

EXHIBIT W

NON-COMPLIANCE POINTS TABLE

[ATTACHED]

Non-Compliance Points Table Exhibit W



The Non-Compliance Points Table below sets forth Performance Shortfalls under the terms of the Agreement that may result in the assessment by the Department of Non-Compliance Points pursuant to Article 11 of the Agreement. The table includes the Performance Shortfalls, the category of each Performance Shortfall, the cure period (if applicable), and the Non-Compliance Points that may be assessed by the Department for each such Performance Shortfall.

Non-Compliance Points						
Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
O1 Notification of Performance Shortfall	O1.1	Agreement § 11.02	The Concessionaire fails to notify the Department of the occurrence of any Performance Shortfall specified in this Non-Compliance Points Table.	C	None	2
	O1.2	Technical Requirements § 4.2	The Concessionaire fails to create and maintain a computer based Maintenance Management System (MMS) in accordance with the Technical Requirements.	B	7 Days	2
	O1.3	Technical Requirements § 4.2	The Concessionaire fails to record a defect on the MMS within seven days of it coming to the attention of the Concessionaire or record the resolution of a defect within fifteen days of corrective action being taken.	B	3 Days	2
	O1.4	Technical Requirements § 4.2	The Concessionaire fails to provide the Department access to the MMS at all times for the purposes of auditing the accuracy of the Concessionaire's Operations and Maintenance Records.	B	2 Days	2
O3 Security	O3.1	Technical Requirements § 1.22	The Concessionaire fails to adhere to requirements regarding the protection and control of Critical Infrastructure Information and Sensitive Security Information, pursuant to the Technical Requirements.	B	7 Days	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
O4 Reporting	O4.1	Technical Requirements § 3.10 and 4.4	The Concessionaire fails to submit quarterly O&M performance report within 21 Days of the end of the reporting period.	B	7 Days	2
O5 Key Personnel and other specified persons	O5.1	Technical Requirements § 3.13	The Concessionaire fails to designate and make available to the Department a full-time project safety officer.	B	14 Days	2
	O5.2	Technical Requirements §§ 1.2 and 3.5	The Concessionaire fails to perform inspections of road pavements and structures using personnel certified as inspectors in accordance with the Standards and Specifications set forth in the Technical Requirements.	C	None	2
	O5.3	Technical Requirements § 3.9	The Concessionaire fails to designate and make available to the Department a project MOT Engineer.	B	14 Days	2
	O5.4	Technical Requirements § 4.3	The Concessionaire fails to identify and make available to the Department a management-level, on-call “duty officer”.	B	7 Days	2
O6 Project Development Plans (PDPs)	O6.1	Technical Requirements § 3.3 and Attachment 3A	The Concessionaire fails to submit to the Department for approval a required update of a PDP in accordance with the Technical Requirements.	B	14 Days	2
	O6.2	Technical Requirements § 3.2.3	The Concessionaire fails to follow the Quality Management System Plan when carrying out any Work.	A	7 Days	2

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
O7 Maintenance Performance:						
Safety Inspections	O7.1a	Technical Requirements § 4.1	The Concessionaire fails to inspect the Project to identify defects that present a hazard to road users at the frequency required in the Technical Requirements.	B	7 Days	3
Hazardous Debris Removal from Roadway	O7.1b	Technical Requirements Attachment 4A	The Concessionaire fails to remove debris and/or road kill from the roadway where it presents a safety hazard within the timeliness requirements set forth in the Technical Requirements.	C	None	5
Hazardous Pavement Failure – Main Lanes	O7.1c	Technical Requirements Attachment 4A	The Concessionaire fails to commence repair of potholes/pavement failures and obstructions in the surfacing of main lanes that present a safety hazard within the timeliness requirements following notice as set forth in the Technical Requirements.	C	None	5
Clear Lanes in Snow/Ice/ Freezing Rain Events	O7.1d	Technical Requirements Attachment 4A	The Concessionaire fails, during snow/ice/freezing rain events, to treat and clear all travel lanes, turn lanes, intersections and interchanges, pursuant to the timeliness requirements set forth in the Technical Requirements (subject to any exclusions noted in the Performance and Measurement Baseline Table). Provided, that for extreme weather events, no Performance Points shall be assessed for failure to cure within the timeliness requirements set forth in the Technical Requirements as long as the Concessionaire has commenced to cure, and	C	None	1 point per half-hour until the travel surfaces are cleared, up to a maximum of 10 points.

