

EXHIBIT A
ACRONYMS AND DEFINITIONS

Acronym	Definition
AASHTO	American Association of State Highway and Transportation Officials
AID	Automatic Incident Detection
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society for Testing Materials
ATMS	Advanced Traffic Management System
BCOM	Virginia Department of General Services' Bureau of Capital Outlay Management
CCCS	Central Control Computer System
CCTV	Closed-Circuit Television
CI	Critical Infrastructure
CII	Critical Infrastructure Information
CII/SSI	Critical Infrastructure Information/Sensitive Security Information
CLRP	Constrained Long-Range Transportation Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetration Test
CPTED	Crime prevention through Environmental Design
CTB	Commonwealth Transportation Board
DBE/SWAM	Disadvantaged Business Enterprise / Small, Women- and Minority-owned Business Enterprise
DEIS	Draft Environmental Impact Statement
DEM	Digital Elevation Model
DGS	Department of General Services
DMS	Dynamic Message Signs
DMT	Dilatometer Test
DMV	Department of Motor Vehicles
DTM	Digital Terrain Model
EDMS	Electronic Document Management System
EIR	Environmental Impact Review
EPD	Escrow Pricing Documents
ESC	Erosion and Sediment Control
ESCCC	Erosion and Sediment Control Contractor Certification
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FAT	Factory Acceptance Testing
FEIS	Final Environmental Impact Statement

FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FI/RW	Field Inspection and Right of Way
FOIA	Freedom of Information Act
GAAP	Generally Accepted Accounting Principles
GFCI	Ground Fault Circuit Interrupter
GFE	Good Faith Effort
GUI	Graphical User-Interface
HOT/HOV	High Occupancy Toll / High Occupancy Vehicle
IAG	InterAgency Group
IAT	Integration Acceptance Testing
IDSP	Integrated Directional Sign Program
IE	Independent Engineer
IIM or I&IM	Instructional and Informational Memorandum
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IP	Intellectual Property
ISA	In Service Availability
ISO	International Organization for Standardization
IT	Information Technology
LED	Light Emitting Diode
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
MTBF	Mean Time Between Failure
MTTR	Mean Time To Repair
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NS	Norfolk Southern
ORT	Open Road Tolling
OSHA	Occupational Health and Safety
PA	Programmatic Agreement
PABs	Public Activity Bonds
PCI	Payment Card Industry
PDP	Project Development Plan
PPTA	Public-Private Transportation Act
PTZ	Pan Tilt Zoom
PVR	Present Value Revenue
QMSP	Quality Management System Plan
RFDP	Request for Detailed Proposals
RLD	Responsible Land Disturber Certification

ROD	Record of Decision
RUMS	Right of Way and Utilities Management System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (Public Law 109-59)
SAT	Site Acceptance Testing
SFP	Solicitation for Proposals
SPT	Standard Penetration Test
SRA	Safety Rest Area
STIP	State Transportation Improvement Plan
STRAHNET	Strategic Highway Network
SWAM	Small Woman-Owned and Minority Business
SYIP	Six-Year Improvement Plan
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act
TMS	Traffic Management System
UCC	Uniform Commercial Code
UPS	Uninterruptible Power Source
USDOT	United States Department of Transportation
VA SHPO	Virginia State Historic Preservation Officer
VCRI	Verification Cross Reference Index
VDOT	Virginia Department of Transportation
VES	Violation Enforcement System
VPS	Violation Processing System
VSMP	Virginia Stormwater Management Program
VSP	Virginia State Police
WBS	Work Breakdown Structure

Additional Exempt Vehicle means official vehicles operated by local police officers while in the conduct of their official duties, and fire-fighting equipment and ambulances owned by a political subdivision or not for profit association or corporation while operated in the conduct of their official duties.

Affiliate, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

Affiliate Contract is defined in Section 25.02(h) of the Agreement.

Agreement or **Comprehensive Agreement** means the Comprehensive Agreement Relating to the U.S. Route 460 Project, dated as of [], and all exhibits and schedules thereto, as supplemented or further amended from time to time.

Agreement Date means the date written on the cover page of the Agreement, which date shall be the date on which the parties have executed and delivered the Agreement.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Right of Way and not necessary or required for the Project (including Project Enhancements) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Project Enhancements) or the Concessionaire's timely fulfillment of its obligations under the Project Agreements.

Allocable Costs means:

(a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:

- (i) an amount equal to the fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus
- (ii) the cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus

- (iii) the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Neilsen/DATAQUEST, Inc. of Palo Alto, California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided* that if rates are not published for a specific type of tool or equipment, the Department shall establish a rate for it that is consistent with its cost and use in the industry; or
- (b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:
 - (i) the amount owing under such contract; *provided* that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
 - (ii) 10% of such amount to reimburse the Department or the Concessionaire for costs of administering the contract; plus
 - (iii) all costs the Department or the Concessionaire reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Alternative Technical Concepts (ATC) mean a technical innovation or concept presented by the Concessionaire in its Detailed Proposal for the Project. The Concessionaire's approved ATCs are attached as Exhibit B-4 of the Agreement.

Approved for Construction (AFC) Documents means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, sealed by a professional engineer licensed by the State.

As-Built Schedule means the last Project Schedule Update submitted to and approved by the Department.

Asset means an individual component, system or subsystem of the Project, as identified in the first column of the Performance Requirements Baseline Table.

Asset Group means a group of Assets as set forth on Table 6.6b of the Performance Requirements Baseline Table.

Asset Identification means the unique identification the Concessionaire will use for each Asset, as described in Section 6.3.2.1 of the Technical Requirements.

Bank Rate means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so-called “prime rate.”

Base Case Financial Model means the Initial Base Case Financial Model, as most recently updated after the Agreement Date pursuant to Section 6.02 of the Agreement.

Base Case Financial Model Update means the Base Case Financial Model as most recently updated pursuant to Section 6.02 of the Agreement prior to any event identified therein or prior to termination of the Agreement.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the model to provide the U.S. Route 460 Project Investment Grade Traffic and Revenue Study dated [], the results of operation of which are incorporated into the Initial Base Case Financial Model.

Baseline Schedule means the schedule approved by the Department identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress throughout the Work Period, as more particularly described in the Agreement and the Technical Requirements.

Benchmark Interest Rates mean the publicly documented interest rates of each maturity included in the following indices:

- (a) The LIBOR swap spot curve as provided by Reuters or Bloomberg;
- (b) The LIBOR swap forward curves, as provided by Reuters or Bloomberg;
- (c) The U.S. Spot Treasury Yield Curve;
- (d) The Municipal Market Data (MMD) Benchmark, supplied by Thomson;
- (e) The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index); and
- (f) The State and Local Government Series (SLGS) index, provided by the US Treasury.

The Benchmark Interest Rates do not include any additional credit spread, margin or fee components.

Borrow Pits means the sources of suitable material from outside the roadway.

Borrowed Cash and Credit Balances means proceeds of Concessionaire Debt included in the Concessionaire Debt Termination Amount that are held, on the date notice of termination is delivered, as cash and credit balances in accounts maintained by or on behalf of the Concessionaire, including in Lender accounts and reserve accounts, but excluding the Handback Reserve Fund (if any).

Breakage Costs means any commercially reasonable breakage costs, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any Project Financing Agreement as a result of the early repayment of such debt prior to its scheduled maturity date.

Business Day means any day on which the Department is officially open for business.

Call Center means the customer call center operated by the Department, currently known as VDOT's highway help line, accessible at (800) 367-ROAD, and its successor.

Change in Control means (a) the Transfer of 50% or more of the membership interests in the Concessionaire by the members of the Concessionaire as of the Agreement Date, or (b) any Transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Concessionaire or a significant aspect of its business.

Change in Law means (a) the adoption of any Law after the Proposal Due Date, or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Authority after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date.

