

**EXHIBIT W**  
**NON-COMPLIANCE POINTS TABLE**

[SEE ATTACHED]

# Non-Compliance Points Table

## Exhibit W



### NON-COMPLIANCE POINTS

#### Non-Compliance Point Categories

Each Concessionaire breach will be classified in one of three categories and assessed points as follows:

Category	Cure Periods	Assessment of non-Compliance Points
A	Cure period shall be deemed to start upon the date the Concessionaire first obtained knowledge of, or first reasonably should have known of, the breach or failure. For this purpose the Concessionaire shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial notice to the Concessionaire, as described in <u>§ 11.01(a)</u> of the Agreement.	<b>Provided that the breach or failure is not cured, Non-Compliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in <u>§ 11</u> of the Agreement.</b>
B	Cure period shall be deemed to start from the date on which the breach or failure occurred, whether or not an initial notice has been delivered to the Concessionaire, as described in <u>§ 11.01(a)</u> of the Agreement	<b>Non-Compliance Points shall first be assessed on the date of the initial notification under <u>§ 11</u> of the Agreement (the start of the first cure period). Provided that the breach or failure is not then cured, Non-Compliance Points shall be assessed again at the end of the first and each subsequent cure period.</b>
C	<b>No Cure Period applicable</b>	<b>Non-Compliance Points shall be assessed on the date of the initial notification under <u>§ 11</u> of the Agreement.</b>

## Non-Compliance Points Table Exhibit W



### Total Point Trigger Levels

Non-Compliance Points will accumulate and upon reaching certain thresholds, the Department will be granted certain rights as follows:

Total Cumulative Number of Uncured Points	Total Cumulative Number of Cured and Uncured Points	Implications
30	135	Increased Monitoring by the Department
45	200	Remediation Plan to be submitted to the Department
68	245	The Department may exercise its rights under § 19.01 of the Agreement

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

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
1	Tolling	Tolling Requirement	Technical Requirements § 4.7	The Concessionaire transmits duplicate transactions or incorrect toll amounts to the Customer Service Center (to be determined on a per transmission basis).	C	None	5
2	Tolling	Tolling Requirement	Technical Requirements § 4.7	Upon notification of a duplicate transaction or an incorrect toll amount on a per transmissions basis, the Concessionaire fails to reconcile or audit the data transmission within one Business Day to identify any and all other duplicate transactions or incorrect toll charges that may have occurred (to be determined on a per transmission basis). Upon identification, the Concessionaire does not transmit the correct information to the Customer Service Center for rectification including appropriate correspondence and crediting/debiting of accounts within five days.	A	3 day	5
3	Tolling	Transactions	Technical Requirements § 4.7.3 (G)	Concessionaire transmits tag reads to the Customer Service Center from vehicles traveling in the General Purpose Lanes (the "GP"). Following receipt of two or more complaints within 30 days of tag reads from vehicles traveling in the GP Lanes emanating from a	C	None	5

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Exhibit W**



	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
				single toll point the Concessionaire shall investigate the complaints. In the event that a cross-read occurred or reasonable doubt exists as to whether a cross-read occurred, the Concessionaire shall, within 15 days of receipt of such second complaint within a 30 day period, prepare correspondence that can be sent to all customers who have made such a complaint regarding the erroneous GP reads. The Concessionaire shall provide information to the public outlining the issue with reads from tags in the GP within 15 days of the receipt of such second complaint within a 30 day period.			
4	Tolling	Tolling Requirement	Technical Requirements § 4.7	<p>Within seven days of receiving notice that an incorrect toll amount has been charged (and provided that customer information has been provided) and that the incorrect charge has been validated, the Concessionaire fails to provide the Customer Service Center correspondence to be sent to the customer informing the customer that his or her account will be credited for errors in excess of \$0.25 (to be determined on a per transmission basis).</p> <p>Upon receiving notice that an incorrect toll has been charged, the Concessionaire fails to submit a plan to the Department for approval to rectify the billing problem.</p>	B	7 days	5
5	Tolling	Signage	Technical Requirements § 4.7.3.J	Upon notification of the display of an incorrect toll amount, the Concessionaire fails to reconcile or audit the data transmission within one Business Day to identify any and all other customer accounts that may have been impacted by the incorrect signage (to be determined on a per transmission basis).	A	3 day	5