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
			<p>diligently continues to cure. Within the timeliness requirements set forth in the Technical Requirements.</p> <p>For purposes of assessing Non-Compliance Points, the Concessionaire's failure to meet the timeliness requirements in more than one section will constitute separate and distinct breaches for each such section.</p>			
Hazardous Slope Erosion	O7.1e	Technical Requirements Attachment 4A	The Concessionaire fails to commence repair any safety hazard that results from a sink hole, slide, high slope or low slope area within the timeliness requirements set forth in the Technical Requirements.	C	None	3
Hazardous Roadside Restraint Defect	O7.1f	Technical Requirements Attachment 4A	The Concessionaire fails to commence repair any hazardous and/or non-functional guardrail, concrete barrier, bridge railing or attenuators within the timeliness requirements set forth in the Technical Requirements.	C	None	3
Any Other Hazardous Circumstance						
	O7.2	Technical Requirements § 4.5	The Concessionaire fails to incorporate in the Life Cycle Maintenance Plan any Major Maintenance required to correct a failure to meet a target for asset condition requirements.	A	3 Months	2
	O7.3	Technical Requirements	The Concessionaire fails to meet a target for asset condition of any asset category as set forth	A	As defined in Attachment	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
		Attachment 4A	in the Technical Requirements (Asset Condition Requirements). Points may be assessed per asset category; provided, that no Non-Compliance Points will be assessed for failure to meet targets for Asset conditions that derive from the Structural Assets of the Existing Project Assets due to events that would be counted against the Structural Assets Excess Cost.		4A	
	O7.4	Technical Requirements § 3.10 and Attachment 4A	The Concessionaire fails to accurately report the Concessionaire's performance in the quarterly O&M report.	A	5 Days	2
	O7.5	Technical Requirements § 4.3	The Concessionaire fails to properly store or dispose of waste and hazardous materials in accordance with the Comprehensive Agreement.	C	None	2
	O7.6	Technical Requirements § 4.3	The Concessionaire fails to provide to the Department all structure inspection reports as set forth in the Technical Requirements	A	14 Days	2
O8 Construction Health and Safety Standards	O8.1	Technical Requirements § 3.13	The Concessionaire is found to be in serious or wilful violation of the Virginia Occupational Health and Safety adopted under the Code of Virginia, and such violation presents a risk to the public health, safety or welfare of the public or persons engaged in the performance of the Work.	C	None	10
O9 Incident Management	O9.1	Technical Requirements	The Concessionaire fails to achieve incident response times set forth in the Technical Requirements (determined as an average over	C	None	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
		Attachment 4A	reporting period).			
O10 Life Cycle Maintenance Plan	O10.1	Agreement § 9.04(b) Technical Requirements § 4.5	The Concessionaire fails to prepare a Life Cycle Maintenance Plan, and subsequent annual updates, in conformance with the Technical Requirements at least 90 Days prior to the beginning of each calendar year after the date that a Project Asset has achieved Substantial Completion.	B	30 Days	5
O11 Operations	O11.1	Technical Requirements § 4.4 and Attachment 4A	The Concessionaire fails to respond within the timeliness requirements set forth in the Technical Requirements to customer inquiries and complaints about the Project (where customer contact information has been provided).	A	7 Days	1
	O11.2	Technical Requirements § 4.6	The Concessionaire fails to ensure that signs present accurate tolling information at all times. Any assessment of Performance Points will be per system occurrence and not per sign with inaccurate tolling information.	C	None	2
	O11.3	Technical Requirements § 4.4 and Attachment 4A	The Concessionaire fails to transmit the information required under the ITS protocols to the Department's ERO Traffic Operations Center within the timeliness requirements and accuracy levels set forth in the Technical Requirements. The Concessionaire may be assessed a maximum of six Non-Compliance Points for any	A	10 Mins	2

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
			single failure or event.			
	O11.4	Technical Requirements § 3.9	The Concessionaire conducts MOT operations in violation of the standards and specifications set forth in the Technical Requirements.	C	None	3
	O11.5	Technical Requirements § 3.8	The Concessionaire conducts Work in contravention of any working hour restrictions set forth in the Technical Requirements.	C	None	3
O14 Tolling	O14.1	Technical Requirements § 4.6 and Attachment 4A	The accuracy of transponder records supplied by the Concessionaire fails to meet the accuracy standard in Attachment 4A during the specified term (Unit of Measure).	B	Quarterly	2
	O14.2	Technical Requirements § 4.6 and Attachment 4A	The accuracy of payment claim records supplied by the Concessionaire fails to meet the accuracy standard in Attachment 4A during the specified term (Unit of Measure).	B	Quarterly	2
	O14.6	Technical Requirements § 4.6	The Concessionaire fails to notify the Department of an increase or anomaly in the number and type of customer complaints within the time specified.	B	7 Days	2