Change Order means a written order issued by the Department to the Concessionaire delineating changes in the Work or in the terms or conditions of the Technical Requirements, as applicable, in accordance with Section 14.03 of the Agreement.

Chief Engineer means the Virginia Department of Transportation's Chief Engineer.

Claim(s) means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

CLRP or Constrained Long-Range Transportation Plan means the constrained long-range transportation plan that is adopted by the applicable metropolitan planning organization and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Collateral Agent means the Institutional Lender acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which shall be delivered by the Concessionaire to the Department.

Committed Investment means, collectively, the following, as shown by the Initial Base Case Financial Model: (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to all Concessionaire Debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

Commonwealth Transportation Commissioner (Commissioner) means the appointed chief executive officer of the Virginia Department of Transportation or any successor in function.

Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to recovery of either Concessionaire Damages or its Allocable Costs:

- (a) Department-Caused Delay;
- (b) the implementation of any Department Change pursuant to this Agreement;
- (c) the development or implementation of a Department Project Enhancement;
- (d) any Discriminatory Change in Law;
- (e) a Force Majeure Termination Event to the extent the Department elects to continue the Agreement pursuant to Sections 13.02(a) and 21.03(a) of the

Agreement, or other Force Majeure event to the extent provided under Sections 13.02(b) and 14.01(j) of the Agreement;

- (f) discovery at, near or on the Project Right of Way of any of the following, but only to the extent provided under Section 14.01(k) of the Agreement:
- (i) Hazardous Substances (including Department release(s) of Hazardous Substances);
 - (ii) discovery of subsurface or latent physical conditions at the actual boring holes identified in any geotechnical reports supplied by the Department, available in the public record, or which came to the Concessionaire's attention by any other means that differ materially from the subsurface conditions indicated in such geotechnical reports at such boring holes;
 - (iii) archeological, paleontological or cultural resources;

provided that each of the above events neither is otherwise specifically dealt with in the Agreement nor arises by reason of:

- (1) the negligence or misconduct of a Concessionaire Party; or
- (2) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

Compensation Event Notice is defined in Section 14.01(a) of the Agreement.

Concept of Operations means the document or documents prepared by the Concessionaire which outlines the characteristics of the ETTM System with regard to its intended capability.

Concessionaire has the meaning assigned to such term in Section 56-557 of the Code of Virginia and, for purposes of the Comprehensive Agreement, means [] and its permitted successors and assigns.

Concessionaire Damages means, with respect to any Compensation Event, the sum of the present value of (a) any Net Cost Impact directly attributable thereto and (b) any Net Revenue Impact directly attributable thereto. Present value shall be determined by application of the PVR Discount Rate then in effect pursuant to Section 4.03 of the Agreement.

Concessionaire Debt means any bona fide debt (including principal, accrued interest, and customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto, and including all payment obligations under interest rate hedging agreements and

reimbursement obligations to any financial insurer with respect thereto) relating to the Project and granted by a Person (other than an Affiliate of the Concessionaire except if the terms of such debt are comparable to the terms that could have been obtained, on an arms-length basis, from a Person that is not an Affiliate of the Concessionaire). No debt shall constitute Concessionaire Debt unless the Collateral Agent provided the Department with a Notice of Concessionaire Debt in accordance with the notice requirements of Section 26.05 of the Agreement. For the purposes of calculating payments due to the Concessionaire from the Department due to Department Default, Termination for Convenience or Force Majeure, Concessionaire Debt incurred after to the date of such events shall not be taken into account.

Concessionaire Debt Termination Amount means:

- (a) All amounts outstanding at the date notice of termination is delivered, including accrued unpaid interest as of such date on Concessionaire Debt and related Financing Assignments that:
 - (i) satisfy the terms and conditions set forth in the definition of Concessionaire Debt and in Sections 7.01, 7.03 and, if applicable, 7.07 of the Agreement;
 - (ii) are not equity bridge loans, which for this purpose means loans provided to the Concessionaire during the Work Period for an amount of equity to be subsequently contributed by Equity Members or Affiliates of the Concessionaire or of an Equity Member, typically (but not necessarily) supported by one or more of a parent guaranty, recourse to the parent or letter of credit from another lending institution; and
 - (iii) in the absence of termination and in the absence of any bankruptcy, insolvency or liquidation of the Concessionaire, would constitute:
 - (A) the senior lien on and pledge of the Concessionaire's Interest; and
 - (B) a first subordinate lien on and pledge of the Concessionaire's Interest, but only where (1) the aggregate debt coverage ratio at the time of financial closing (i.e. considering the combined debt service for such subordinate Concessionaire Debt and the senior Concessionaire Debt) does not exceed 1.1 to 1, (2) none of the Lenders (including participating Lenders) of such subordinate Concessionaire Debt is an Equity Member or Affiliate of the Concessionaire or an Equity Member and none directly or indirectly controls an Equity Member, and (3) such

subordinate Concessionaire Debt does not constitute consideration paid for the sale of the economic rights in the Concessionaire or in an Equity Member. Aggregate debt coverage ratio shall be determined in accordance with the terms of the written loan commitment for such subordinate Concessionaire Debt. For the avoidance of doubt, TIFIA financing that satisfies the terms and conditions set forth in Sections 7.01, 7.03 and, if applicable, 7.07 of the Agreement is expressly included and deemed to meet the terms set forth in clause (iii)(B) above; plus

- (b) Without double counting in relation to such Concessionaire Debt, all Breakage Costs payable by the Concessionaire as a result of prepayment of the outstanding amounts of such Concessionaire Debt, subject to the Concessionaire and the Lenders mitigating all such costs to the extent reasonably possible; minus
- (c) To the extent it is a positive amount, the aggregate of:
 - (i) So much of the amounts under subsections (a) and (b) above that constitute or accumulate by reason of (A) accrued interest that the Concessionaire failed to pay when due, including any such interest that has been added to principal, or (B) default rates of interest, late charges and penalties, including any such items added to principal;
 - (ii) All amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Lenders to the Concessionaire as a result of prepayment of outstanding amounts of such Concessionaire Debt; and
 - (iii) All other amounts received by the Lenders of such Concessionaire Debt on or after the date notice of termination is delivered and before the date on which any compensation is payable by the Department to the Concessionaire as a result of enforcing any other rights the Lenders may have, to the extent such amounts reduce principal or accrued interest (or would have done so if not applied to default rates of interest, late charges or penalties).

The foregoing amount shall be determined without regard to any Refinancing that may occur after the date notice of termination is delivered.

Concessionaire's Initial Notice is defined in Section 11.01(b)(i) of the Agreement.

Concessionaire Defaults is defined in Section 20.01 of the Agreement.

Concessionaire's Interest means the rights and obligations of the Concessionaire under the Agreement, which shall constitute solely intangible contract rights.

Concessionaire Management Plan means the plan developed by the Concessionaire that describes the Concessionaire's managerial approach, strategy, and quality procedures to design, build, operate and maintain the Project and achieve all requirements of the Agreement, as described in more detail in the Technical Requirements.

Concessionaire Marks is defined in Section 19.04(d) of the Agreement.

Concessionaire Party means the Concessionaire and any Affiliate and any agents, Representatives, officers, directors, employees, Contractors, suppliers and materialmen of the Concessionaire or any Affiliate, and shall include the Design-Build Contractor and the O&M Contractor.

Concessionaire Project Enhancements means any extensions of, additions to, or major modifications to the Project undertaken by the Concessionaire after the Service Commencement Date pursuant to Section 12.01 of the Agreement.

Concessionaire Representative means an individual designated in accordance with Section 26.04 of the Agreement.

Construction Documentation means all Design Documentation, AFC Documents, and all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project and/or the Utility Relocations included in the Work, in accordance with the Agreement and the other Project Agreements.

Construction Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting Project requirements and innovation in construction approach, as described in more detail in the Technical Requirements.

