in its marketing efforts for NC Quick Pass and ETC Services. However, either Party may implement, at its own cost, supplemental marketing efforts which are in addition to those provided by the mutually agreed upon Communication, Public Outreach and Community Education Plan after informing the other Party in writing of such supplemental efforts. Developer will be provided usage of, and is hereby granted, a license to use the term "NC Quick Pass" or any such successor. Developer may also use the NC Quick Pass logos and logos of the Reciprocity Agencies to the extent allowed by such Reciprocity Agencies at no charge for operational and marketing purposes and NCDOT represents and covenants that it has lawful authority to grant such license; provided that NCDOT will retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

## **IX. LIAISON; MEETINGS**

- A.** Each Authorized Representative of NCDOT and Developer will designate a person and an alternate whose responsibility will be to meet periodically with each other.
- B.** From time to time and at the request of either NCDOT or the Developer, a meeting may include any ETC Servicer in order to coordinate areas of mutual concern and interest to both Developer and NCDOT, including the CCH and CSC operations.
- C.** The primary purpose of meetings will be to discuss issues related to the provision of ETC Services, the cost of ETC Services, other issues of mutual interest and, if applicable, the selection and performance of the ETC Servicer. NCDOT will be responsible for coordinating the meetings, which will be held not less than quarterly.

## **X. RECORDS AND AUDITS**

- A.** NCDOT and Developer will have access to Transaction records maintained by the Developer, NCDOT, and any ETC Servicer upon reasonable notice to the other Party and in accordance with applicable Law. Such access shall not be unreasonably withheld. For the avoidance of doubt, the provisions of Article 22 of the Agreement shall apply to all records related to the ETC Services along with applicable Law.
- B.** NCDOT shall have the right, but not the obligation, to conduct statistically valid sample auditing of Transactions sent to the CCH by the Developer each Business Day. Developer and NCDOT shall agree and establish a procedure to conduct such auditing as of the first Substantial Completion Date as set forth in Paragraph II.B.
- C.** Developer shall have the right, but not the obligation, in accordance with applicable Law to inspect all information related to Transactions sent to the CCH by the Developer and processed by NCDOT by the CCH and CSC. Developer and NCDOT shall agree and establish a procedure for such inspection as of the first Substantial Completion Date as set forth in Paragraph II.B.
- D.** All records created and maintained by the Developer shall meet the requirements of Chapters 121 and 132 of the General Statutes of North Carolina. NCDOT shall provide assistance to the Developer upon request to assure adherence to all records management requirements.

## **XI. REMEDIES FOR NCDOT'S NONPAYMENT AND FAILURE TO PERFORM ETC SERVICES**

### **A. Failure to Pay Amounts Due Under this Exhibit 18**

If NCDOT fails to make a payment to Developer under this Exhibit 18 when due, Developer shall have the following rights and remedies:

- (1) Developer shall be entitled to interest in accordance with Section 24.16 of the Agreement;
- (2) If NCDOT fails to make such payment to Developer when due, and such failure continues for 20 consecutive Business Days, Developer shall have the right to terminate NCDOT's responsibility to perform the ETC Services required under this Exhibit 18 and assume performance of such services on Developer's own behalf. If Developer elects to exercise its rights under this Paragraph XI.A.(2), Developer shall provide no less than 30 days advance written notice to NCDOT during which NCDOT shall continue to perform ETC Services required under this Exhibit 18.
- (3) NCDOT shall continue to provide any Toll Payments owed to Developer pursuant to Paragraph VII for three years after the termination has occurred.

**B. Failure to Perform ETC Services**

Developer shall have the rights and remedies set forth in Appendix B of this Exhibit 18 for failure by NCDOT to perform certain ETC Services in accordance with Appendix B of this Exhibit 18.

**C. Transition Plan for ETC Services in the Event of Termination**

- (1) No more than 180 days after the successful completion of the ETCS Demonstration Period for the first Project Section to achieve Substantial Completion, NCDOT shall submit a transition plan to Developer that sets forth the protocols and procedures in the event the ETC Services to be furnished by NCDOT are terminated under this Exhibit 18. Such transition plan shall set forth protocols and procedures for (i) the switchover involving the cessation of CCH account management system services for the HOT Lanes as described in this Exhibit 18 and the commencement of such services to Developer (or its ETC Servicer), including access to NCDOT NC Quick Pass account information in accordance with applicable Law; (ii) the continuation of interoperability between NC Quick Pass and Developer; (iii) the transition of CSC back office system services for the HOT Lanes as described in this Exhibit 18; (iv) the mutual payment and transfer of any moneys owed between the parties under this Exhibit 18; (v) the transfer of any Transponder inventory in the possession of NCDOT pursuant to this Exhibit 18; (vi) ensuring that interoperable transaction fees between NC Quick Pass and Developer shall not exceed the lesser of: (A) the fees established in Appendix A of this Exhibit 18 and (B) the fees established in the E-ZPass® Group Reciprocity Agreement; and (vii) facilitating and arranging, to the extent available, Developer's acceptance and integration into out-of-state interoperability arrangements. NCDOT shall prepare such transition plan at its sole cost and expense.
- (2) Developer shall review the transition plan and provide any comments to NCDOT within 60 days of its receipt. After the receipt of Developer's comments, the Parties shall cooperate with each other to develop a mutually acceptable transition plan no later than 180 days after Final Completion. Such transition plan shall be approved by Developer in its sole discretion. However, until such time that a transition plan is approved by Developer, Developer shall not have the right to terminate the ETC Services furnished by NCDOT pursuant to this Exhibit 18.

**D. Developer's Rights to Exercise Toll Collection and Enforcement**

In the event Developer terminates NCDOT's performance of ETC Services under this Exhibit 18, Developer shall have the authority to perform such ETC Services, including toll collection and enforcement, in accordance with this Exhibit 18 and to the maximum extent allowed by applicable Law. For the avoidance of doubt, Developer may utilize to the fullest extent allowed by applicable Law the

enforcement provisions set forth in the NCTA Business Policies, including, without limitation, Policy 4.8 of the NCTA Business Policies.

## **XII. DEFINITIONS**

Capitalized terms used but not otherwise defined in this Exhibit 18 have the respective meanings set forth in Exhibit 1 to the Agreement. In addition, the following terms have the meanings specified below:

**ACH** means Automated Clearing House or similar electronic network for financial transactions in the United States in which credit and debit transactions which are originated in batches between entities.

**CCH/CSC Noncompliance Event** means each failure by NCDOT to perform the performance requirements set forth in Table B -1 of Appendix B of this Exhibit 18.

**CCH/CSC Noncompliance Points** means the points that may be assessed for certain breaches or failure to perform by NCDOT, as set forth in Table B-1 of Appendix B of this Exhibit 18.

**ETC Services** means the services furnished by Developer or NCDOT, as applicable, pursuant to this Exhibit 18.

**ETC Services Change Order** means a written document executed by the Parties with respect to a change in the ETC Services furnished by NCDOT.

**ETC Servicer** means a contractor performing the ETC Services for Developer or NCDOT, as applicable.

**Financial Clearing** means the daily fiscal processes that are used to send an instruction to the payee that a Transaction has occurred that requires payment of a fixed or determinate amount of money, to obtain the payment from the payee (or an authorized third party such as a bank or credit card issuer), to post any and all accounting entries, to conduct any and all settlements, and to disburse the payment in accordance with the CA Documents.

**NCTA Business Policies** means that certain North Carolina Turnpike Authority Customer Service Center Business Policies dated February 17, 2017 with revisions agreed between the Parties as of the Amendment No. 8 Date, as may be modified from time to time pursuant to Paragraph II.A of Exhibit 18.

**Pass Through Fees** means any fees charged by Reciprocity Agencies with respect to a Transaction on the HOT Lanes.

**Reciprocity Agency** means any agency, authority or other Governmental Agency operating an out-of-State toll facility that has entered into a Reciprocity Agreement.

**Reciprocity Agreement** means a contract between NCDOT and any agency, authority or other Governmental Agency operating an out of State toll facility to ensure that the

procedures involved in the payment of tolls and other fees and charges through an electronic means are standardized and fully compatible (commonly referred to as interoperable).

**Variable Fees** means an amount equal to three percent (3%) of the Toll Payment.

**Appendix A**

**Transaction Fee**

<b>Transaction Type</b>	<b>Amount</b>
Transponder Transaction	\$0.045
Video Transaction	\$0.045
Exempt Vehicle Transaction	\$0.00

The Transaction Fee shall be applied only once to each Transaction and Irregular Transaction for each Toll Segment sent to the CCH by the Developer.

The Transaction Fee identified in this Appendix A shall remain in effect for 5 years after the Substantial Completion Date for the Project Section which is first to achieve Substantial Completion. The Transaction Fee identified in this Appendix A shall be increased by 2.5 percent annually after such 5-year period. Such escalated Transaction Fee shall take effect and be applied at the end of such 5-year period and every other year thereafter.

## **Appendix B**

### **Performance Requirements for ETC Services Performed by NCDOT**

Table B-1 of this Appendix B identifies minimum performance requirements for certain ETC Services performed by or on behalf of NCDOT pursuant to Exhibit 18, which shall result in CCH/CSC Noncompliance Points and trigger the remedies set forth in this Appendix B. The occurrence of a CCH/CSC Noncompliance Event ("NCE") shall trigger the assessment of CCH/CSC Noncompliance Points and, if applicable, liquidated damages, under the system set forth in this Appendix B. The minimum performance requirements set forth in this Table B-1 of this Appendix B shall apply the later of (a) October 1, 2018 or (b) the Amendment No. 8 Date. NCDOT shall be required to submit a monthly report related to the applicable minimum performance requirements no later than 30 Days after the end of the applicable month.