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
	O14.8	Technical Requirements § 4.6	The Concessionaire fails to comply with standards applicable to the retention of and use of customer records pursuant to Applicable Law, including § 33.1-56.4 of the Code of Virginia. For the assessment of Non-Compliance Points, all instances found at any one time shall count as one act.	B	3 Days	5
	O14.10	Electronic Toll Collection Agreement, § 8.1	The Concessionaire fails to promptly initiate corrective action after notice from the Department that Concessionaire's ETC system is not performing in accordance with the approved operating procedures.	A	3 Days	2
	O14.11	Agreement § 5.05	The Concessionaire charges tolls after receipt of the Department's request to suspend tolling.	A	1 Day	2
O15 Critical Tunnel Systems – Mechanical:						
Tunnel Ventilation System	O15.1	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair failures to the tunnel ventilation system (ventilation fan, jet fan, CO monitoring system) within the timeliness requirements set forth in the Technical Requirements.	B	2 Days	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
Tunnel Drainage System	O15.2	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to maintain air quality below the thresholds set forth in the Technical Requirements	B	2 Days	5
	O15.3	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair failures to the tunnel drainage system (drainage pump, drainage pump piping system, wet well level control system, wet well hydrocarbon sensor) within the timeliness requirements set forth in the Technical Requirements.	B	5 Days	4
Tunnel Tidal Flood Gate System	O15.4	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair failures to the tunnel tidal flood gate system (tidal flood gate lifting/lowering system, tidal flood gate sealing system, open cut roadway drainage system shut-off valve) within the timeliness requirements set forth in the Technical Requirements.	B	5 Days	4
Tunnel Fire Protection System	O15.5	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel fire protection system (fire pump, fire main, fire main riser pipe fire hose valve, sprinkler system sectioning valve (deluge valve), fire alarm system (manual pull station and auto stations)) within the timeliness requirements set forth in the Technical Requirements.	B	2 Days	5
Tunnel Emergency Egress Passageway System	O15.6	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel emergency egress passageway system (pressurization fans, roadway to egress	B	2 Days	2

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
Tunnel Generator	O15.7	Technical Requirements Attachment 4A, Table 2b	passageway door) within the timeliness requirements set forth in the Technical Requirements. The Concessionaire fails to repair functionality or safety impairing failures to the tunnel generator within the timeliness requirements set forth in the Technical Requirements.	A	5 Days	2
Tunnel Closed Circuit Television System	O15.8	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel closed circuit television system within the timeliness requirements set forth in the Technical Requirements.	B	2 Days	2
O16 – Critical Tunnel Systems – Electrical:						
Tunnel Power Distribution System	O16.1	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel power distribution system (tunnel feeder cable, substation transformer, medium voltage breaker, low voltage power breaker, power metering device, generator power transfer devices, switchgear DC control batteries, electrical/mechanical alarm panel) within the timeliness requirements set forth in the Technical Requirements.	B	2 Days	5
Tunnel Electrical Mechanical Equipment Control	O16.2	Technical Requirements Attachment 4A,	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel electrical mechanical equipment control system	B	2 Days	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
System		Table 2b	(main PCL, backup PCL, operator’s console) within the timeliness requirements set forth in the Technical Requirements.			
Tunnel Lighting System	O16.3	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel lighting system (lighting control system, lighting power distribution system, tunnel lighting fixtures, tunnel emergency lighting UPS) within the timeliness requirements set forth in the Technical Requirements.	B	2 Days	5
Tunnel Communications System	O16.4	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel communications system (operations UHF radio system, maintenance VHF radio systems, AM/FM rebroadcast and override radio system, facility telephone system) within the timeliness requirements set forth in the Technical Requirements.	A	2 Days	5
Tunnel Traffic Control System	O16.5	Technical Requirements Attachment 4A, Table 2b	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel traffic control system (primary computer, backup computer, operator’s console, field VMS, field VSS, field overheight, field lane use signals, field loop detector, field communications, traffic control system UPS) within the timeliness requirements set forth in the Technical Requirements.	A	2 Days	5
Tunnel CCTV System	O16.6	Technical Requirements	The Concessionaire fails to repair functionality or safety impairing failures to the tunnel closed	A	2 Days	5

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Heading		§ Ref	Performance Shortfalls	Category	Cure Period	Points
		Attachment 4A, Table 2b	circuit television system (tunnel or tower camera, control room monitor, field communications, main video switcher) within the timeliness requirements set forth in the Technical Requirements.			