Construction Segment means any segment or portion of the Project which the Design-Build Contractor and the Concessionaire have designated pursuant to the Design-Build Contract for the purpose of scheduling construction, subject to the approval of the Department.

Construction Segment Approval is defined in Section 8.02(b) of the Agreement.

Consultant means any Person at the time retained by or on behalf of the Department or the Concessionaire, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Contingency Amount is defined in Section 14.02(a) of the Agreement.

Contingency Compensation Events means Compensation Events other than those under clauses (a) through (c) of the definition of Compensation Events.

Contingency Compensation Event Limit is defined in Section 14.02(a) of the Agreement.

Contract means any contract, subcontract, or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire or any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor means any Person with whom the Concessionaire has entered into any contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term “Contractor” shall include the Design-Build Contractor and the O&M Contractor.

Consultant means any Person at the time retained by or on behalf of the Department or the Concessionaire, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Consumer Price Index (CPI) means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at that time.

Crash Analysis Procedure means the procedure used by the Department as part of its Roadway Safety Assessment.

Critical Infrastructure (CI) means systems and assets, whether physical or virtual, so vital to Virginia that the incapacity or destruction of such systems and assets would have debilitating impact on security, economic security, public health or safety, or any combination thereof. Critical infrastructure includes but is not limited to: tunnel and bridge facilities, ferries, Smart Traffic Centers, Department Central and District Offices, data systems, security systems, and Information Technology Infrastructure.

Critical Infrastructure Information (CII) means the designation used by the Department to identify information that is not appropriate for public release without a need-to-know.

Critical Infrastructure Information/Sensitive Security Information Program (CII/SSI Program) means a program established for the development, management, maintenance, and review of procedures to be used to identify, classify and protect Critical Infrastructure Information and Sensitive Security Information throughout the Department.

Critical Infrastructure Information/Sensitive Security Information (CII/SSI) means a program established for the development, management, maintenance, and review of procedures to be used to identify, classify and protect Critical Infrastructure Information and Sensitive Security Information throughout the Department.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance.

Critical Path Method means a mathematical approach to calculating when a project may finish using a “forward” and “backward” path to reveal which activities are on the Critical Path.

Critical Path Milestone Schedule Deadlines means the deadlines to be submitted by the Concessionaire pursuant to the scheduling provisions of the Technical Requirements.

Day or day means a calendar day.

DBE/SWAM means the Federal Disadvantaged Business Enterprises Program designed to support socially and economically disadvantaged firms working with transportation agencies and the Commonwealth of Virginia’s Small, Women, and Minorities Program to support these groups in doing business with the Commonwealth.

DBE/SWAM Plan means the plan developed by the Concessionaire that defines the Concessionaire’s approach to meet the DBE/SWAM participation goal for the Work Period and Operating Period, as described in more detail in the Technical Requirements.

Defect means a deterioration in the condition or performance of an Asset, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Asset of the Project, which would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of road users;

- (b) a structural deterioration of the affected Asset or any other part of the Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the Environment; or
- (e) failure of the affected Asset or any other part of the Project to meet a Performance Requirement.

Delay Event means:

- (a) With respect to the Work Period, the occurrence of one or more of the following during the Work Period:
 - (i) a Force Majeure event;
 - (ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design Build Contractor as of the Agreement Date, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way, excluding any such conditions known to the Concessionaire prior to the Concessionaire's submission of its Detailed Proposal or that would become known to the Concessionaire by undertaking reasonable investigation prior to the Concessionaire's submission of its Detailed Proposal (for avoidance of doubt, conditions away from the actual boring holes that differ from conditions extrapolated from such boring data and that are not within clause (2) above are not a Delay Event); (B) threatened or endangered species; (C) archaeological or paleontological resources; (D) Hazardous Substances present on the Project Right of Way as of the Agreement Date, excluding any such Hazardous Substances known to the Concessionaire prior to the Concessionaire's submission of its Detailed Proposal or that would become known to the Concessionaire by undertaking reasonable investigation prior to the Concessionaire's submission of its Detailed Proposal; (E) Hazardous Substances spilled or otherwise placed on the Project Right of Way subsequent to the Agreement Date other than by a Concessionaire Party in the course of performing the Work; or (F) Utilities in the Project Right of Way, excluding any such Utilities known to the Concessionaire prior to the Concessionaire's submission of its Detailed Proposal or that would become known

- to the Concessionaire by undertaking reasonable investigation prior to the Concessionaire's submission of its Detailed Proposal;
- (iii) an unreasonable and unjustifiable failure by a Governmental Authority to issue, or an unreasonable and unjustified delay by a Governmental Authority in issuing, any Governmental Approval or other authorization required for the Project or the Work (provided that such failure or delay could not have been reasonably prevented by the Concessionaire);
 - (iv) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement;
 - (v) a Change in Law that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;
 - (vi) the implementation of any Department Change pursuant to the Agreement; or
 - (viii) Department-Caused Delay;
- (b) with respect to the Operating Period, the occurrence of one or more of the following during the Operating Period:
- (i) a Force Majeure event; or
 - (ii) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement;
 - (iii) a Change in Law that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;
 - (iv) the implementation of any Department Change pursuant to the Agreement;
 - (v) the development or implementation of a Department Project Enhancement; or

- (vi) Department-Caused Delay; and
- (c) which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under the Agreement, provided that such delay or the cause thereof is neither specifically dealt with in the Agreement nor arises by reason of:
 - (i) the negligence or misconduct of a Concessionaire Party; or
 - (ii) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

Department means the Virginia Department of Transportation, an agency of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or under the Comprehensive Agreement.

Department-Caused Delay means: (1) any of the failure of the Department to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to the Department after the Agreement Date for which response is required under any Project Agreement to which the Department is a party, as an express prerequisite to the Concessionaire’s right to proceed or act, within the time periods (if any) indicated in such Project Agreements, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from the Concessionaire requesting such action in accordance with the terms and requirements of such Project Agreements; or (2) the failure of the Department to deliver to the Concessionaire a certificate of take for recordation within 60 days following the Concessionaire’s delivery to the Department of all documentation required by Section 8.08 (b) and the Technical Requirements; *provided* that each of the foregoing events neither is otherwise specifically dealt with in the Agreement nor arises by reason of:

- (a) the negligence or misconduct of a Concessionaire Party; or
- (b) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

A “Department-Caused Delay” shall not apply in instances where the Department’s failure to respond is a deemed approval or deemed disapproval under the applicable Project Agreement or where the Department may approve or disapprove in its sole discretion.

Department Change means any change in the scope of the Work or terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) that the Department has directed the Concessionaire to perform through a

Change Order or a Directive Letter or that the Department performs pursuant to Section 14.03 of the Agreement.

Department's Annual Reimbursable Cost mean the annual payment made to the Department pursuant to Part B of Exhibit E of the Agreement.

Department's Initial Reimbursable Cost mean the initial payment made to the Department pursuant to Part A of Exhibit E of the Agreement.

Department's Reimbursable Costs mean the payments made to the Department pursuant to Parts A and B of Exhibit E of the Agreement.

Department Default is defined in Section 20.04 of the Agreement.

Department Project Enhancements means any extensions of, additions to, or major modifications of the Project undertaken by the Department after the Service Commencement Date pursuant to Section 12.02 of the Agreement, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets.

Department Representative means an individual designated in accordance with Section 26.04 of the Agreement.

Department's Initial Notice is defined in Section 11.01(b)(ii) of the Agreement.

Department's Project Manager means the Department personnel designated to lead and manage the implementation of the Agreement from the Department's perspective (post procurement activities).

Department's Written Determination is defined in Section 11.03(a) of the Agreement.

Design-Build Contract means the Design-Build Contract, dated as of [], between the Concessionaire and the Design-Build Contractor for the Work, as it may be amended or supplemented.