#### **A. Notification**

- (1) If NCDOT believes there has occurred any CCH/CSC Noncompliance Event, NCDOT may deliver to Developer a written notice of determination thereof setting forth the CCH/CSC Noncompliance Event and the CCH/CSC Noncompliance Points and, if applicable, the liquidated damages to be assessed with respect thereto. Such written notice shall be provided within 3 Business Days after NCDOT obtains knowledge of such CCH/CSC Noncompliance Event.
- (2) If Developer believes there has occurred any CCH/CSC Noncompliance Event, Developer may deliver to NCDOT a written notice of determination thereof setting forth the CCH/CSC Noncompliance.

#### **B. Assessment of CCH/CSC Noncompliance Points and Liquidated Damages**

If at any time Developer serves notice of determination under Section A, then, Developer may assess CCH/CSC Noncompliance Points and, if applicable, liquidated damages in accordance with this Appendix B, subject to the following terms and conditions.

- (1) Developer shall not be entitled to assess CCH/CSC Noncompliance Points or liquidated damages under more than one category for any particular event or circumstance that is a CCH/CSC Noncompliance Event. Where a single act or omission gives rise to more than one CCH/CSC Noncompliance Event, it shall be treated as a CCH/CSC Noncompliance Event for the purpose of assessing CCH/CSC Noncompliance Points and, if applicable, liquidated damages, and the highest amount of CCH/CSC Noncompliance Points and liquidated damages under the relevant CCH/CSC Noncompliance Event shall apply.
- (2) The number of points listed in Table B-2 of this Appendix B for any particular CCH/CSC Noncompliance Event is the maximum number of



CCH/CSC Noncompliance Points that may be assessed for each event or circumstance that is a breach or failure, and the amount of liquidated damages listed in Table B-1 of this Appendix B for any particular Noncompliance Event is the maximum amount of liquidated damages that may be assessed for each event or circumstance that is a breach or failure. Developer may, but is not obligated to, assess less than the maximum.

**C. Provisions Regarding Dispute Resolution**

- (1) NCDOT may object to the assessment of CCH/CSC Noncompliance Points respecting any CCH/CSC Noncompliance Event, by delivering to Developer written notice of such objection not later than five days after Developer delivers its written notice of such CCH/CSC Noncompliance Event.
- (2) If for any reason NCDOT fails to deliver its written notice of objection within the applicable time period, NCDOT shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.
- (1) If NCDOT gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures in Section 17.8 of the Agreement.
- (2) Pending the resolution of any Dispute arising under this Section C, the provisions of this Section C shall take effect as if the matter were not in Dispute, provided that if the final decision regarding the Dispute is that (a) the CCH/CSC Noncompliance Points should not have been assessed or, (b) the number of CCH/CSC Noncompliance Points must be adjusted, then the number of CCH/CSC Noncompliance Points assigned or assessed and the related liabilities of NCDOT shall be adjusted to reflect such decision.

**D. Developer Remedies for Accumulated CCH/CSC Noncompliance Points**

- (1) If at any time NCDOT is assessed more than 223 CCH/CSC Noncompliance Points in any consecutive 365-day period, Developer shall be entitled, at NCDOT's expense, to increase the level of monitoring of the ETC Services provided by NCDOT under Paragraph IV of Exhibit 18 beyond the level agreed upon pursuant to Paragraph II.C of Exhibit 18, to such increased level as Developer sees fit, until such time as NCDOT has demonstrated to Developer's reasonable satisfaction that:

- (a) Has reduced the number of CCH/CSC Noncompliance Points below the threshold triggering such heightened scrutiny, and
- (b) Is diligently pursuing cure of all other instances of CCH/CSC Noncompliance Events that have resulted in assessment of CCH/CSC Noncompliance Points.

Developer may require as part of such increased monitoring that NCDOT prepare a remedial plan for Developer's review and approval.

- (2) If at any time NCDOT is assessed more than 245 CCH/CSC Noncompliance Points in any consecutive 365-day period, then, Developer shall be entitled to require NCDOT to replace the applicable ETC Servicer. Upon receiving written notice from Developer that Developer intends to exercise its rights under this Section D(2), NCDOT shall elect either to: (a) replace the ETC Servicer and the replacement ETC Servicer shall start providing CCH and/or CSC services within 120 days of such notice at no additional cost to Developer or (b) terminate NCDOT's responsibility to perform ETC Services as described in Exhibit 18 and allow Developer to perform such services on Developer's own behalf.
- (3) If NCDOT elects to terminate its responsibility to perform the CCH and CSC services pursuant to Section D(1)(b), NCDOT shall provide 120 days advance written notice to Developer. After providing such written notice to Developer, NCDOT shall continue to provide CCH and/or CSC services as described in Exhibit 18 until such time as Developer assumes performance of such services; provided, however, that NCDOT's obligation to continue to provide CCH and/or CSC services as described in Exhibit 18 shall not exceed a period of 365 days after providing such written notice
- (4) If at any time NCDOT is assessed more than 265 Noncompliance Points in any consecutive 365-day period, then Developer shall be entitled to terminate NCDOT's responsibility to perform CCH and/or CSC services as described in Exhibit 18 and assume performance of such services on Developer's own behalf within 120 days of providing written notice to NCDOT of such decision.
- (5) If termination of NCDOT's responsibility to perform CCH and/or CSC services occurs pursuant to this Appendix B, NCDOT shall have no obligation to provide ETC Services-related facilities, equipment, software, hardware, communication lines, or office supplies, unless such items are owned or leased by Developer prior to termination.

#### **E. Liquidated Damages Respecting CCH/CSC Noncompliance Events**

- (1) In addition to CCH/CSC Noncompliance Points, certain CCH/CSC Noncompliance Events shall result in liquidated damages as set forth in Table B-1 below. NCDOT shall be liable for and pay to Developer

liquidated damages for each CCH/CSC Noncompliance Event assessed against NCDOT in the amount set forth in Table B-1.

- (2) Developer and NCDOT acknowledge that such liquidated damages shall constitute Developer's sole right to damages for such individual CCH/CSC Noncompliance Event and are reasonable in order to compensate Developer (a) for its increased costs in performing its obligations under Exhibit 18 and (b) for its potential loss of Toll Revenue. Developer and NCDOT further acknowledge that such increased costs and loss of revenue payment would be difficult and impracticable to measure and prove, because, among other things, the variety of factors that influence use of and demand for the Project make it difficult to sort out causation and quantify the precise Toll Revenue loss attributable to the matters that will trigger these liquidated damages.

**Table B-1. Performance Requirements for ETC Services Performed by NCDOT**

<b>TABLE B-1. PERFORMANCE REQUIREMENTS FOR ETC SERVICES PERFORMED BY NCDOT*</b>					
<b>Element Category</b>	<b>Required Task</b>	<b>ID</b>	<b>Minimum Performance Requirements</b>	<b>NCE Category</b>	<b>Liquidated Damages</b>
<b>CCH Host</b>	CCH Host Availability	1	Maintain 99.99% availability of the CCH host server, measured monthly.	C	
	No Loss of Transactions	2	No Transactions sent by Developer and receipt acknowledged by CCH shall be lost at any time, including during periods when communications with the CCH Host is not available. Success rate shall be 100% measured per day, reported upon occurrence and monthly.	E	100% of Transponder Toll Rate for each lost Transaction.
	Transaction Processing	3	Process eligible Transactions for posting in near real-time. Success rate shall be 100% measured per day, report delays upon occurrence and monthly.	C	
	Accuracy	4	Video Account bills and subsequent notices sent to the wrong recipient, or to a recipient who already has paid the toll, shall not occur more than once per 2,000 bills/notices sent, measured and reported monthly.	C	
<b>Call Response Time</b>	Call efficiency	5	The Average Speed of Answer (ASA) shall be no more than 60 seconds calculated monthly and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	B	
		6	95% of telephone calls to be answered within 3 minutes, calculated monthly and reported monthly, except under the	B	

			following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.		
	IVR automatic response time	7	The IVR must provide the requested information within 10 seconds of the customer entering their account information 100% of the time, measured daily and reported monthly.	B	
	Customer phone call blockage rate (busy signal)	8	The phone call blockage rate shall be less than 0.05% of total incoming calls, calculated and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	D	
	Telephone system availability	9	Telephone system (including trunk line, switch, instruments, IVR and call distribution systems) shall be 99.95% available on a 24x7 basis excluding pre-scheduled manufacturer's recommended preventive maintenance, measured and reported monthly.	D	
	Web Site availability	10	Interactive web site, including all requisite interactive links to external sites shall be 99.5% available on a 24x7 basis excluding pre-scheduled manufacturer's recommended preventive maintenance, or force majeure, measured daily and reported monthly.	D	\$100 per day for failure to meet the 99.5% availability requirement.
<b>Customer Service Availability</b>					

Web Site account maintenance availability	11	Secure customer access through website for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance.) shall be 95% available on a 24x7 basis excluding prescheduled manufacturer's recommended preventive maintenance (Data shall be secured by SSL certificate or similar certified technology) or force majeure, measured daily and reported monthly.	D	\$100 per day for failure to meet 95% availability requirement.
Walk-in center availability	12	The I-77 Express walk-in service center shall be available for not less than 8 hours per day weekdays and 4 hours per weekend measured daily and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt walk-in center availability requirements; (b) walk-in center closures resulting from documented severe weather/emergency events shall exempt walk-in center availability requirements; or (c) upon mutual agreement weekend hours may be eliminated if lack of customer traffic warrants	D	\$100 per day for each daily instance the walk-in center fails to meet the prescribed availability requirement
Call center staffing	13	Hours of staffed telephone coverage shall be not less than 8 hours per day weekdays and 4 hours per weekend measured daily and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements; (b) call center closures resulting from documented severe weather/emergency events shall exempt walk-in center availability requirements; or (c) upon mutual agreement weekend hours may be eliminated if lack of customer traffic warrants.	D	