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	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
6	Tolling	Privacy	Technical Requirements § 4.7.3(K)	The Concessionaire fails to comply with standards applicable to the retention of and use of customer records pursuant to applicable Law, including § 33.1-56.4 of the Code of Virginia.	C	None	5
7	Tolling	Transactions	Technical Requirements § 4.7.3(B)	The Concessionaire requests payment from an account not on the list of current active tags transmitted by the Department (to be determined on a per transmission basis).	C	None	5
8	Communications	Public Information	Technical Requirements § 2.1.1	The Concessionaire issues information to the public or in press releases whether through variable message signs or other means that is factually incorrect.	C	None	5
9	Customer Service	Public Information	Technical Requirements § 4.4.1	The Concessionaire fails to respond within seven days to customer inquiries and complaints about the HOT Lanes where contact details of customers have been provided no matter whether the complaint is received directly from customers, the Customer Service Center, or from the Department.	A	2 days	5
10	Communications	Public Information	Technical Requirements § 2.1.4	The Concessionaire's does not regularly include in its marketing and public relations materials information about how HOV users can access the facility and the HOV information is not approved by the Department prior to its public release.	A	7 days	5
11	Project Management	Project Plans	Technical Requirements §1.3 and Attachment 1.3	The Concessionaire fails to produce, review, and, if necessary, update the following plans during the Operating Period in accordance with the Agreement including but not limited: (1) the Concessionaire Management Plan; (2) the Hazardous Substances Management Plan; (3) the Communication, Public Outreach, and Community Education Plan; (4) the Life Cycle Maintenance Plan; and (5) the Operation and Maintenance Plan.	A	30 days	5

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	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
12	Operations	Incident Management	Technical Requirements § 4.3	The Concessionaire fails to achieve an incident response time that complies with the Law.	C	None	5
13	Operations	Information Sharing	Technical Requirements § 3.16.4 (B) § 3.16.5 (C) § 3.16.11 § 3.16.15 § 4.4.7 § 4.4.8	The Concessionaire fails to transmit the following to the Department's Northern Virginia Public Safety Traffic Operations Center: (1) incident management data; (2) real time speed and volume data for the HOT Lanes; and (3) streaming video from CCTV cameras with a view of the HOT Lanes. The minimum refresh rates for such data transmissions shall be pursuant to the Technical Requirements.	A	5 days	5
14	Operations	Systems Control	Technical Requirements § 4.4.10 § 1.12	The Concessionaire fails to relinquish control to the Department of nominated ITS field devices within 10 minutes of receiving such request from an Authorized Department Representative in the prescribed manner in accordance with the Comprehensive Agreement.	B	10 Minutes	5
15	Operations	Work Zone Management	Technical Requirements § 1.8.1 (C)	The Concessionaire fails to meet requirements of IIM-LD-241 relative to work zone safety, management, Maintenance of Traffic and diversion routes for regular maintenance during operations.	B	60 minutes	5
16	Inspections	Qualification of Inspectors	Technical Requirements § 4.2.1.B	The Concessionaire fails to have all inspectors certified pursuant to the Department's Standards and Specifications.	A	14 days	5
17	Inspections	Quality of Inspection	Technical Requirements § 4.1	The Concessionaire fails to identify material defects in the inspection reports, Life Cycle Maintenance Plan, or work currently undertaken.	C	None	5
18	Inspections	Quality of Inspection	Technical Requirements	The Concessionaire fails to include identified material defects in the next Life Cycle Maintenance Plan and/or the Operations and Maintenance Plan.	A	14 days	5