Design-Build Contractor means [].

Design Documentation means such plans, drawings, specifications and other design documentation (including design standards, design or durability reports, models, samples and calculations) in computer readable and written formats prepared by or on behalf of the Concessionaire for the purposes of the construction of the Work or any component thereof.

Design Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of

responsibility and well defined approach for meeting Project requirements and innovation in design approach, as described in more detail in the Technical Requirements.

Design Public Hearing Documentation means documents approved by the Department's Chief Engineer following a required public hearing relative to design of the Project.

Design Work Commencement Approval is defined in Section 8.02(a) of the Agreement.

Detailed Proposal means the Concessionaire's submission dated [] in response to the Request for Detailed Proposals.

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time after the Agreement Date that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which shall include such terms as may be mutually agreed by the Concessionaire and the Department.

Deviation means any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements.

Directive Letter means an order issued by the Department in accordance with Section 14.03(e) of the Agreement directing the Concessionaire to perform Work.

Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that has the effect of discriminating solely against the Project, except where such State Law or change in State Law or in interpretation or application is (a) in response, in whole or in part, to any failure to perform or breach of the Agreement or other Project Agreement, violation of applicable Law or Governmental Approval, culpable act or culpable omission on the part of any Concessionaire Party (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or (b) otherwise permitted under the Agreement. For avoidance of doubt, none of the following shall be a Discriminatory Change in Law: (i) the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new mode of transportation that results in the reduction of Gross Revenues or in the number of vehicles using the Project, (ii) any changes in Taxes of general application; or (iii) a Tax Imposition.

Dispute means any Claim, dispute, disagreement or controversy between the Department and the Concessionaire concerning their respective rights and obligations under the Project Agreements, including concerning any alleged breach or failure to perform and remedies.

Distribution means

- (a) any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to any Equity Members, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire,
- (b) any payment by the Concessionaire to an Affiliate other than pursuant to an Affiliate Contract to which the Department has consented in accordance with Section 25.02 (h) of the Agreement, or
- (c) the early release of any contingent funding liabilities to any Equity Member.

Document Management Plan means the plan developed by the Concessionaire to define the document management approach for all Work Product, as described in more detail in the Technical Requirements.

Emergency means any unplanned event within the Project Right of Way that:

- (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of road users or the traveling public;
- (b) has jeopardized the safety of road users or the traveling public; or
- (c) is a declared state of emergency pursuant to State or federal Law.

Environment means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Laws means any Laws applicable to the Projects regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1351 *et seq.*, the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.

Environmental Management Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to environmental management, as described in more detail in the Technical Requirements.

EPDs means the documents placed into escrow as described in Section 19.05(a) of the Agreement.

EPD Escrow Agreement means the EPD Escrow Agreement dated as of [] among the Concessionaire, the Department and the Escrow Agent, as it may be amended or supplemented.

Equity IRR means the nominal post-tax rate of return at the Concessionaire level based on timing of actual equity contributions and distributions over the full Term projected in the Base Case Financial Model.

Equity Member means any Person with a direct equity interest in Concessionaire.

Escrow means one or more escrow accounts established by the Escrow Agent pursuant to the EPD Escrow Agreement.

Escrow Agent means [], and its successors and assigns, in its role as escrow agent under Section 19.05 of the Agreement, or such other entity serving as escrow agent thereunder as may be agreed to in writing by the Department and the Concessionaire.

ETTM means electronic toll and traffic management.

ETTM Data means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information.

ETTM Equipment means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems; the traffic management system equipment; communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with electronic toll and traffic management.

ETTM System means the ETTM Facilities, ETTM Equipment and the software which monitors, controls or executes the ETTM Equipment, all of which shall meet the minimum performance criteria established by the Technical Requirements.

E-ZPass means an electronic toll collection system used in the Commonwealth of Virginia and as part of the “E-ZPass Interagency Group”.

Factory Acceptance Testing (FAT) means the tests to be conducted at the supplier’s premises to verify that the equipment, sub-system or system complies with the functional and performance requirements of that supplier’s subcontract.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit I of the Agreement.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to the Work as set forth in Section 8.11(b) of the Agreement.

Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 8.11(b) of the Agreement.

Final Acceptance Date means the date on which Final Acceptance is achieved, as indicated on the Final Acceptance Certificate.

Financial Close means satisfaction of all of the conditions set forth in Section 7.02(c)(i) and (ii) of the Agreement.

Financial Close Date means the date on which Financial Close occurs.

Financial Close Deadline means the date by which Financial Close must occur, which shall be no later than 18 months from the Agreement Date.

Financial Close Security means the letter of credit in the amount of the greater of \$165 million or 25% of the Committed Investment, provided by the Concessionaire to the Department, which is subject to draw as set forth in Section 20.03(b) of the Agreement.

Financial Model Formulas means the financial formulas that the Concessionaire and the Department have agreed upon as of the Agreement Date for projecting over the Term the Equity IRR and the Weighted Average Cost of Debt, which financial formulas are used as part of the Base Case Financial Model, but without the data and information used by or incorporated into the Base Case Financial Model, as modified from time to time with the approval of both parties.

Financial Plan Memorandum means the Concessionaire's plan, attached as Exhibit F of the Agreement, to obtain and repay all financing, at its own cost and risk and without recourse to the State, the CTB or any other agency, instrumentality or political subdivision of the State, necessary to develop and operate the Project and any Concessionaire Project Enhancements.

Financing Assignment is defined in Section 7.03(a) of the Agreement.

Fitch Ratings mean Fitch Ratings, and any successor thereto which is a nationally recognized rating agency.

Float means the amount of time that any given activity or logically connected sequence of activities shown on a Project Schedule may be delayed before it will affect the Guaranteed Substantial Completion Date. Such Float is generally identified as the

difference between the early completion date and late completion date for all activities as shown on a Project Schedule.

Force Majeure means any of the following intervening acts of people or nature that can be neither anticipated nor controlled: war, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, riot or other public disorder, industry-wide or regional strikes or labor disputes, condemnation or confiscation of property or equipment by any Governmental Authority (other than the Department), governmental embargo, epidemic, quarantine restriction, earthquake that causes ground accelerations in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood, hurricane force winds, tornados, *provided* that each of the foregoing events neither is otherwise specifically dealt with in the Agreement nor arises by reason of:

- (a) the negligence or misconduct of a Concessionaire Party;
- (b) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement;
- (c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;
- (d) any strike, labor dispute or labor protest directed solely at a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Concessionaire Party; or
- (e) damage to the Project caused by severe weather, flood or earthquake if such damage would not have occurred but for the Project's failure to have been designed or constructed in accordance with the Technical Requirements.

It is specifically understood that, other than earthquakes causing ground acceleration in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood, hurricane force winds or tornados, Force Majeure does not include, and the Concessionaire shall assume the risk of weather and conditions resulting from weather.

Force Majeure Dispute Notice is defined in Section 13.02(g) of the Agreement.

Force Majeure Extension is defined in Section 13.02(c) of the Agreement.

Force Majeure Extension Notice is defined in Section 13.02(c) of the Agreement.

Force Majeure Termination Event means the occurrence of any of the following Force Majeure events that materially and adversely affects performance of the Concessionaire's obligations, provided that the effects of such events could not have been

avoided by the exercise of caution, due diligence, or reasonable efforts by the Concessionaire: (a) war occurring within the State, (b) nuclear explosion or nuclear contamination that causes direct physical damage or effects to the Project and (c) riot or other public disorder in the immediate vicinity of the Project.

Force Majeure Termination Notice is defined in Section 21.03(a) of the Agreement.

General Inspection means an inspection to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop the Life Cycle Maintenance Plan, to maintain asset condition and service levels and to develop programs of maintenance and Major Maintenance to minimize the effect of such work on road users.