<b>Customer Response Time</b>	Call abandon rate	14	The call abandon rate shall be less than 2.5% of all incoming calls lasting 3 minutes or more, calculated daily and reported monthly.	D	\$100 per day for failure to meet the less than 2.5% requirement after notice of failure to meet such benchmark.
	Issue written response	15	Written responses shall be issued with 3 business days 98% of the time, and within 5 business days 100% of the time, measured and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt written response requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	B	
	Walk-in service time	16	The I-77 Express walk-in center wait time for service shall be within 10 minutes 98% of the time, and within 30 minutes 100% of the time, calculated daily and reported monthly as measured by sampling or incident reporting, except under the following circumstances: a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt walk-in center availability requirements or (b) walk-in center closures resulting from documented severe weather/emergency events shall be exempt.	D	\$100 per day for failure to meet 98% service within 10 minutes and \$100 per day for failure to meet 100% service within 30 minutes after notification of NCE
	Acknowledge emails	17	Incoming email queries or complaints (which may include escalation to Level 2 Customer Service) shall be acknowledged in return within 30 minutes 100% of the time measured and reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt acknowledge email requirements or (b) walk-in center closures resulting from	C	

		<p>documented severe weather/emergency events shall be exempt.</p> <p>Response time after acknowledgement shall be issued within 3 business days 98% of the time, and within 5 business days 100% of the time, measured monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt acknowledge email requirements or (b) walk-in center closures resulting from documented severe weather/emergency events shall be exempt.</p>		
Telephone response not requiring research	18	<p>Telephone live queries and/or complaints related to standard products, services and policies should be addressed while the customer is on the telephone without a call-back required 90% of the time and 100% within one (1) Business Day, measured and reported monthly, except under the following circumstances: a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.</p>	C	
Complaint resolution	19	<p>100% of complaints will be resolved or escalated for dispute resolution within 30 days, measured monthly, except under the following circumstances: a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.</p>	C	



	Process Transponder requests	20	Time to process complete Transponder requests/orders shall be within two (2) Business Day 95% of the time and 100% within three (3) Business Days of receipt, measured daily, reported monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt call center availability requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	E	<p>\$100 for failure to meet 95% within two (2) Business Days and \$100 per day for failure to meet 100% within three (3) Business Days</p> <p>Liquidated damages will not apply for the first 60 days after the Amendment No. 8 Date.</p> <p>Liquidated damages will not be assessed for a given month if the total number of Transponders failing to be distributed within three (3) Business Days is fewer than ten (10).</p>
<b>Customer Service Quality</b>					
	Customer satisfaction rating	21	90% of customers must rank the service as satisfactory or better, measured in annual customer survey.	A	
<b>Customer Account Maintenance</b>	Mail or email statements	22	The time to mail or email statements and billings shall be within five Business Days of end of statement period, 90% of the time, measured monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt mail or email statement requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	E	
	Errors under \$50	23	The number of errors reported by customers under \$50 shall not exceed 1 per 1,000 Transactions, measured daily and reported monthly.	C	
	Errors over \$50	24	The number of errors reported by customers over \$50 shall not exceed 1 per 1,000,000	D	

		Transactions, measured and reported monthly.		
Privacy conformance	25	Privacy legislation (N.C.G.S. §136-89.213 and 18 U.S.C. §2721) shall be conformed with 100% of the time, report upon occurrence and monthly whether there have been any instances of non-conformance.	E	
Process account updates	26	Process 100% of account updates within one Business Day of receipt of application by any means, provided necessary information to update the Account is provided, measured monthly. Time to process correspondence, which may include general inquires or other activities not related to Account maintenance, is to be distinguished from time to process account updates. This standard is intended to cover both account openings and updates, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt Process account updates requirements or (b) call center closures resulting from documented severe weather/emergency events shall be exempt.	D	
Assign Transponders to accounts	27	99.95% of Transponder assignments to accounts shall be correctly assigned, measured daily and reported monthly.	D	\$100 per day for failure to meet 99.95%.
Time to process Transponder reports	28	The time to process Transponder reports shall be 95% within one (1) Business Day of receipt of report, except for lost/stolen reports, for which 100% will be processed within one (1) Business Day, measured monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt time to process Transponder reports requirements or (b) call center	B	

		closures resulting from documented severe weather/emergency events shall be exempt.		
Transaction Posting	29	Customers must be able to view (at a minimum via the Internet) ETCs-created Transactions charged to their ETC Prepaid Account within 3 business days. The success rate shall mean that the time elapsed between the time a Transaction is successfully created and the time the Transaction is posted on the Customer Account and can be viewed by the Customer is less than 3 Business Days. Success rate shall be 100%, measured monthly.	D	
Invoicing	30	The system must be able to generate a detailed and accurate invoice or statement at the end of each billing period, showing the list of all Transactions, tolls and Incidental Charges due, and debits and credits to prepaid accounts for all Accounts. The success rate shall mean that accurate invoices shall be issued for all Accounts within five Business Days after the end of each billing period. Success rate shall be 100%, measured monthly.	E	
Monthly ETC Service Report	31	NCDOT shall deliver to the Developer a monthly report describing how NCDOT has met all its ETC Service obligations (including a descriptions of the ETC Service obligations not performed and the reason why) for the previous calendar month within thirty (30) days after the previous calendar month.	A (There shall be a one week interval of recurrence for this performance requirement)	

\*Scheduled system maintenance is excluded from downtime calculations. Metrics and format of reports for reporting on performance requirements will be mutually agreed upon between NCDOT and Developer.

<b>Table B-2. CCH/CSC NONCOMPLIANCE POINTS</b>	
<b>CCH/CSC Noncompliance Event Classification</b>	<b>Points</b>
A	1
B	2
C	3
D	4
E	5

## **Appendix C**

### **TOLL PAYMENT INVOICING AND RECONCILIATION PROCESS**

#### **I. DAILY TRANSACTION FILES**

- A.** As specified by the CA Documents, Developer on each Day shall create and submit to NCDOT Transaction files containing Transaction records in compliance and in accordance with the NCTA Interface Control Document ("ICD"), except as noted in this Appendix C.
- B.** Developer shall submit separate Transaction files for Transponders issued by NCDOT, Video Transactions, Transactions involving Reciprocity Agencies, Exempt Vehicles, and resubmittal Transactions, which will appear as individual lines on the daily Transaction Invoice. Irregular Transactions shall be excluded from being sent in any Transaction file.
- C.** For each Transaction file submitted to the NCDOT, Developer shall receive from NCDOT an acknowledgement in accordance with the ICD.

#### **II. DAILY TRANSACTION INVOICES**

- A.** On each Day, Developer shall provide a Transaction Invoice to NCDOT via email by no later than 9:00 am eastern time based on distribution list specified by NCDOT. For Transaction Invoices received after 9:00 am eastern time on a Business Day, the Transaction Invoice shall be deemed received by NCDOT on the next Business Day. Transaction Invoices received on a non-Business Day will be deemed received by NCDOT the next Business Day.
- B.** Each Transaction Invoice shall only contain Transaction files that were acknowledged as received by NCDOT prior to 11:59:59 pm eastern time of the previous Day. A Transaction Invoice that contains a Transaction file that was not acknowledged as received by NCDOT prior to 11:59:59 pm eastern time of the previous Day shall be rejected by NCDOT in its entirety and shall not be eligible for payment, subject to the Developer's right to resubmit a Transaction Invoice in compliance with this Appendix C. Further, any Transaction file not sent by Developer within 45 days of the date of the Transaction shall not be eligible for a Toll Payment, unless the delay in transmittal is due to NCDOT's failure to perform the ETC Services in accordance with the CA Documents.
- C.** NCDOT shall notify Developer of any rejected Transaction Invoices no later than 3 Business Days after NCDOT's receipt of a Transaction Invoice. NCDOT shall reject Transaction Invoices only for the following reasons:
  - (1) File not sent

- (2) Bad file sent (file-based dispositions; issue discovery is communicated in the "Not Acknowledged" (NAK) file)
    - Checksum invalid
    - File size invalid
    - Record count invalid
    - Duplicate file (exact same file as one previously sent)
  - (3) Bad invoice sent
    - Transaction type, file name and/or file date invalid
    - Invoiced dollar amounts invalid
  - (4) Any other reason mutually agreed upon by the Parties in writing
- D.** If NCDOT does not reject a Transaction Invoice within such time period, NCDOT shall continue processing such Transaction Invoices for payment in full via electronic funds transfer (EFT) based on invoiced amounts in accordance with this Exhibit 18. NCDOT shall include the referenced invoice numbers in the e-mail payment notification.
- E.** The Transaction Invoice shall be consistent with the format approved by NCDOT and shall include at a minimum the following information:
- (1) Invoice Date (same as date of Transaction Invoice generation)
  - (2) Invoice Due Date (based on target ACH payment initiation date that is five (5) Business Days from the Transaction Invoice generation date)
  - (3) Transaction file submission date (date shall be the same for each file and based on local date/time)
  - (4) Invoice Number (unique for each Transaction Invoice and in the format of T40MMDDYYHHMMSS (local date/time))
  - (5) Transaction file names
  - (6) Quantity of Transactions, type of file and fees related to each Transaction file
  - (7) Total base toll amount charged to Users for each Transaction file
  - (8) Total Toll Payment owed
  - (9) Total of each type of fee
  - (10) Total net amount due

- F. Any Transaction Invoices rejected by NCDOT will be corrected and resubmitted with a revised Transaction Invoice due date based on the resubmittal date and NCDOT will start the Transaction Invoice processing from the beginning in accordance with this Exhibit 18.
- G. Developer shall send a Transaction Invoice every day for Transaction files which received an ACK the previous day.