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	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
			§ 4.1				
19	Maintenance	Performance Requirements	Technical Requirements § 4.5	The Concessionaire fails to meet the performance requirements for each asset as defined in Attachment 4.5 as measured in cycles adopted in the industry for each asset.	A	30 days	5
20	Maintenance	Performance Requirements	Technical Requirements § 4.5	The Concessionaire fails to act in accordance with Exhibit C - Attachment 4.5 with regard to responding to safety hazard issues	A	Stated timeliness requirements	5
21	Level of Service	Degradation Assessment	Technical Requirements § 4.4.4	The Concessionaire fails to appropriately manage the dynamic tolling mechanism to ensure the level of service of the HOT Lanes does not become degraded as required by Law  In addition and to be measured separately, upon receiving notice of a problem with the dynamic tolling mechanism, the Concessionaire fails to submit a rectification plan to the Department for approval.	B	7 days	5
22	CA Obligations	Discrimination	CA § 24.01	The Concessionaire is found to have engaged in discriminatory employment practices which violate state and/or federal Law related to such practices or the Concessionaire admits to having engaged in such practices.	C	None	5
23	CA Obligations	Contracting	CA § 24.01	The Concessionaire fails to include provisions in all of its subcontracts requiring its subcontractors to refrain from discrimination as described in § 24.01 of CA.	C	None	5
24	CA Obligations	Contracting	CA § 24.02	The Concessionaire enters into a subcontract with any Person (as defined by the CA) debarred or prohibited from participating in state or federally-funded projects or any Person who has been indicted, convicted, pled guilty, or pled <i>non contendere</i> to a violation of any Law (as defined by the CA) involving fraud, conspiracy,	C	None	5

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	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
				collusion, bribery, or any other act showing a similar lack of moral or ethical integrity.			
25	CA Obligations	Contracting	CA § 24.02	The Concessionaire enters into a contract or subcontract with an Affiliate (as that term is defined by the CA) without providing notice and/or obtaining consent from the Department (to the extent that such notice and/or consent is required by the CA).	A	30 days	5
26	CA Obligations	Suspension of Tolls	CA § 5.05	The Concessionaire fails to suspend tolls within 10 minutes of receipt of the Department's request which will be delivered in accordance with the CA by an Authorized Department Representative in an agreed manner.	A	10 minutes	5
27	CA Obligations	Permit Fee	CA Exhibit J	The Concessionaire fails to deliver audited calculations of the Permit Fee by April 30 of each year after First Level Targeted Rate of Return has been reached.	B	14 days	5
28	CA Obligations	Permit Fee	CA Exhibit J	The Concessionaire fails to deliver requested additional information or clarifications to audited calculations within 30 days of receiving a request for such information from the Department.	B	14 days	5
29	CA Obligations	Updates to Financial Model	CA § 6.02	The Concessionaire fails to provide the Department with updated Financial Model within the following timeframes: (i) 120 days within the end of the fiscal year; (ii) 60 days after the occurrence of a compensation event; (iii) 60 days after agreement for amendments to the Project; or (iv) concurrently with written notice of a proposed Refinancing.	B	7 days	5
30	CA Obligations	Refinancing	CA § 7.05	The Concessionaire fails to provide the Department with written notice of any proposed Refinancing at least 75 days, or such notice as possible in accordance with the Agreement, prior to the proposed date of closing of the Refinancing along with supporting documents.	B	7 days	5



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	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
31	CA Obligations	O&M Contractor	CA § 24.02(d)	The Concessionaire fails to seek approval from the Department before engaging an O&M Contractor <u>other than the initial O&amp;M Contractor</u> identified in the Operations and Support Services Agreement as of the date of the Agreement.	B	7 days	5
32	CA Obligations	Annual Budget	CA § 9.08	The Concessionaire fails to file annually with the Department an Annual Budget in the required form in accordance with the Agreement.	B	7 days	5
33	CA Obligations	Department Access and Inspection	CA § 10.03, § 18.07	The Concessionaire fails to provide financial or other records within 14 days after receiving a request for such records from the Department, FHWA, and their respective authorized agents.	B	3 days	5
34	Operations	General	Technical Requirements § 4.1B	The Concessionaire fails to operate and maintain the Project gate system in a manner intended to disallow traffic from entering in the opposite direction of traffic flow, excluding circumstances beyond the control of the Concessionaire.	B	20 minutes	3