Generally Accepted Accounting Principles or **GAAP** means such accepted accounting practice as conforms at the time to generally accepted accounting principles in the United States of America, consistently applied.

Good Industry Practice means:

- (a) the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced concessionaire or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals; and
- (b) the application of professional engineering judgment after consideration of safety, operational requirements, level of service, life-cycle costs, and the Department's policies, regulations and standard procedures for the geometric design of State Highways.

Notwithstanding the foregoing, the lowest cost shall not be the basis for engineering decisions.

Governmental Approvals means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under applicable Laws prior to undertaking any particular activity contemplated by the Agreement or a Development Contract.

Governmental Authority means any court, federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

Gross Revenues mean:

- (a) Toll Revenues; plus
- (b) Proceeds of business interruption or similar insurance against loss of revenues from operation of the Project; plus
- (c) All other amounts derived from or in respect of the operation of the Project which constitute revenues in accordance with Generally Accepted Accounting Principles, including any interest income the Concessionaire earns on any funds on deposit in any bank account or securities account; plus
- (d) the aggregate of all Net Revenue Impact, before discounting, for which the Department pays compensation to the Concessionaire pursuant to the Agreement (but not amounts debited from the Contingency Amount and credited to the Concessionaire to compensate for Net Revenue Impact); plus
- (e) the aggregate of all Net Cost Saving, before discounting, that the Concessionaire retains pursuant to Section 14.04 of the Agreement; plus
- (f) all amounts the Concessionaire retains from the unused Contingency Amount, if any, pursuant to Section 14.02(c) of the Agreement; minus
- (g) total credits and refunds of Toll Revenues made by the Concessionaire to customers and users on account of Toll Revenue previously collected; minus
- (h) deductions made pursuant to Section 14.01(g)(iii) of the Agreement.

Guaranteed Substantial Completion Date is defined in Section 8.01(f) of the Agreement.

Handback Requirements mean the terms, conditions, requirements and procedures governing the condition in which the Concessionaire is to deliver the Project to the Department upon expiration or termination of the Agreement, as set forth in the Technical Requirements.

Handback Reserve Fund is defined in Section 21.02(d) of the Agreement.

Hazardous Substances means any material or substance that poses a threat to human health and/or the Environment and is regulated under Environmental Laws. Typical hazardous materials or substances are toxic, corrosive, ignitable, explosive, or chemically reactive. Hazardous Substance includes any substance designated by EPA to

be reported if a designated quantity of the substance is spilled in the waters of the United States or is otherwise released into the Environment.

Health, Safety and Security Plan means the plan developed by the Concessionaire that defines the health, safety and security activities required during the design and construction of the Project, as described in more detail in the Technical Requirements.

Incident means any unplanned event within the Project Right of Way that causes potential or actual disruption to the free flow of traffic.

Independent Engineer means the independent engineering consultant retained by the Department in accordance with an Independent Engineer Agreement.

Independent Engineer Agreement means the Project Agreement by that name entered into between the Department and the Independent Engineer with respect to the Project, together with any amendments and supplements thereto.

Initial Baseline Schedule means the initial construction schedule, which is attached as Exhibit B-2 of the Agreement.

Initial Base Case Financial Model means the Financial Model Formulas and the assumptions and information used by or incorporated in the Financial Model Formulas, which is attached as Exhibit B-6 of the Agreement, which:

- (a) includes certain projections and calculations with respect to revenues, expenses, the repayment of Concessionaire Debt, Distributions to Equity Members, and the Initial Equity IRR, and are used to produce financial forecasts and the Maximum PVR; and
- (b) is prepared on the basis of the Base Case Traffic Model, the PVR Discount Rate and the Initial Benchmark Interest Rates, as such PVR Discount Rate and Initial Benchmark Interest Rates were provided by the Department pursuant to the Request for Detailed Proposals.

The Initial Base Case Financial Model may be revised only in accordance with Section 6.02(a) of the Agreement.

Initial Benchmark Interest Rates means the Benchmark Interest Rates that shall be assumed in the Initial Base Case Financial Model and that are provided by the Department pursuant to the Request for Detailed Proposals.

Initial Concessionaire Debt Termination Amount means the Concessionaire Debt Termination Amount as determined for the senior lien debt financing for the Concessionaire and the first tier subordinate debt financing for the Concessionaire that meets the parameters set forth in clause (a)(iii)(B) of the definition of Concessionaire Debt Termination

Amount, each in the face amount set forth in the Initial Base Case Financial Model (without regard to the actual face amount of the indebtedness under the Initial Project Financing Agreements).

Initial Equity IRR means the value of the Equity IRR in the Initial Base Case Financial Model.

Initial Project Financing Agreements means, collectively, the Project Financing Agreements listed on Exhibit [] of the Agreement.

Initial PVR Discount Rate means the PVR Discount Rate value that shall be assumed in the Initial Base Case Financial Model and that was provided by the Department in accordance with the Request for Detailed Proposals and determined by the Department as an approximation of the weighted average cost of capital anticipated for the Project.

Initial Toll Rates mean the toll rates to be charged on the Project in the first calendar year of Service Commencement, as set forth in the Toll Rates Schedule.

Institutional Lender means:

- (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;
- (b) any (i) savings bank, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (*provided* that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions);

- (c) any “qualified institutional buyer” under Rule 144(a) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or
- (d) any other financial institution or entity designated by the Concessionaire and approved by the Department (*provided* that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of the State);

provided, that each such entity (other than entities described in clause (b)(iv) and clause (c) of this definition) or combination of such entities if the Institutional Lender is a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$1 billion; and *provided, further*, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

Integration Acceptance Testing (IAT) means the testing conducted to ensure that the complete Tolling and Traffic Management System (TMS) meets the end-to-end system-level functional and performance requirements in normal operating conditions.

Intellectual Property means the ETTM books and records, EPDs, copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

Law means any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, statute, code, order, decree, rule or regulation of any Governmental Authority.

Lenders means each of the Institutional Lenders that are parties to the Project Financing Agreements, including the Collateral Agent, and their respective successors and assigns who also qualify as Institutional Lenders.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Life Cycle Maintenance Plan means the plan produced annually by the Concessionaire identifying Major Maintenance and Handback Requirements needs on a

rolling 5-year basis, the estimated costs and timing of those needs and such other information as may be reasonably requested by the Department, as described in Section 9.04(c) of the Agreement and the Technical Requirements.

Lock-up Period means the five-year period commencing on the Agreement Date.

Losses means, with respect to any Person, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or out-of-pocket and documented costs or expenses actually suffered or incurred by such Person, including as a result of any injury to or death of persons or damage to or loss of property.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as Ordinary Maintenance.

Major Maintenance Reserve Fund is defined in Section 9.05 of the Agreement.

Maintenance Management System (MMS) means the system required under the Technical Requirements to record inventory, failures, repairs, maintenance activities, inspections performed, communications, and notifications of Incidents and Defects.

Maintenance Rating Program (MRP) means the Department's Maintenance Rating Program.

Maximum PVR means \$_____ [insert amount from the Concessionaire's Detailed Proposal, as adjusted for the change in CPI between January 1, 2009 and the Agreement Date], the maximum PVR that may be earned, as adjusted from time to time in accordance with Section 4.04 of the Agreement.

Maximum Term is defined in Section 4.02(b) of the Agreement.

Modified Candidate Build Alternative 1 (Modified CBA 1) means the preferred alignment for the Project as determined by the NEPA process and approved by the Commonwealth Transportation Board.

Monitoring Period is defined in Section 11.06(a) of the Agreement.

Monthly Gross Revenue means, in nominal U.S. dollars, Gross Revenues for any calendar month during the Operating Period, as may be adjusted pursuant to the Agreement.

Monthly Progress Reports means those reports prepared by the Concessionaire or its contractors that are required under the Agreement for monthly delivery to the Department's Project Manager that reflect the status of and information related to the development and operation of the Project.