### **III. TRANSACTION RESUBMITTAL REQUESTS**

- A. In the event that NCDOT requests a Transponder Transaction to be resubmitted as a Video Transaction, NCDOT shall request such resubmission via the "Disposition File Data Record" per the ICD in Excel file format to Developer and shall identify which Transactions are required for resubmission. Such Transaction resubmissions shall be sent by Developer as "R" records (Transaction-based dispositions; communicated in the disposition (DSP) file).
- B. NCDOT shall request Video Transactions that were returned from a state-run database as not matching a license plate in the database to be corrected and resubmitted. NCDOT shall request such resubmission via the "Disposition File Data Record" per the ICD in Excel file format to Developer and shall identify which Transactions are required for resubmission. Such Transaction resubmissions shall be sent by Developer as "R" records (Transaction-based dispositions; communicated in the disposition (DSP) file).
- C. Developer shall be required to make the requested change or correction pursuant to Paragraphs III.A. and III.B. of this Appendix C and resubmit to NCDOT. If, for any reason, Developer is not able to make the requested change or correction, the Transaction record will become an Irregular Transaction and will follow the reconciliation and adjustment process set forth in Paragraph IV of this Appendix C.
- D. Developer shall not be required to resubmit a Transponder Transaction as a Video Transaction after 39 Days from the date of the original Transaction, nor shall any such Transaction be subject to the reconciliation and adjustment process set forth in Paragraph IV of this Appendix C after such date.

### **IV. RECONCILIATION AND ADJUSTMENT PROCESS**

- A. On a monthly basis by the 15th day of the month following the month being reported on, NCDOT shall determine which Transactions may require an adjusted Toll Payment under the CA Documents based exclusively on the following reasons:
  - (1) Duplicate Transaction
  - (2) Cross lane
  - (3) Poaching
  - (4) Rejected, duplicate Transaction

- (5) Image Transaction does not have an associated image and requires image submission by the host system (up to 45 Days)
  - (6) Plate ID coded incorrectly; NCTA unable to correct – exclusive of not having a readable image only
  - (7) Plate not found in image
  - (8) Waived due to Exempt Vehicle
  - (9) Transaction is beyond posting limit (45 days)
  - (10) A temporary license plate issued by a jurisdiction that does not store temporary plate information in a state run database
  - (11) Resubmittal requests from NCDOT that did not meet the requirements in Paragraph III.C of this Appendix C and that was not beyond the timeline set forth in Paragraph III.D of this Appendix C.
  - (12) Any other reason mutually agreed upon by the Parties in writing
- B. NCDOT shall identify which Transaction(s) are being presented for adjustment, the reason for the adjustment, and the amount of the requested adjustment. Such information shall be provided to Developer through the "Disposition File Data Record" in Excel file format. Such Disposition Data File Record shall also include the amounts owing for each of the bases for adjustment and the net amount owed.
- C. No later than 10 Business Days after receiving the adjustment information, the Parties shall agree on the amount to be adjusted.
- D. No later than 10 Business Days after reaching agreement, the agreed upon adjustment shall be processed by Developer as a separate payment to NCDOT using an electronic funds transfer (EFT) and NCDOT shall receive payment from the Developer of the agreed upon adjustment amount. Developer shall send to NCDOT a credit memo in the form of an email, which shall identify the agreed upon adjustment amount and related adjustment file name.
- E. If NCDOT does not receive payment for the agreed upon adjustment from the Developer within the time required under Paragraph IV.D of this Appendix C, NCDOT shall be entitled to deduct the agreed upon adjustment from subsequent Toll Payments owed to Developer.
- F. Notwithstanding anything to the contrary in the CA Documents, in the event the Parties cannot agree on the amount of adjustment, Developer shall pay the undisputed portion of the adjustment in accordance Paragraph IV.D of this Appendix C and with respect to the disputed amounts, the Parties shall resolve the Dispute in accordance with the Dispute Resolution Procedures set forth in Section 17.8 of the Agreement.



- G. NCDOT shall not be entitled to any adjustment under this Appendix C for any Irregular Transaction that was initially processed by NCDOT beyond 365 Days of NCDOT's receipt of such Irregular Transaction.

#### **V. VIDEO TRANSACTION IMAGE ACCURACY AUDIT PROCESS**

- A. By the 15th day of the month following the month being audited and reported on, NCDOT shall provide to Developer the results of NCDOT's monthly Video Transaction accuracy audit as required by the minimum performance requirements for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions. This audit sample size shall consist of a minimum of 5% of randomly selected Video Transactions with a transaction date stamp from the month being audited as sent to the CCH.
- B. NCDOT shall identify which Video Transactions were audited by Developer's Transaction ID# including the method used to randomly select the sample transactions. The success rate shall mean the total number of Video Transactions sent to the CCH and selected for audit by the CCH for the reporting period against the total number of Video Transactions selected for audit that contain the correct license plate data. Such information shall be provided to Developer for review through a workbook in Excel file format or any other method agreed by the parties. The workbook shall indicate the Video Transactions that were randomly selected for audit, which transactions were flagged as incorrect and the accuracy calculation.
- C. To ensure that the NCDOT audit accurately represents the population of transactions for the month in question, Developer may, at its own discretion, perform an audit of 5% of randomly selected transactions of the same month. If Developer's and NCDOT's audit results show a difference in the accuracy rate of 0.2% or greater, Developer shall have the ability to request a new and final random audit to be performed by Developer, and agreed by the Parties, to be used to determine the accuracy rate for the month in question.
- D. No later than 10 Business Days after receiving the full results of the monthly audit, Developer shall review the reported transaction errors for accuracy and provide the results of their findings to NCDOT. During this 10 Business Day period, Developer may adjust the audited accuracy success rate by excluding from the list of transaction errors:
- (1) Video Transactions with incorrect license plate data that were returned from a state-run license plate database as not matching a license plate in the database.
  - (2) Transactions incorrectly identified by the auditor as errors.
  - (3) Transactions identified as "Plate Type" errors that were correct according to the ICD version active at the time of the transaction.
  - (4) Any other reason mutually agreed upon by the Parties in writing.

- E. Within 10 Business Days of Developer's review. Developer and NCDOT shall meet to come to an agreement on the Video Transaction image license plate data accuracy success rate based on the results of the audit performed by NCDOT and the audit review performed by Developer, and if the accuracy level fails to meet the minimum performance requirements for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions, determine the rebate percentage of revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions, for the month being audited, in accordance with Paragraph VI of this Appendix C.
- F. No later than 10 Business Days after reaching mutual agreement on the accepted rebate error rate for the month being audited, the video transaction revenue rebate calculated pursuant to Paragraph VI of this Appendix C shall be processed by Developer as a separate payment to NCDOT using an electronic funds transfer (EFT) and NCDOT shall receive payment from Developer of such amount.
- G. The obligation to maintain success rates for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions and Paragraph VI of this Appendix C shall constitute a Performance Requirement and NCDOT's rights with respect to Developer's maintenance or failure to maintain the same shall be limited to those granted in the CA Documents for other Performance Requirements.

## **VI. VIDEO TRANSACTION ACCURACY REVENUE REBATE RECONCILIATION**

The video transaction revenue rebate shall be for the month being audited and shall be based upon revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions. The rebate percentage, as determined by the Video Transaction accuracy rate, shall be calculated as follows:

- A. If the Video Transaction accuracy rate meets or exceeds the following performance requirements, Developer shall be exempt from providing a video transaction revenue rebate:
  - (1) During the first six months of the Operating Period, the full success rate for Video Transactions shall be 98.5% pursuant to the minimum performance requirements for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions. Meeting or exceeding the full success rate for any month during such period means that Developer has met the required Video Transaction image accuracy performance requirements for the reported month.
  - (2) After the first six months of the Operating Period, the full success rate for Video Transactions shall be 99.0% pursuant to the minimum performance requirements for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions. Meeting or exceeding the full success rate for any month during this period means that the Developer has met the required Video Transaction image accuracy performance requirements for the reported month.

- B.** For each month that Developer fails to meet the success rate as specified in the minimum performance requirements for Video Transaction image accuracy set forth in ID 142 of Table 23.2 to the Technical Provisions, Developer shall rebate a percentage of the revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions for that month equal to the difference (D) between the full success rate percentage and the experienced Video Transaction error rate percentage multiplied by a factor X.