Moody's means Moody's Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

National Fire Protection Association (NFPA) 502 means a standard which provides fire protection and fire life safety requirements for limited access highways, road tunnels, bridges, elevated highways, depressed highways, and roadways that are located beneath air-right structures.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended and as it may be amended from time to time.

NEPA Documents is defined in Section 8.07(b) of the Agreement.

Net Cost Impact means any net increase in the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs) directly attributable to a Compensation Event, as compared with what the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs) would have been absent occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Concessionaire. Net Costs Impact shall:

- (a) Exclude:
 - (i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of the Department in the regular course of business, and
 - (ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);
- (b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing the Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

- (c) Exclude those costs incurred in asserting, pursuing or enforcing any Claim; and
- (d) Take into account any savings in costs, including finance costs, attributable to the Compensation Event.

Net Cost Saving means a decrease in the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs and taking into account any savings in the Concessionaire's operating and finance costs) directly attributable to a Compensation Event, a Deviation, whether proposed, approved or unauthorized, or Nonconforming Work waived by the Department, as compared with the greater of (a) what the costs would have been absent occurrence of a Compensation Event, Deviation or Nonconforming Work or (b) the applicable costs indicated in the Initial Base Case Financial Model.

Net Revenue Impact means:

- (a) any net increase or decrease in Gross Revenues directly attributable to a Compensation Event;
- (b) in the case of a net decrease in Gross Revenues, less any savings in Project operating and maintenance costs resulting from the Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event) as compared with what the Gross Revenues would have been absent occurrence of the Compensation Event;
- (c) in the case of a net increase in Gross Revenues, less any incremental increase in Project operating and maintenance costs resulting from the Compensation Event (excluding any increase in costs included in Net Cost Impact for the same Compensation Event); less
- (d) any lost Gross Revenues that can reasonably be mitigated by the Concessionaire (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

New Agreements is defined in Section 7.06(e) of the Agreement.

Nonconforming Work means Work that the Concessionaire, any Governmental Authority or the Department, as applicable, determines does not conform to the requirements of the Agreement, relevant Governmental Approvals, applicable Law or the Design Documentation, including but not limited to Deviations not approved in writing by the Department.

Notice of Filing of Certificate means a notice issued by Concessionaire to the Department requesting that the Department enter into condemnation proceedings for the acquisition of Project ROW.

Notice to Commence Right of Way (ROW) Acquisition means a notice issued by the Department, providing the Concessionaire with the right and obligation to initiate an offer and/or to acquire a property.

O&M Contractor is defined in Section 9.03(a) of the Agreement [*Add if known as of the Agreement Date*, and initially shall be _____].

O&M Records means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by the Concessionaire or a third party, (b) any communication to and/or from the Department, the Independent Engineer or other third party, and (c) any information system (as may be introduced or amended by the Department from time to time) in connection with operation, maintenance, renewal or hand back of the Project that the Department requires the Concessionaire to use or operate.

O & M Security means the letter of credit to be provided by the Concessionaire to the Department pursuant to Section 9.01 (d).

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Operating Period, including Major Maintenance and potential Project Enhancements.

Open Book Basis means allowing the Department to review all underlying assumptions and data associated with each Financial Model Formula or revision thereto, Initial Base Case Financial Model, Base Case Financial Model, Base Case Financial Model Update, Net Revenue Impact, Net Cost Saving, PVR calculation, Maximum PVR calculation, pricing or compensation (whether of the Concessionaire or the Department) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, traffic volumes and related data including vehicle categories, Gross Revenues, changes in toll rates, and other items reasonably required by the Department to satisfy itself as to the reasonableness and accuracy of the amount.

Open Road Tolling (ORT) means an electronic toll collection system without toll plazas, where drivers will be charged the toll without having to stop, slow down, or stay in a given lane.

Operating Period means the period commencing on the Service Commencement Date through the end of the Term.

Operations and Maintenance Agreement means the Contract between the Concessionaire and the O&M Contractor for the O&M Work, as it may be amended or supplemented.

Operations and Maintenance Plan (O&M Plan) means the plan developed by the Concessionaire that identifies the methods, systems and procedures for performing the O&M Work, as described in more detail in the Technical Requirements.

Ordinary Maintenance means maintenance actions taken place to preserve the current condition of assets that are routine in nature and may be performed and funded annually. The actions may include pot hole repair, mowing, shoulder repair, guardrail repair, removal of roadside hazards, etc.

Outline Project Development Plans mean the outline project development plans submitted by the Concessionaire as part of its Detailed Proposal, which are attached as Exhibit B-3 of the Agreement.

Outside Substantial Completion Date means the date that is 365 days after the Guaranteed Substantial Completion Date, as such deadline may be extended by reason of Delay Events in accordance with Section 13.01 of the Agreement.

Oversight Services means those services and functions the Department has the right or obligation to perform or to cause to be performed under Laws or any Project Agreement in order to monitor, review, approve, administer or audit the Project Agreements or the work or performance of the Concessionaire thereunder.

PABs means private activity bonds allocated and issued pursuant to Section 11143 of Title XI of SAFETEA-LU, which amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued.

PABs Issuer means any public entity or corporation eligible under State Law to issue the PABs.

Performance Improvement Plan is the plan submitted and approved by the Department pursuant to Section 11.06(b) of the Agreement with respect to improving the Concessionaire's performance.

Performance Points means the points that may be assessed for certain breaches or failures to perform by the Concessionaire, as set forth in Exhibit H of the Agreement.

Performance Requirement means a performance requirement with respect to the O&M Work, as set forth in the Performance Requirements Baseline Table for each Asset.

Performance Requirements Baseline Table means the table included in the Technical Requirements, as may be updated pursuant to the Agreement, which sets forth the Performance Requirements for each Asset.

Performance Security means the letter(s) of credit securing the Concessionaire's performance of the Work during the Work Period, as more particularly set forth in Section 8.13 of the Agreement.

Permit is defined in Section 4.01 of the Agreement.

Permit Fee means the payment made to the Department pursuant to Part C of Exhibit E of the Agreement.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Planned Refinancing means any Refinancing that matches the timing, interest rate and amount of a Refinancing specifically incorporated into and assumed in the Initial Base Case Financial Model.

Positive Net Revenue Impact means a Net Revenue Impact that is a positive number (i.e. a net increase in Gross Revenues) directly attributable to a Compensation Event, a Deviation, whether proposed, approved or unauthorized, or Nonconforming Work waived by the Department. For this purpose, "Net Revenue Impact" shall be treated as if it applies not only to Compensation Events but to Deviations and Nonconforming Work

PPTA is defined in clause (A) of the Recitals to the Agreement.

Post-Refinancing Model means the Pre-Refinancing Model updated to reflect the base case terms and rates of the respective Refinancing (e.g. base case terms and rates for new debt structure (s)), with all else held constant. The Post-Refinancing Model shall be prepared, submitted, and solved to determine the "Post-Refinancing Equity IRR" as required under Section 7.07 of the Agreement.

Pre-Refinancing Model means the Base Case Financial Model as updated to the proposed date of the Refinancing prepared, submitted, and solved to determine the "Pre-Refinancing Equity IRR" as required under Section 7.07 of the Agreement. The Pre-Refinancing Model shall include all realized (and documented) values and reasonable and documented changes to base case forecast values (including any proposed update to the Base Case Traffic Model and macroeconomic assumptions) provided that such forecast values must have been accepted by Lenders as base case assumptions for the proposed Refinancing and are subject to the Department's review. Notwithstanding the foregoing,

such Pre-Refinancing Model shall not include updates to assumptions for any debt-related costs, including but not limited to assumed Refinancing rates, future debt terms and structures, all of which shall remain assumed at the levels shown in the Base Case Financial Model (established at Financial Close or the previous Refinancing as applicable). The Pre-Refinancing Model shall clearly indicate all changes in information and assumptions from those in the Base Case Financial Model and shall include supporting documentation and certifications as applicable and at the Department's request.