This revenue rebate shall be based upon the following:

- a. During the first six full months of the Operating Period, X will be equal to 1 if  $D \leq 1$ . If  $D > 1$ , X will be 1.0 for the first 1% of difference (D) and 2.0 for the rest of the difference (D-1%). For example:
- i. If during the first six months of the Operating Period, the accuracy rate was 97.8% for a given month, NCDOT would be entitled to 0.7%  $[(98.5\% - 97.8\%) \times 1]$  of the revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions because  $D \leq 1$  ( $98.5\% - 97.8\% = 0.7\%$ ).
  - ii. If the accuracy rate was 96.8% during the initial six-month Operating Period, the rebate would be 2.4%.  $[(98.5\% - 97.5\%) \times 1] + [(97.5\% - 96.8\%) \times 2] = (1\%) + (1.4\%) = 2.4\%$  of the revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions because  $D > 1$  ( $98.5\% - 96.8\% = 1.7\%$ ).
- b. After the first six full months of operation X will be equal to 1.5 if  $D \leq 1$ . If  $D > 1$ , X will be 1.5 for the first 1% of difference (D) and 2.0 for the rest of the difference (D-1%). For example:
- i. If after the first six months of the Operating Period, a monthly audited Video Transaction success rate is 98.5%, then the rebate is 0.75%  $((99.0\% - 98.5\%) \times 1.5)$  of the revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions because  $D \leq 1$  ( $99.0\% - 98.5\% = 0.5\%$ ).
  - ii. If after the initial six months of the Operating Period, a monthly audited Video Transaction success rate is 97.5%, then the rebate is 2.5%  $((99.0\% - 98.0\%) \times 1.5) + ((98.0\% - 97.5\%) \times 2.0) = ((1\% \times 1.5) + (.5\% \times 2)) = (1.5\% + 1\%) = 2.5\%$  of the revenue received by Developer from NCDOT's Toll Payments solely pursuant to Video Transactions because  $D > 1$  ( $99.0\% - 97.5\% = 1.5\%$ ).

**Attachment C**

Table 23.2 of the Technical Provisions

[see attached]

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	ALL PROJECT ELEMENTS				
				O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Inspection & Reporting								
O&M Plan	Annual updates to the O&M Plan.	1	Within 45 days prior to the beginning of each Fiscal Year, update the O&M Plan and submit it to NCDOT for review and approval.	A	N/A	N/A	24 Hours	
O&M Monthly and Annual Reports	O&M Monthly Reports.	2	Deliver the O&M Monthly Report to NCDOT no later than the 15th day of the subsequent month.	A	N/A	N/A	24 Hours	
	O&M Annual Reports.	3	Deliver the O&M Annual Report to NCDOT no later than the 30th day of the subsequent Fiscal Year.	A	N/A	N/A	24 Hours	
Renewal Work Plan	Annual updates to the Renewal Work Plan.	4	Within 45 days prior to the beginning of each Fiscal Year, update the Renewal Work Plan and submit it to NCDOT for review and approval.	A	N/A	N/A	24 Hours	
Renewal Work Report	Renewal Work Reports.	5	Deliver the Renewal Work Report, including any as-built drawings, to NCDOT no later than the 45th day of the subsequent Fiscal Year.	A	N/A	N/A	24 Hours	
Emergency Reporting	Emergency reports.	6	Provide NCDOT with a detailed damage report within 24 hours after the occurrence of an Emergency, as detailed in Section 23.1.9 of the Technical Provisions.	B	N/A	N/A	24 Hours	
Maintenance Patrols	Conduct maintenance patrols to detect any issues on the facility that need to be addressed.	7	Conduct a daily maintenance patrol and visual inspection of the entire facility to identify any incidents or deficiencies. Submit an incident/deficiency report to NCDOT by 7:00 a.m. the following day.	B	N/A	N/A	8 Hours	
Noncompliance Event and Closure Reporting	Notification of O&M Noncompliance Events and Closures to NCDOT.	8	Notify NCDOT of O&M Noncompliance Events and Closures within 48 hours of the event, as detailed in Section 23.5.1 of the Technical Provisions.	B	N/A	N/A	8 Hours	
Remedial Plan	Delivery of Remedial Plan to NCDOT.	9	Deliver Remedial Plan to NCDOT in accordance with Article 17.3.6.1 of the CA.	E	N/A	N/A	24 Hours	

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
ALL PROJECT ELEMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Flexible Pavement								
Flexible Pavement	Maintain flexible pavement at acceptable condition and level of safety for traveling public.	10	For any continuous one mile segment, maintain a Pavement Condition Survey Manual rating of 80 or higher for HOT Lane pavement.	C	12 Months	N/A	30 Days	
		11	For any continuous one mile segment, maintain a Pavement Condition Survey Manual rating of 80 or higher for General Purpose Lane pavement.	C	12 Months (if remedial actions identified in the independent inspections are deemed as Developer's responsibility under Section 23.1.7 of the Technical Provisions)	N/A	30 Days (if remedial actions identified in the independent inspections are deemed as Developer's responsibility under Section 23.1.7 of the Technical Provisions)	
		12	Repair all pot holes and slippage areas greater than 1.0 square feet in area and/or between 1.0 inches and 2.0 inches deep.	C	48 Hours	N/A	24 Hours	
		13	Repair all pot holes and slippage areas greater than 2.0 inches deep.	E	4 Hours	N/A	2 Hours	\$3,300
		14	Seal all cracks greater than 0.1 inches if there are greater than 50 linear feet of such cracks in any continuous 1/10 of a lane mile segment.	B	30 Days	N/A	10 Days	
		15	Meet all other technical requirements for flexible pavement set forth in the Maintenance Operations Manual.	A	60 Days	N/A	10 Days	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Rigid Pavement								
Rigid Pavement	Maintain rigid pavement at acceptable condition and level of safety for traveling	16	For any continuous one mile segment, maintain a Pavement Condition Survey Manual rating of 80 or higher for HOT Lane pavement.	C	12 Months	N/A	30 Days	
		17	For any continuous one mile segment, maintain a Pavement Condition Survey Manual rating of 80 or higher for General Purpose Lane pavement.	C	12 Months (if remedial actions identified in the independent inspections are deemed as Developer's responsibility under Section 23.1.7 of the Technical Provisions)	N/A	30 Days (if remedial actions identified in the independent inspections are deemed as Developer's responsibility under Section 23.1.7 of the Technical Provisions)	
		18	Repair all spalls, pot holes, and punchouts greater than 1.0 square feet in area and/or between 1.0 inches and 2.0 inches deep.	C	48 Hours	N/A	24 Hours	
		19	Repair differential lane-shoulder drop-offs greater than 1/4 inches.	B	7 Days	N/A	24 Hours	
		20	Repair differential lane-lane drop-offs greater than 1/4 inches.	D	7 Days	N/A	24 Hours	
		21	Repair all spalls, pot holes, and punchouts greater than 2.0 inches deep.	E	4 Hours	N/A	2 Hours	\$3,200
		22	Seal all joints and cracks and repair damaged joints.	C	30 Days	N/A	10 Days	
		23	Repair or replace all slabs where movement is evident, regardless of the number of pieces the slab is broken into, including but not limited to corner breaks.	C	60 Days	N/A	10 Days	\$3,900
		24	Meet all other technical requirements for rigid pavement set forth in the Maintenance Operations Manual.	A	60 Days	N/A	10 Days	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Slopes, Drainage and Vegetation								
		25	No tree and shrub overhanging Traffic Lanes and Shoulders.	C	7 Days	N/A	24 Hours	
		26	Maintain mowable areas at a height between 4 and 18 inches and in accordance with Exhibit 23-01.	C	7 Days	N/A	24 Hours	
		27	No trees or woody growth greater than 1.0 inches in diameter within the established cleared area.	B	7 Days	N/A	24 Hours	
		28	Maintain all portions of the travel lanes, Shoulders, curbs, gutters, and drainage structures free of plant growth and vegetation.	C	7 Days	N/A	24 Hours	
		29	Maintain all walls, barriers, and other roadway features free of undesirable vegetative growth.	C	7 Days	N/A	24 Hours	
		30	Turf - no continuous brown-out areas greater than 50 square feet.	C	60 Days	N/A	5 Days	
		31	No bare or erodible areas.	D	15 Days	5 Days	5 Days	
		32	Slope - No washouts or ruts greater than 6 inches deep and 2 feet wide, or erosion showing a pattern that will endanger the stability of the slope creating an unsafe recovery area.	D	15 Days	5 Days	5 Days	\$400
		33	No off-site siltation.	D	7 Days	3 Days	3 Days	\$400
		34	No slope failures.	E	24 Hours	12 Hours	60 Minutes	\$1,200
		35	Unpaved Shoulder - No drop-offs greater than 2.0 inches within 10 feet of the edge of Travelway, no Shoulders higher than 2.0 inches within 10 feet of the edge of Travelway, and no Shoulders that cause water to drain back within the Travelway.	C	3 Days	24 Hours	24 Hours	
		36	Use pesticides in accordance with all Laws and Governmental Approvals, permits, regulations and as set forth in the CA Documents.	D	N/A	N/A	N/A	
		37	Meet all other technical requirements for vegetation control set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Fencing	Maintain fence in acceptable condition and level of safety for the traveling public.	38	Repair or replace damaged and/or broken fences that no longer provide access control and/or a physical barrier.	C	30 Days	5 Days	5 Days	
		39	Fences shall be functional, visible and accessible. Fences and fence posts shall be plumb and fence shall have no sags or deflections greater than six inches.	B	30 Days	N/A	5 Days	
		40	Meet all other technical requirements for fencing set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	



TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Retaining Walls	Maintain retaining walls at acceptable level of safety for the traveling public (non-structural damage or deterioration).	41	Keep weep holes in walls open. No wash-outs or separation at top of wall.	C	30 Days	N/A	5 Days	
		42	Prevent erosion at base on walls.	C	30 Days	N/A	5 Days	
		43	Seal cracks or joints in accordance with the Bridge Maintenance Manual.	C	30 Days	N/A	5 Days	
		44	Repair all spalls greater than 1.0 inches deep with a surface area greater than 1.0 square feet.	C	30 Days	N/A	5 Days	
		45	Meet all other technical requirements for retaining walls set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
	Maintain retaining walls at acceptable level of safety for the traveling public (structural damage).	46	Complete all emergency/temporary repairs of damage to the structural integrity that create a public safety hazard, traffic safety hazard or compromises the system.	E	24 Hours	12 Hours	12 Hours	\$1,000
		47	Complete all permanent repairs of damage to the structural integrity that creates a public safety hazard, traffic safety hazard or compromises the system.	E	7 Days	4 Days	3 Days	
Causeways	Prevent erosion and maintain slope stability and ensure safety.	48	Complete all temporary repairs of damage to the structural integrity that create a public safety hazard, traffic safety hazard or compromises the system, as directed by NCDOT through a Change Order.	E	As agreed upon by Developer and NCDOT			
		49	Complete all permanent repairs of damage to the structural integrity that creates a public safety hazard, traffic safety hazard or compromises the system, as directed by NCDOT through a Change Order.	E	As agreed upon by Developer and NCDOT			
Litter and Debris								
Debris and Encumbrances Removal	Removal of tire casings, automobile wreckage, animal carcasses, and other debris from travel lanes and Shoulder	50	Remove debris or encumbrances, carcasses, and other roadway obstructions in the Travelways that constitute a safety hazard or eminent danger.	E	30 Minutes	15 Minutes	15 Minutes	\$6,700
		51	Remove debris or encumbrances, carcasses, and other obstructions on the Shoulders and other areas not on the Travelway.	C	8 Hours	4 Hours	4 Hours	
		52	Dispose of collected debris, carcasses, and other roadway obstructions in accordance with all Laws and Governmental Approvals, permits, regulations and as set forth in the CA Documents.	D	N/A	N/A	N/A	
		53	Meet all other technical requirements for debris removal set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	ALL PROJECT ELEMENTS				
				O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
		54	Start one litter collection cycle every two weeks.	B	N/A	N/A	48 Hours	
		55	Finish each litter collection cycle within one week after starting.	B	N/A	N/A	48 Hours	
		56	Collect excessive litter upon notification or discovery.	B	2 Hours	60 Minutes	60 Minutes	
		57	Dispose of collected litter/debris in accordance with all Laws and Governmental Approvals, permits, regulations and as set forth in the CA Documents.	D	N/A	N/A	N/A	
		58	Meet all other technical requirements for litter removal set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Graffiti Removal	Continually monitor and maintain assets free of graffiti.	59	Remove graffiti from traffic devices where it is a safety hazard.	E	24 Hours	8 Hours	8 Hours	
		60	Remove other graffiti that is not a safety hazard.	B	48 Hours	12 Hours	12 Hours	
		61	Meet all other technical requirements for graffiti removal set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
		62	Respond to the scene upon notification and document situation and report to NCDOT.	D	30 Minutes	20 Minutes	15 Minutes	
		63	Begin implementation of clean-up/containment efforts in accordance with the O&M Plan.	E	60 Minutes	45 Minutes	30 Minutes	
		64	Complete initial containment and removal efforts to maintain public safety in accordance with the O&M Plan and notify NCDOT of Initial assessment of affected area(s).	E	2 Hours	90 Minutes	60 Minutes	
		65	Manage mitigation and removal Work. Restore contaminated area to its initial condition in accordance with the O&M Plan.	D	3 Days	48 Hours	24 Hours	
		66	Conduct contamination removal Work in accordance with all Laws and Governmental Approvals, permits, regulations and as set forth in the CA Documents.	D	N/A	N/A	N/A	
		67	Meet all other technical requirements for hazardous materials set forth in the Maintenance Operations Manual.	C	30 Days	N/A	5 Days	
Landscaping								
Landscaping	Continually monitor landscaped areas.	68	Landscaped areas and plantings are to be maintained in healthy conditions (and free of disease and pests) in accordance with Developer's Corridor Landscaping and Aesthetics Plan.	B	30 Days	N/A	24 Hours	
		69	Meet all other technical requirements for landscaping set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Sound and Privacy Walls	Maintain sound and privacy walls at acceptable level of safety for the traveling public (non-structural damage or deterioration).	70	Prevent erosion at base on walls.	C	30 Days	N/A	5 Days	
		71	Seal cracks or joints in accordance with the Bridge Maintenance Manual.	C	30 Days	N/A	5 Days	
		72	Repair all spalls greater than 1.0 inches deep with a surface area greater than 1.0 square feet.	C	30 Days	N/A	5 Days	
		73	Meet all other technical requirements for sound/privacy walls set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
	Maintain sound and privacy walls at acceptable level of safety for the traveling public (structural damage).	74	Complete all emergency/temporary repairs of damage to the structural integrity that creates a public safety hazard, traffic safety hazard or compromises the system.	E	24 Hours	12 Hours	12 Hours	
		75	Complete all permanent repairs of damage to the structural integrity that creates a public safety hazard, traffic safety hazard or compromises the system.	E	7 Days	4 Days	3 Days	
Storm water								
Drains & Drainage	Maintain drainage system in acceptable condition and level of safety for the traveling public.	76	Clear obstructed culverts, drains, ditches, inlets, etc. or sediment, vegetation and debris when they are greater than 50% blocked. Conduct culvert inspection and video culverts as necessary.	C	48 Hours	N/A	24 Hours	
		77	Maintain Travelways free of standing water.	E	30 Minutes	N/A	30 Minutes	\$8,000
		78	No damage due to cracking, joint failures, or corrosion that affects performance. No water infiltration causing sub base erosion, pavement failures, Shoulder failures, or roadway settlement.	D	30 Days	N/A	5 Days	
		79	No eroded area at the inlet or outlet that is wider or longer than 1.5 times the pipe diameter and greater than 6 inches deep. No pipe shall be perched more than 12 inches.	D	30 Days	N/A	5 Days	
		80	Meet all other technical requirements for drainage set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Retention/Hazardous Spill Basins	Ensure that all retention/hazardous spill basins are working properly and free of functional defects.	81	Meet all technical requirements for inspection and maintenance of retention/hazardous spill basins in accordance with NCDOT memorandum dated December 18, 2003 regarding Hazardous Spill Basin Maintenance Policy.	D	7 Days	N/A	3 Days	
Erosion & Sedimentation Control	Ensure that all erosion and sedimentation control measures comply with Developer's Stormwater Pollution Prevention Plan and Stormwater Management Program.	82	Ensure that all erosion and sedimentation control measures comply with Developer's Stormwater Pollution Prevention Plan, Developer's Stormwater Management Program and the Maintenance Operations Manual.	D	At NCDOT sole discretion			

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	ALL PROJECT ELEMENTS				
				O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Permits	Maintain all facilities in line with permits.	83	Comply with Governmental Approvals and permit requirements, monitoring, and reporting.	D	30 Days	N/A	5 Days	
<b>Bridges</b>								
Major Damage	Repair major damage.	84	Complete temporary repairs to restore safe travel conditions (to the extent physically feasible) for any major damage as defined in Section 23.2.2.2 of the Technical Provisions.	E	24 Hours	12 Hours	4 Hours	\$2,200
		85	Begin implementation of remediation Work for permanent repairs.	D	5 Days	3 Days	24 Hours	
		86	Complete permanent repairs to major damage as defined in Section 23.2.2.2 of the Technical Provisions and Work identified from NBIS inspections.	D	As agreed upon by Developer and NCDOT			
		87	Meet all other technical requirements for Structures set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Minor Damage	Repair minor damage.	88	Repair minor damage as defined in Section 23.2.2.2 of the Technical Provisions, and Work identified from NBIS inspections.	C	60 Days	N/A	5 Days	
Bridge Deck	Maintain bridge deck at acceptable condition and level of safety for traveling public.	89	Repair all cracks greater than or equal to 1/8 of an inch in width if there are greater than 50 linear feet of such cracks in any 500 square foot section of bridge deck.	B	60 Days	N/A	5 Days	
		90	Repair or replace all bearings or joint seals that no longer function properly.	C	60 Days	N/A	5 Days	
		91	No exposed reinforcing steel on bridge deck.	C	60 Days	N/A	5 Days	
		92	Repair all spalls and pot holes greater than 1.0 square feet in area and/or between 1.0 inches and 2.0 inches deep.	C	48 Hours	N/A	24 Hours	
		93	Repair all spalls and pot holes greater than 2.0 inches deep.	E	4 Hours	N/A	2 Hours	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
ITS & Communications Systems								
ITS Systems Operability	Highway advisory radio (HAR).	94	Maintain monthly HAR system performance (up time) above 98%.	C	N/A	N/A	N/A	
		95	Rectify each individual HAR defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		96	Rectify each individual HAR defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Traffic monitoring stations.	97	Maintain monthly traffic monitoring station system performance (up time) above 95%.	C	N/A	N/A	N/A	
		98	Rectify each individual traffic monitoring station defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		99	Rectify each individual traffic monitoring station defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Message sign system (excluding toll rate signs).	100	Maintain monthly message sign system performance (up time) above 95%.	C	N/A	N/A	N/A	
		101	Rectify each individual message sign defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		102	Rectify each individual message sign defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Incident detection system.	103	Maintain monthly incident detection system performance (up time) above 98%.	C	N/A	N/A	N/A	
		104	Rectify each individual CCTV camera/incident detection system defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		105	Rectify each individual CCTV camera/incident detection system defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Developer TMC Security system.	106	Maintain monthly Developer TMC security system performance (up time) above 99%.	C	N/A	N/A	N/A	
		107	Rectify each individual security camera/system defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		108	Rectify each individual security camera/system defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Roadway weather information station system (RWIS).	109	Maintain monthly RWIS performance (up time) above 95%.	C	N/A	N/A	N/A	
		110	Rectify each individual RWIS defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		111	Rectify each individual RWIS defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