Pre-Refinancing Equity IRR means the Equity IRR resulting from solving the Pre-Refinancing Model in accordance with the procedure described in Section 7.07 of the Agreement.

Post-Refinancing Equity IRR means the Equity IRR resulting from solving the Post-Refinancing Model in accordance with the procedure described in Section 7.07 of the Agreement.

Preliminary Reference Design means the drawings included in the Project Reference Documents entitled "preliminary alignment study" sheets 1-15 dated September, 2008.

Professional Engineer means an individual licensed as a professional engineer in the Commonwealth of Virginia.

Project means the new U.S. Route 460 transportation facility, as more particularly described in Exhibit B-1 of the Agreement.

Project Agreements mean the Agreement, including all exhibits of the Agreement, and all other agreements identified in Section 3.02 of the Agreement, as those agreements may be amended, superseded or replaced during the Term.

Project Development Plans means the project development plans developed by the Concessionaire pursuant to the Technical Requirements.

Project Enhancement Account is defined in Section 6.03 of the Agreement.

Project Enhancements means, collectively, Concessionaire Project Enhancements and Department Project Enhancements.

Project Financing Agreements means the Initial Project Financing Agreements, the Financing Assignments and any other documents evidencing Concessionaire Debt (including Refinancings) obtained in compliance with the terms of the Agreement, together with any and all amendments and supplements thereto.

Project Purposes means the development, permitting, design, financing, acquisition, construction, installation, equipping, management and administration of the Project in accordance with the Agreement.

Project Reference Documents means the collection of information, data, documents and other materials that the Department has provided to the Concessionaire for general or reference information only.

Project Right of Way or Right of Way (ROW) means any real property (which term is inclusive of all estates and interests in real property, including slope easements), which is:

- (a) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Ultimate Configuration;
- (b) shown on the approved ROW Acquisition and Relocation Plan; and
- (c) within the lines established by the NEPA Documents to establish the outside limits of the Ultimate Configuration, as such limits may be adjusted pursuant to the Agreement.

Project Recovery Schedule means the schedule provided to the Department pursuant to Section 8.14 of the Agreement.

Project Schedule means the Initial Baseline Schedule, Baseline Schedule, Project Schedule Updates or the As-Built Schedule, as applicable.

Project Schedule Update means the schedule attached to the Monthly Progress Report submitted to the Department, as described in more detail in the Technical Requirements.

Project Value means fair market value of the Concessionaire's Interest, determined according to the appraisal procedures set forth in Section 21.10 of the Agreement.

Proposal Due Date means the deadline for the Concessionaire to submit its Detailed Proposal as set forth in the Request for Detailed Proposals.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual

Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Public Information and Communication Plan means the plan developed by the Concessionaire setting forth the Concessionaire's approach to communicating with road users and other stakeholders affected by the development and operation of the Project, as described in more detail in the Technical Requirements.

Punch List means an itemized list of Work which remains to be completed with respect to the Project after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

PVR stands for the present value of Gross Revenues collected by the Concessionaire, as calculated cumulatively each month of the Term in accordance with Section 4.03 of the Agreement.

PVR Discount Rate means the discount rate used for calculating the PVR, as set forth in Section 4.03 of the Agreement, subject to adjustment in accordance with Sections 7.02 and 7.07 of the Agreement

Quality Management System Plan (QMSP) means the plan developed by the Concessionaire that defines the quality management systems during the design, construction and operations and maintenance phases of the Project, as described in more detail in the Technical Requirements.

Rating Agency means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch Investors Service, Inc. or Duff & Phelps, Inc. or any other entity providing similar services and having comparable market recognition, or any of their respective successors.

Refinancing means:

- (a) Any amendment, variation, novation or supplement of any Concessionaire Debt, Initial Project Financing Agreement or Financing Assignment that results in an increase of such Concessionaire Debt;
- (b) The issuance by Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Initial Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit; or
- (c) Any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a) or (b) above,

excluding, however any capitalization of interest or accretion of principal or other committed increases on any Concessionaire Debt incurred or committed on or prior to the Financial Close Date.

Refinancing Payment means a payment made by the Concessionaire to the Department from the proceeds of an Unplanned Refinancing, payable within 30 business days of closing of the Unplanned Refinancing.

Remedial Action is defined in Section 16.01(b) of the Agreement.

Remedial Action Plan means the plan developed by the Concessionaire with respect to Hazardous Substances encountered by the Concessionaire within the Project Right of Way, as described in more detail in the Technical Requirements.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

Request for Change Proposal means a written notice issued by the Department to the Concessionaire setting forth a proposed Department Change and requesting the Concessionaire’s assessment of Concessionaire Damages, Positive Net Revenue Impact and/or Net Cost Saving, and schedule impacts thereof, as set forth in Section 14.03(b) of the Agreement.

Request for Detailed Proposals (RFDP) means the Department request for such proposals under Phase Four of the procurement process for the Project, including all addenda thereto.

Reserved Rights means the Department’s right and opportunity to develop and pursue, anywhere in the world, entrepreneurial, commercial and business activities that are ancillary or collateral to (1) the use, enjoyment and operation of the Project and Project Right of Way as provided in this Agreement and (2) the collection, use and enjoyment of Toll Revenues as provided in this Agreement. The Reserved Rights reserved to the Department include but are not limited to all the following:

- (a) All rights to finance, design, construct, use, possess, operate and maintain any passenger or freight rail facility, roads and highways (State and local) or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, crossings, interchanges and fixed guide-ways, and to grant to others such rights;

- (b) All rights to install, use, lease, grant infeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Agreement Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by the Concessionaire that is necessary for and devoted exclusively to the operation of the Project;
- (c) All rights to use, sell and derive revenues from ETTM Data and other data generated from operation of the Project or any ETTM System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls;
- (d) All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;
- (e) All rights to install, use and derive information, services, capabilities and revenues from intelligent transportation systems and applications, except installation and use of any such systems and applications by the Concessionaire as required solely for operation of the Project. For avoidance of doubt, if the Concessionaire installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and shall be the sole property of, the Department;
- (f) All rights to use, install, maintain, repair, or authorize the use, installation, maintenance or repair, of utilities
- (g) All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Department or the Project, or that may be confused with those of the Department or the Project;
- (h) All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Project or any portion thereof, except for a non-exclusive license for the Concessionaire to use the name in connection with Project operations;

- (i) 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;
- (j) Any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and
- (k) All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Project.

Residual Life means the calculated duration that any Asset of the Project, subject to the type of routine maintenance of the Asset which is normally included as an annually recurring cost in highway maintenance and repair budgets, will continue to comply with any applicable Performance Requirement or standard after the end of the Term, before Major Maintenance is required, determined through the application of the Residual Life Methodology and Residual Life inspections.

Residual Life Methodology means the evaluation methodology by which the Residual Life of any Asset of the Project will be calculated. It contains the method by which any necessary Major Maintenance will be identified to ensure that Residual Life Requirements will be met at the end of the Term.

Residual Life Requirements means the requirements set forth in the Technical Requirements with respect to the condition of an Asset at the end of the Term.

Roadway Safety Assessment means a safety assessment of the Project undertaken in accordance with the Department's Road Safety Assessment Guidelines.

ROW Acquisition and Relocation Plan means the plan developed by the Concessionaire that defines the approach to acquisition of the Project ROW, as described in more detail in the Technical Requirements.

S&P means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

Safety Compliance Order means any written order or directive of the Department issued after the Agreement Date, which directs the Concessionaire to undertake certain improvements to the Project (a) to correct a specific safety condition affecting the Project, which the Department has determined to exist by investigation or analysis, or (b) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of the State Highways.

Safety Service Patrol (SSP) means a patrol to assist stranded road users as described in the Technical Requirements.

Schedule of Values means the schedule of values attached as Exhibit B-7 of the Agreement..

Schematic Design means the drawings depicting the layout and scope of the Project, which is attached as Exhibit B-1 of the Agreement.

Security Plan means the document (or part of another document) prepared by the Concessionaire which sets out how the security of the ETTM System, including the sub systems, communication links, roadside equipment and ETTM Facility shall meet the relevant requirements for enforcement evidence and that data are held securely and only accessible to authorized personnel.

Sensitive Security Information (SSI) is the designation used to identify information related to maritime critical infrastructure that is not appropriate for public release without a need-to-know and as further defined in 49 CFR PART 1520.

Service Commencement means the opening of the Project for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.01(a) of the Agreement.

Service Commencement Date means the date on which Service Commencement is achieved, as indicated in the Service Commencement Notice.

Service Commencement Notice is defined in Section 9.01(a)(x) of the Agreement.

Source Code and Source Code Documentation mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

State Indemnitee means and includes the Department, the Commissioner, the CTB, the State and their respective Representatives.

STIP or **Statewide Transportation Improvement Program** means the state improvement program that schedules the detailed funding for all federally supported surface transportation projects/programs within the boundaries of the State, for the next three fiscal years, that is approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving federal transportation funds and/or agreements. Projects/programs in the STIP have to be consistent with the long-range plans of the State and/or the metropolitan planning organizations within the boundaries of the State.

Substantial Completion means the satisfaction of the criteria for completion of construction of the Project set forth in Section 8.11(a) of the Agreement, as and when confirmed by the Department's issuance of the Substantial Completion Certificate.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.11(a) of the Agreement evidencing the Department's determination that Substantial Completion has occurred.

Substantial Completion Date means the date on which Substantial Completion is achieved, as indicated in the Substantial Completion Certificate.

Substituted Concessionaire means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with Section 7.05(c) of the Agreement to perform the Concessionaire's obligations and succeed to the Concessionaire's Interests after any such Lender, or any such Person, acquires the Concessionaire's Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project.

SYIP or **Six-Year Improvement Program** means the Commonwealth Transportation Board's approved allocation of funding in accordance with Article 1.1, Chapter 1, Title 33.1 of the Virginia Code.

Task is defined in Section 9.04(c) of the Agreement.

Tax means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any

kind whatsoever payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not including in each case utility rates or rents.

Tax Imposition means:

- (a) any State or local property tax or similar ad valorem tax or charge (including but not limited to property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with the Agreement, unless recorded by or at the behest of the Concessionaire; and
- (b) any license fee or tax on or measured by receipts or revenues levied, rated, charged, imposed or assessed by the State or any county, city or town of the State against the Concessionaire and attributable to the Project or the Concessionaire's Interest, but excluding:
 - (i) any (A) taxes of general application on overall net income or (B) other taxes of general application on or measured by receipts levied, rated, charged, imposed or assessed by the State in substitution for or replacement of any other State tax of general application, or
 - (ii) any taxes levied, rated, charged, imposed or assessed in connection with any Transfer during the Term of all or any portion of the Concessionaire's Interest.

Technical Requirement Revisions is defined in Section 14.03(g) of the Agreement.

Technical Requirements means the Technical Requirements included as Exhibit L of the Agreement, as the same may be revised by any Technical Requirement Revisions in accordance with Section 14.03(g) of the Agreement.

Term is defined in Section 4.02 of the Agreement.

Termination Event is defined in Section 7.05(a) of the Agreement.

Third-Party Claim means any Claim asserted against a State Indemnitee by any Person who is not a party to the Agreement.

Time Impact Analysis (TIA) means a time impact analysis, (a) establishing the influence of an event on the Baseline Schedule, and shall include a fragmentary network, and for events that have not yet occurred (such as proposed changes or Project Enhancements), the fragmentary network shall demonstrate how the Concessionaire proposes to incorporate such event in the Baseline Schedule, and (b) demonstrating: (i) the time impact based on the date the event occurred or notice of a proposed change is

given to the Concessionaire, (ii) the status of the Work at such point of time; and (iii) the time computation of all affected activities.

Toll Rates Schedule means Exhibit B-5 of the Agreement, consisting of Form 8-B from the Detailed Proposal.

Toll Revenues means:

- (a) All amounts received by or on behalf of the Concessionaire applicable to vehicles for the privilege of traveling on the Project imposed pursuant to the Agreement and from any other permitted use or operation of the Project, including without limitation fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.);
- (b) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues; and
- (c) Amounts the Concessionaire receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues.

Traffic Management System (TMS) means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes.

Transfer means to sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.

Transferee is defined in Section 26.01(a) of the Agreement.

Transportation Management Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to maintenance of traffic, as described in more detail in the Technical Requirements.

Type 1 Defect means a Defect which requires prompt attention because it represents an immediate or imminent hazard, or there is a risk of immediate or imminent structural deterioration, or there is an immediate or imminent risk of damage to a third party's property or equipment, or there is an immediate or imminent risk of damage to the environment.

Type 2 Defect means any Defect other than a Type 1 Defect.

Ultimate Configuration means a configuration of the Project, including a six-lane divided limited access highway and all of the diamond interchanges, described in the “Preferred Alternative” in Section 2.9 of the Final Environmental Impact Statement..

Unplanned Refinancing means any Refinancing that is not a Planned Refinancing.

Utilities Plan means the plan developed by the Concessionaire that defines the utility coordination activities during the design and construction of the Project, as described in more detail in the Technical Requirements.

Utility or **utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways.

Utility Owner or **utility owner** means the owner or franchisee of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Ultimate Configuration.

Violation Processing Services Agreement means an agreement the Concessionaire and the Department may enter into to govern utilization of the Department’s Violation Processing System.

Violation Processing System (VPS) means the Department’s system in Clifton Forge which processes and retains the required data for violations management, payment processing and related customer service functionality.

Virginia Code means the Code of Virginia of 1950, as amended from time to time.

Weighted Average Cost of Debt (WACD) means the weighted average annual cost of Concessionaire Debt, taking into account as applicable the cost of each type of debt held and the time period during which such debt was and/or is anticipated to be outstanding in the Base Case Financial Model. This shall be calculated using the following formula:

$$WACD = [(1 + Quotient)^{12}] - 1$$

Where “Quotient” is the quotient of: (i) the sum total of all actual and anticipated interest paid during each month of the Term; divided by (ii) the sum total of the actual and anticipated average principal balance outstanding during each month of the Term.

For purposes of the calculation, “interest” shall include carried interest, interest rate swap margins and credit enhancement (e.g., monoline) expenses as applicable.

Work means:

- (a) during the Work Period, all of the work required to be furnished and provided by or on behalf of the Concessionaire under the Agreement, including all administrative, design, engineering, real property acquisition support services, occupant relocation, construction, Utility Relocations, utility accommodation, procurement, supply, installation, testing, verification, labor, materials, equipment, construction management services, documentation and other duties and services; and
- (b) during the Operating Period, all of the work required to be furnished and provided by the Concessionaire pursuant to the Agreement, including Major Maintenance.

Work Breakdown Structure (WBS) means a deliverable-oriented hierarchical structure that breaks the total scope of Work during the Work Period into activities, products or services that have distinct identification and that contain specific scope characteristics measured in terms of cost and effort. Each descending WBS level represents an increasingly detailed delineation of activities, products or services.

Work Period means the period commencing on the Agreement Date through the Final Acceptance Date.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Department, as applicable, for the Project or the Rights of Way, including but not limited to drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers’ and inspectors’ diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding

handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, ETTM Equipment and ETTM Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 19.02 of the Agreement and which is not conceived or first reduced to practice for Project Purposes, such as proprietary financial and pricing information of the Concessionaire.