Element Category	Required Task	ID	Minimum Performance Requirements	ALL PROJECT ELEMENTS				
				O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
ITS Systems Operability (Continued)	Two-way radio system.	112	Maintain monthly two-way radio system performance (up time) above 99%.	C	N/A	N/A	N/A	
		113	Rectify each individual two-way radio system defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		114	Rectify each individual two-way radio system defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Call boxes.	115	Maintain monthly call box system performance (up time) above 95%.	C	N/A	N/A	N/A	
		116	Rectify each individual call box defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		117	Rectify each individual call box defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	All other ITS systems.	118	Maintain monthly system performance (up time) above 95% for all other ITS systems.	C	N/A	N/A	N/A	
		119	Rectify each individual other ITS system defect to restore full functionality during the observation period defined in Section 21.6.	D	8 Hours	N/A	8 Hours	
		120	Rectify each individual other ITS system defect to restore full functionality after the observation period defined in Section 21.6.	D	24 Hours	N/A	24 Hours	
	Emergency maintenance repair.	121	Implement emergency maintenance repairs in accordance with Section 23.2.4.4 of the Technical Provisions.	E	N/A	N/A	10 Minutes	
ITS Maintenance	Inspection, testing, maintenance, etc. of all ITS system components.	122	Conduct routine inspections, testing, and maintenance in accordance with all Laws and equipment manufacturer's recommendations.	D	N/A	N/A	5 Days	
Existing Communication Links	Maintaining existing communication links within the Project Right of Way.	123	Repair or replace damaged communications equipment (fiber optic cable, conduit, pull boxes, splice cabinets, hubs, etc.). Damaged fiber optic cable may be temporarily fusion spliced.	D	4 Hours	N/A	2 Hours	
		124	Replace any damaged fiber optic cable from termination point to termination point with the same type of cable.	D	90 Days	N/A	30 Days	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

ALL PROJECT ELEMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
<b>Tolling</b>								
HOT Lanes Operations	Manage Lanes Speed Monitoring.	125	Maintain daily Traffic Monitoring Station performance uptime 99.8%, per calendar month.	E	N/A	N/A	N/A	
	Operating Speed Performance Standard.	126	Maintain compliance with the Operating Speed Performance Standard per part VII.C(2) of Exhibit 4 to the Agreement. This requirement applies monthly when the HOT Lanes are in compliance with the OSPS, every seven days when the HOT Lanes are not in compliance with the OSPS per VII.E(7) of Exhibit 4 to the Agreement.	E	N/A	N/A	7 Days	
	Federal Minimum Average Speed Standard.	127	Maintain compliance with the Federal Minimum Average Speed Standard per part VII.C(1) of Exhibit 4 to the Agreement. This requirement applies monthly when the HOT Lanes are in compliance with the Federal Minimum Average Speed Standard, every seven days when the HOT Lanes are not in compliance with the Federal Minimum Average Speed Standard per VII.E(7) of Exhibit 4 to the Agreement.	E	N/A	N/A	7 Days	
	Performance Reporting.	128	Provide monthly reports on HOT Lanes performance as per Part E of Exhibit 4 to the Agreement; if one monthly report identifies Degradation, then the frequency of reporting shall be increased to every seven days as per Part E of Exhibit 4 to the Agreement.	D	N/A	N/A	48 Hours	
	Degraded Facility.	129	If the monthly report identifies a Degradation, Developer shall submit a rectification plan to the NCDOT for approval.	D	N/A	N/A	72 Hours	
	Publicity of Toll Rates.	130	Publicize, make available or otherwise provide the current or prevailing toll rate in accordance with Exhibit 4 of the Agreement and the CA Documents.	D	N/A	N/A	24 Hours	
	Toll rate sign system.	131	Maintain monthly toll rate sign system performance (up time) above 95%.	C	N/A	N/A	N/A	
		132	Rectify each individual toll rate sign defect to restore full functionality.	D	24 Hours	N/A	24 Hours	

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	ALL PROJECT ELEMENTS				
				O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
ETCS Performance	ETCS availability	133	The ETCS shall be available at least 99.6% of time. The success rate shall mean, for a given day, the total number of hours for which the ETCS is available divided by the total number of hours in the day (excluding hours for scheduled down time and loss of power).	E	N/A	N/A	N/A	
	Transaction creation success rate	134	For all vehicles passing through the tolling zone, the ETCS shall produce an appropriate Transponder Transaction or Video Transaction, complete with vehicle occupancy declaration information. The success rate shall mean the total number of correct toll Transactions recorded by the ETCS expressed as a percentage of the total number of vehicles passing through each tolling zone, individually. Success rate shall be at least 99.60% measured monthly.	E	N/A	N/A	N/A	
	Transponder read success rate	135	For all vehicles passing through the tolling zone and carrying a valid, fully functioning, properly-mounted transponder, the ETCS shall correctly read each transponder. The success rate shall mean the number of correct transponder reads, expressed as a percentage of all vehicles passing through the tolling zone and carrying a valid, properly-mounted transponder. Success rate shall be at least 99.90% measured monthly.	E	N/A	N/A	N/A	
	Legible image capture reliability success rate.	136	For all Video Transactions, the license plate images produced by the image capture system shall be human legible and reliably contain images of the correct vehicle and its region of interest. Region of interest is defined by the mounting area of a license plate required by Law. The success rate shall mean the number of Video Transactions including at least one human-legible image where the vehicle region of interest is in focus and reliably discernible, expressed as a percentage of the total number of Video Transactions. Success rate shall be at least 99.00% measured monthly.	E	N/A	N/A	N/A	
	License plate image readability and reliability success rate.	137	For all Video Transactions legible images, the license plate images produced by the image capture system shall be readable by the human eye and reliably contain images from which both plate number and issuing jurisdiction can be read by the human eye. The success rate shall mean the number of Video Transactions legible images including at least one plate image readable by the human eye from which both plate number and jurisdiction of issue are reliably discernible, i.e. can be converted unambiguously to text by an operator, expressed as a percentage of the total number of Video Transactions legible images (excluding plate images for temporary plates or vehicles with missing, damaged, obstructed or improperly mounted plates). Success rate shall be at least 99.90% measured monthly.	E	N/A	N/A	N/A	



TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

ALL PROJECT ELEMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
ETCS Performance	HOV status declaration data transmission success rate	138	For all HOV Transactions, the ETCS shall transmit the HOV status declaration data to enforcement personnel prior to or as the respective vehicle passes through an enforcement zone. The success rate shall mean the number of HOV Transactions declaration data sets correctly transmitted and readily usable to an enforcement terminal, expressed as a percentage of the total number of HOV Transaction declaration data sets transmitted. Success rate shall be at least 99.90% measured monthly. Communications delays of HOV declarations coming from mobile applications or websites are exempt.	E	N/A	N/A	N/A	
	Transmittal of transponder transactions.	139	Developer shall send Transponder Transactions to the NCDOT CCH within 72 hours of the occurrence of the Transaction with 100% of the time, calculated daily. Days of unavailability of the CCH affecting transmission of the Transactions will be exempt.	E	N/A	N/A	N/A	
	Transmittal of video transactions.	140	Developer shall send video transactions to the CCH within seven calendar days of the transaction trip occurrence with at least 99% of the time, except under the following circumstances: (a) I-77 Express walk-in center/storefront closures from documented severe weather/emergency event shall be exempt and (b) days of unavailability of the CCH affecting the transmission of Transactions shall be	E	N/A	N/A	N/A	
	Storage of User Transaction Information.	141	Developer shall maintain a record of User Transactions for a minimum of 24 months, reported monthly.	B	N/A	N/A	30 Days	

	Video Transaction Image Accuracy	142	<p>For all Video Transactions sent to the CCH for processing, the Transaction shall contain the correct license plate, data defined as the license plate number, jurisdiction and plate type as per the ICD. The success rate shall mean the total number of Video Transactions sent to the CCH for the reporting period against the total number of Video Transactions that contain the correct license plate data.</p> <p>The determination of the experienced Video Transaction success rate shall be made by a minimum quality assurance (QA) monthly random sampling of 5% of Video Transactions sent to the CCH for processing. The QA sampling will be conducted by the CCH on a monthly basis and the full audit detail shall be submitted to Developer following the reconciliation and adjustment process set forth in Paragraph V in Appendix D of Exhibit 18.</p> <p>Full success rate shall be at least 98.5% or greater measured monthly for the first six full months of operation. Full success rate shall be at least 99.0% after the first six full months of operations.</p> <p>Failure to meet the applicable success rate set forth in Table 23.2.2 shall be on a graduated scale from A to E as set forth in Table 23.2.2.</p>	Graduated Scale from A to E See Table 23.2.2	N/A	N/A	N/A	Refer to Paragraph VI in Appendix D of Exhibit 18.
Back Office Services	Customer Service Level 2 Request for information.	143	Developer shall respond to User request for information within five days, reported monthly. Developer shall respond to NCDOT with Level 2 Customer Service transaction disposition within two (2) Business Days of receipt of Level 2 requests for Transactions occurring less than 365 days prior to ticket date and within five (5) Business Days of receipt of Level 2 requests for Transactions occurring between 12 to 24 months prior to the ticket date 99% of the time, measured monthly, except under the following circumstances: (a) holidays listed on the NC Quick Pass annual calendar, as provided to Developer, shall exempt Level 2 requirements or (b) I-77 Express walk-in center/storefront closures resulting from documented severe weather/emergency events shall be exempt.	E	N/A	N/A	24 Hours	
	[Not used]	144						
	[Not used]	145						
	Privacy of User information.	146	Developer shall maintain the travel records of Users as confidential information and in compliance with all applicable Laws and according to the terms of the Agreement. The success rate shall mean that there shall be no disclosure of Patron Confidential Information to any third party or the general public for any purpose, except the purposes described in this Agreement. Success rate shall be 100%.	E	N/A	N/A	N/A	
Electrical								

Highway Lighting	Maintain functionality of highway lighting system.	147	Maintain full functionality of all luminaires and provide maintained illuminance to meet the design standards to Section 20 of the Technical Provisions.	A	5 Days	48 Hours	24 Hours	
Sign Lighting	Maintain functionality of highway sign lighting	148	Maintain full functionality of all sign luminaires.	C	48 Hours	24 Hours	24 Hours	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

ALL PROJECT ELEMENTS								
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
<b>Traffic Guidance</b>								
Pavement Markings / Delineators	Repair and replacement of line striping and pavement reflectors.	149	Pavement markings, snowplow able pavement markers and reflectors shall be replaced when they are missing or no longer straight, continuous, or visible under all lighting conditions and when pavement is wet - April to October.	B	30 Days	N/A	5 Days	
		150	Pavement markings, snowplow able pavement markers and reflectors shall be replaced when they are missing or no longer straight, continuous, or visible under all lighting conditions and when pavement is wet - November to March.	B	60 Days	N/A	5 Days	
		151	Replace all damaged or missing delineation posts/reflectors. All delineation posts and reflectors shall be free of functional defects and visible to the traveling public.	B	30 Days	N/A	5 Days	
		152	Meet all other technical requirements for pavement markings and delineators set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Signage	Maintain signs at acceptable level of safety for the traveling public.	153	Repair all damaged overhead signs and sign structures that pose imminent risk to the public.	E	2 Hours	30 Minutes	30 Minutes	\$3,300
		154	Repair/replace all damaged but functional and clearly legible overhead signs and sign structures.	C	60 Days	7 Days	5 Days	
		155	Repair/replace all non-functional or non-legible Stop, Do Not Enter, Wrong Way, Yield and Hospital signs.	E	8 Hours	4 Hours	60 Minutes	\$3,300
		156	Repair/replace all other signs, including posts that are damaged or missing.	B	5 Days	48 Hours	24 Hours	
		157	Meet all other technical requirements for signage set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Guardrail	Maintain guardrail at acceptable level of safety for the traveling public (non-structural damage or deterioration).	158	Guardrail is maintained to meet the current design criteria and safety standards.	D	5 Days	N/A	24 Hours	
		159	Guardrail shall be free of excessive wear, unsightly rust and vegetation.	B	30 Days	N/A	5 Days	
		160	Meet all other technical requirements for guardrail set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
	Maintain guardrail at acceptable level of safety for the traveling public (structural damage).	161	Complete all emergency/temporary repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	12 Hours	6 Hours	60 Minutes	\$800
		162	Complete all permanent repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	5 Days	48 Hours	24 Hours	

TABLE 23.2 - O&amp;M AFTER CONSTRUCTION WORK REQUIREMENTS

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
			ALL PROJECT ELEMENTS					
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
	Maintain barrier walls at acceptable level of safety for the traveling public (non-structural damage or deterioration).	163	Barrier is maintained to meet the current design criteria and safety standards.	D	5 Days	N/A	24 Hours	
		164	Barrier shall be free of vegetation.	B	30 Days	N/A	5 Days	
		165	Meet all other technical requirements for barrier walls set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
	Maintain barrier walls at acceptable level of safety	166	Complete all emergency/temporary provisions and/or repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	12 Hours	12 Hours	60 Minutes	\$800
		167	Complete all permanent repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	5 Days	48 Hours	24 Hours	
Attenuators	Maintain attenuators at acceptable level of safety for the traveling public (non-structural damage or deterioration).	168	Attenuators are maintained to meet the current design criteria and safety standards.	D	5 Days	N/A	24 Hours	
		169	Attenuators shall be free of vegetation.	B	30 Days	N/A	5 Days	
		170	Meet all other technical requirements for attenuators set forth in the Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
	Maintain attenuators at acceptable level of safety for the traveling public (structural damage).	171	Complete all emergency/temporary repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	12 Hours	12 Hours	60 Minutes	\$2,400
		172	Complete all permanent repairs of damage to structural integrity that creates a traffic hazard or compromises the system to the extent it will not function properly if it was to sustain another hit.	E	5 Days	48 Hours	24 Hours	
Storm and Other Major Damage								
Storm Maintenance / Major Damage	Response to damage caused by strong winds, heavy rains, slides, slip-outs and other major damage.	173	Place regulatory and warning devices, delineation signs, etc. on the facility at conclusion of event.	D	24 Hours	N/A	60 Minutes	
		174	Begin planning/implementation of remediation Work.	C	24 Hours	N/A	24 Hours	
		175	Meet all other technical requirements for storm damage set forth in Maintenance Operations Manual.	A	30 Days	N/A	5 Days	
Disaster Recovery	Mitigation of disruption of operation of the Project and restoring operations post-disaster.	176	Comply with all disaster recovery requirements and procedures.	E	N/A	N/A	24 Hours	

TABLE 23.2 - O&M AFTER CONSTRUCTION WORK REQUIREMENTS								
				ALL PROJECT ELEMENTS				
Element Category	Required Task	ID	Minimum Performance Requirements	O&M Noncompliance Event Classification	Cure Period	Fast Cure Period	Interval of Recurrence	Liquidated Damages per Day
Lane Closures								
Lane Closures	Closure of Traffic Lanes during the Term (at least two Traffic Lanes remaining open).	177	Comply with the time restrictions for Permitted Closures set forth in Section 23.2.1.2 of the Technical Provisions. Request approval 24 hours prior.	D	N/A	N/A	15 Minutes	Refer to Exhibit 14 of the Agreement
	Closure of Traffic Lanes during the Term (less than two Traffic Lanes remaining open).	178	Comply with the time restrictions for Permitted Closures set forth in Section 23.2.1.2 of the Technical Provisions. Request approval 24 hours prior.	E	N/A	N/A	15 Minutes	Refer to Exhibit 14 of the Agreement
Incident Response								
Incident Response	Response to sites of incidents, emergencies, accidents, and other events that that result in a condition that is unsafe and/or may present a life threatening condition.	179	Respond to scene within 45 minutes after detection or notification on Shoulders	C	N/A	N/A	30 Minutes	Refer to Exhibit 14 of the Agreement
		180	Respond to scene within 45 minutes after detection or notification in Travelway	D	N/A	N/A	30 Minutes	
	Clearing of incidents and reopening of closed travel lanes and Shoulders after police/emergency response officials provide notification to begin clean-up in accordance with Section 23.3.2.1.4 of the Technical Provisions.	181	Reopen and clear the closed Shoulder to traffic after Closure resulting from an Incident that involves a breakdown, minor accident (passenger vehicles only, no overturned vehicles), non-hazardous material spill or debris and only resulting in a Shoulder closure/blockage within 60 minutes.	C	N/A	N/A	30 Minutes	
		182	Reopen and clear the closed travel lane to traffic after Closure resulting from an Incident that involves a breakdown, minor accident (passenger vehicles only, no overturned vehicles), non-hazardous material spill or debris and resulting in up to one closed travel lane within 30 minutes.	N/A	N/A	N/A	N/A	
		183	Reopen and clear the closed travel lanes to traffic after Closure resulting from an Incident that involves a multiple vehicle accident (passenger vehicles/light trucks, one overturned vehicle), but no fire and resulting in up to all travel lanes closed in one direction within 60 minutes.	N/A	N/A	N/A	N/A	
		184	Reopen and clear the closed travel lanes to traffic after Closure resulting from an Incident that involves a multiple vehicle accident (passenger vehicles/light trucks, two or more overturned vehicles) with or without fire and resulting in up to all travel lanes closed in one direction within two hours.	N/A	N/A	N/A	N/A	
		185	Reopen and clear the closed travel lanes to traffic after Closure resulting from an Incident that involves a heavy transport vehicles or lost cargo loads, with or without fire and resulting in up to all travel lanes closed in one direction and one or more travel lanes closed in the opposite direction within three hours.	N/A	N/A	N/A	N/A	

**Table 23.2.2**

For Video Transaction Image Accuracy (ID 142), failure to meet the applicable success rate shall result in the assessment of Noncompliance Points based on the following Noncompliance Event Classification:

Table 23.2.2 Video Transaction Accuracy		
Success Rate (First Six Full Months of Operating Period)	Noncompliance Event Classification	Points
98.0%	N/A	0
97.5% up to and not including 98.0%	A	1
97.0% up to and not including 97.5%	B	2
96.5% up to and not including 97.0%	C	3
96.0% up to and not including 96.5%	D	4
Below 96.0%	E	5
Success Rate (After Six Full Months of Operating Period)	Noncompliance Event Classification	Points
98.5%	N/A	0
98.0% up to and not including 98.5%	A	1
97.5% up to and not including 98.0%	B	2
97.0% up to and not including 97.5	C	3
96.5% up to and not including 97.0%	D	4
Below 96.5%	E	5

